

[Boom! Lawyered: How John Roberts Helped Trump Defund Planned Parenthood](#)

Imani Grandy: Hello fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that is just sick of Donald Trump. Know what I mean? I'm just sick of the man. I don't like him. He's not my Jewish Messiah. He's frankly a pain in the ass.

I'm Imani Gandy.

Jess 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 a big thanks to our subscribers and a welcome to our new listeners.

Imani Grandy: If there's one thing that anti-choicers love, it's attacking Planned Parenthood.

Jess Pieklo: Definitely.

Imani Grandy: Whether it's fake claims that Planned Parenthood was founded by a woman whose sole goal in life was to exterminate the black population through abortion, or claims that Planned Parenthood was in the nefarious business of selling baby heads on the black market for pennies on the dollar.

Anti-choicers seemed to have a never-ending stream of lies and attacks when it comes to Planned Parenthood.

Jess Pieklo: They really do. And earlier this week, all of the Planned Parenthood haters creamed their collective Twinkie, Imani, as the reproductive healthcare provider announced that it would be withdrawing from the Federal Family Planning Program known as Title X because of Trump's domestic gag rule.

Imani Grandy: But wait a minute, you said, I couldn't say anything about cream Twinkies anymore because you said it was gross.

Jess Pieklo: It is. I know, but these are wild times, Imani, and a girl's allowed to change her mind.

Imani Grandy: Fair enough, fair enough. But that's exactly what happened. Anti-choicers could barely contain their excitement. But as they were gloating, thinking that they had finally taken down Big Abortion, what they were really gloating about is poor people being unable to access healthcare.

Jess Pieklo: Yep.

Imani Grandy: Because that's what conditioning Title X funding on a promise not to perform, speak about, make a referral for, or even have a whisper of a fleeting thought about abortion. That's what it does. It makes it difficult, and in some cases,

impossible for poor people who rely on Planned Parenthood to access reproductive healthcare.

Jess Pieklo: This is a big deal. We're not going to sugarcoat this. It's fucking terrible. What's even more terrible is that providers are going to have a really hard time winning this case at the Supreme Court, Imani. You know why?

Imani Grandy: Yeah, just tell us, just lay it on me.

Jess Pieklo: Because the government attorney who so successfully argued in favor of a similar domestic gag rule during the Reagan administration, that guy, he's sitting on the Supreme Court right now. Do you know who that guy is? I mean-

Imani Grandy: Oh yeah, I do. Because we've been talking about this.

Jess Pieklo: I've been yammering about him all week.

Imani Grandy: You've been yammering about him all week, and frankly, you're a little bit obsessed with this dude lately.

Jess Pieklo: It's John Roberts, John Roberts is to blame.

Imani Grandy: John Frickin' Roberts. Oh God. John Roberts. Why? Why?

Jess Pieklo: Yeah. We're going to tell you why. In this episode, we're going to tell you all about Trump's attacks on the Federal Family Planning Program known as Title X, the domestic gag rule, and how John Roberts will probably and happily let the Trump administration screw over poor people.

Imani Grandy: We're also going to tell you about how this gag rule is really about a war on contraception.

Jess Pieklo: Yup.

Imani Grandy: Then we're probably going to silent scream some more, because that's just what you have to do in Donald Trump's America.

Jess, where do we begin? Let's dig into this a bit.

Jess Pieklo: All right. Let's get some background here. In May 2018, the Trump administration announced new restrictions related to the Title X Family Planning Program. That's the federal program that guarantees access to reproductive healthcare for Medicaid recipients.

Those restrictions include the domestic gag rule. This gag rule bans federal dollars from going to providers who perform abortions or refer for abortion services. The restrictions also mandate these new physical and financial

separation requirements between a Title X funded program and a facility that engages in "abortion activities."

Imani Grandy: These physical and financial separation restrictions are downright ridiculous.

Jess Pieklo: They're bonkers.

Imani Grandy: They're just so absurd. The separation must include separate waiting rooms, separate consultation rooms, separate examination rooms, and separate treatment ... treatment, goddamn it. What is it with me and the word treatment? And separate treatment rooms, as well as office entrances and exits.

Title X grantees would have to provide different phone numbers and email addresses for those staff members and facilities involved in abortion services.

Jess Pieklo: That's just bizarre.

Imani Grandy: It's bonkers.

Jess Pieklo: Like you'd get three different emails for one job.

Imani Grandy: Right. Right. Like we don't have enough problems with the emails; I have like 25,000 emails that are unread. I don't need 3,000 email accounts. My God.

Jess Pieklo: Listeners, she's slow on the email. This would be terrible for her.

Imani Grandy: Really, really bad on the emails. If you want to find me, just DM me on Twitter.

But these separation requirements apply to all Title X funded projects that give referrals to patients who want to obtain an abortion, as well as any that engage in separately funded advocacy or public education activities that "promote abortion" as determined by the Trump administration.

Jess Pieklo: Oh, no room for fuckery there.

Imani Grandy: No room at all, because the Trump administration is going to decide; and we know how reasonable they are. So in order to obtain Title X funding, providers would have to open and operate an entirely independent facility to merely provide a referral for abortion care.

These separation requirements are set to take effect in 2020. And may I just say yet again, they are absurd. They're absurd!

Jess Pieklo: Can you imagine the idea of, okay we've got a clinic and then let's say, what would compliance look like? We've got our clinic and so now we are opening

our separate facility. So here, patient, we are going to walk next door. Assuming it would ever be that easy where I can then go do that.

The added expense and hassle is just ridiculous, which is why advocates across the country sued to block the restrictions from taking effect. Yay. Good.

In the lawsuit they made a couple arguments. First, they argued primarily that the gag rule violates section 1554 of the Affordable Care Act. That's the section that says the secretary of health and human services, "shall not promulgate any regulation that creates any unreasonable barriers to the ability of individuals to obtain appropriate medical care."

That makes me a little sweaty because that sounds like administrative law.

Imani Grandy: Oh God, here we go. They're also arguing that the rule is arbitrary and capricious.

Jess Pieklo: Ooh!

Imani Grandy: We're going to give space for Jess to have her a little flip out now, because she loves that shit.

But they're saying it's arbitrary and capricious because "it reverses longstanding positions of the department without proper consideration of sound medical opinions and the economic and noneconomic consequences."

Now they're also arguing that the separation requirements increase expenses unnecessarily and unreasonably because duh, if you're a clinic and you have to erect an entirely different building just to house a referral service. Yeah. That's going to increase your expenses a little bit unnecessarily and a little bit unreasonably.

Jess Pieklo: I do think we're at the point within the Trump administration where legal pleadings can have "because, duh" in them in responding to some of this shit.

Imani Grandy: They're also arguing that not including counseling on abortion is inconsistent with ethical and evidence-based healthcare. Now what happened next is just basically flat-out judicial chaos.

Jess Pieklo: It really is. We had four different district court judges blocking the restrictions from taking effect, with two of those judges blocking it nationwide while the lawsuits proceed.

But, on June 20th a three-judge panel from the Ninth Circuit granted a request from the Trump administration to stay or pause those nationwide injunctions, which would allow the gag rule to be broadly enforced. Okay. That's bad.

So advocates say, hold up, that's bad. And they asked the full Ninth Circuit to reconsider. The full Ninth Circuit refused. Also bad.

Imani Grandy: Yep.

Jess Pieklo: Meanwhile, the Trump administration had given providers until August 19th, so this Monday, to provide a letter or some kind of plan to say how they were going to comply with these new restrictions.

Planned Parenthood and other providers said, "Well, this is bad." So they asked the Ninth Circuit again for emergency relief. The Ninth Circuit again said, No.

So, Planned Parenthood announced that it was leaving Title X so long as these restrictions remained in place. I mean, what can it do?

Imani Grandy: Remember when the Ninth Circuit was liberal-

Jess Pieklo: I know.

Imani Grandy: ... and they did the right thing and they did good things. And now the Ninth Circuit is just shit.

Jess Pieklo: I know.

Imani Grandy: It sucks. So Trump has for the time being gotten Planned Parenthood and a bunch of other family planning providers that offer comprehensive reproductive healthcare to leave the Federal Family Planning Program, which is ridiculous because how are you going to get family planning providers to leave a family planning program? Why, Jess? Why, why, why?

Jess Pieklo: Well, good question Imani. Why? Why does this case matter other than Planned Parenthood?

Imani Grandy: Well, aside from the effect on Planned Parenthood, it's an attack on low-income people and their access to comprehensive healthcare. It's an all-out assault on contraception access.

Title X serves about 4,000,000 people. And often it serves those 4,000,000 people as their primary source of access to healthcare.

Jess Pieklo: That's a lot of people.

Imani Grandy: A lot of people. Approximately two-thirds of people who rely on Title X live in poverty, and Title X clinics are the main source of medical care for the 6 in 10 women who receive their care there. 60%.

Now, about one third of Title X patients are Latinx, and approximately 22% are black. So we're talking one third Title X are Latinx, 22% are black. Obviously, this means that a disproportionate number of Title X patients are people of color.

Providers like Planned Parenthood have a choice. They can either comply with this bullshit or they can leave the program. Many have decided to leave, because they want to continue to be able to provide the full panoply of services that constitute reproductive healthcare, which includes abortion and contraception.

So those folks are going to leave. But guess who's going to stay?

Jess Pieklo: Who?

Imani Grandy: Well, those providers who are not only anti-abortion but also anti-contraception. That's what this fight is really about.

Jess Pieklo: It really is. This is a war on contraception access, and one John Roberts helped make possible.

Imani Grandy: I'm going to ask you to explain because I know you're itching to; you're very excited. Tell us more about this.

Jess Pieklo: His history is really bad, and I feel the need to evangelize about this. So I'm going to do that a little bit. It's true.

Some of our listeners may recall because I've talked about this before. But if not, if this is new information, John Roberts was once a lawyer in the George H.W. Bush administration. While he was a lawyer in that administration, he argued that Roe versus Wade was wrongly decided and should be overturned.

Imani Grandy: That's lovely. That bodes well for all of the abortion rights cases that are coming up next term. John Roberts is a conservative; he may be the swing vote on the Court right now, but he is a conservative and he does not like Roe v. Wade, so that's fun.

Jess Pieklo: Yeah, Imani, let me ease into this. He did this a couple times, but I really want to talk about this case, Rust versus Sullivan. There, Roberts was the lead government attorney defending the Reagan era, domestic gag rules. That's how long we have been fighting about the restrictions on Title X. Basically as long as Title X has existed, Republicans have tried to screw with it. The Reagan administration had a gag rule and that was being litigated when Bush was president.

These are the rules that Trump just replicated, okay? Roberts is arguing this before the Supreme Court. In that case, he wrote in the government's brief,

"We continue to believe that Roe was wrongly decided and should be overruled."

Imani Grandy:

I mean what the hell man.

Jess Pieklo:

I just heard Imani's eyes roll.

Imani Grandy:

I did, yeah, my eyes have rolled so far in the back of my head that I just may never be able to see you again. This is just signaling where we're headed, right?

Jess Pieklo:

It is.

Imani Grandy:

We are just, it's just a blaring light. Wee-ooo, wee-ooo, siren, per-per-per-per, air horns, the whole thing.

We're headed to a bad place, people, and John Roberts is going to just grab us by the hands and take us to the bad place. Not even the medium place.

Jess Pieklo:

Skipping us down the path to the bad place.

Imani Grandy:

Not even with like a bag of cocaine to the medium place. We're going straight to the bad place.

Jess Pieklo:

Oh, with that image in mind, I'm going to give you folks one more quote from Rust, just to give you a sense that really, when we say he's not a moderate ... because you're going to hear "He's a moderate" at some point again on abortion. Because at one point he decided not to close the clinics in Louisiana. He's not a moderate. Here's what he wrote.

"The Court's conclusions in Roe, that there is a fundamental right to an abortion and that the government has no compelling interest in protecting prenatal human life through pregnancy, Find no support in the text, structure or history of the Constitution." Imani, did you know that? No support?

Imani Grandy:

None. Yeah, except for the fact that there is, because the Court decided that there was. Fine, if you don't like a decision, say you don't like a decision. But don't pretend the people who actually issued that decision just pulled it directly out of their own asses.

Jess Pieklo:

Right.

Imani Grandy:

Oi ...

Jess Pieklo:

So with all of that context in going into defend the constitutionality of the Reagan era gag rule, Roberts advanced this line of logic. He said, "While under Roe, the government may not prohibit a woman from choosing to have a first trimester abortion." This is true; good job for acknowledging that.

"This Court has repeatedly held that the government is not obligated to provide the means to exercise any such right. Thus the government need not finance the provision of information about abortion, whether the information is provided in the form of abortion counseling, referral or advocacy."

Roberts gets the Court to buy this argument and uphold the gag rule by a 5 to 4 vote.

Imani Grandy: First of all, I want to address the fact that, you know what, the government actually does have an obligation to finance the provision of information about abortion. To the extent that it's going to decide to finance the provision of information about healthcare. Abortion is healthcare, motherfuckers.

But aside from that-

Jess Pieklo: The motherfuckers really drives that home.

Imani Grandy: You just got to add that in there. What is the point of the Hyde Amendment if we're going to talk about public financing of abortion when it comes to Title X? The Hyde Amendment already makes public financing of abortion impossible.

That is why this myth of the gag rule really being about abortion is horseshit. Because it's not about abortion, it's about contraception and it's about cementing opposition to contraception into Supreme Court jurisprudence.

Jess Pieklo: Okay. That was a lot, and I agree with all of it.

Imani Grandy: It's also very shouty.

Jess Pieklo: I think we need to break that down, because you're going to hear that this is about abortion. But really, when we're talking about these restrictions, it is about contraception. So let's really walk that through.

Imani Grandy: All right. Here we go. In 1980, in a different abortion rights case called Harris versus McRae, the Supreme Court upheld the constitutionality of the Hyde Amendment, and also ruled that state Medicaid programs were not obligated to pay for medically necessary abortions that Hyde had made un-reimbursable.

The Hyde Amendment is a spending restriction passed by Congress that prevents federal funds ... that's Medicaid ... from paying for abortions. The Hyde Amendment was first passed in 1976 in direct response to Roe, and it is very clearly an attack on poor people.

In fact, the dude who introduced the Hyde Amendment, good old Henry Hyde, basically said that he would love to eradicate abortion across the board, but since the only way he could do it was by attacking Medicaid, then he was going

to go ahead and attack Medicaid. And if it's poor people, eh, fuck them. Who cares?

Jess Pieklo: Eh, fuck them.

Imani Grandy: Now Congress can repeal the Hyde Amendment at any time.

Jess Pieklo: Anytime.

Imani Grandy: Anytime it wants to, they get to say, "No, we're not going to attach this stupid rider to the Appropriations Bill anymore."

So by the time the Reagan administration is pushing this gag rule, and especially by the time John Roberts is defending that gag rule before the Supreme Court, while serving in the first Bush White House, it is already established law that the government doesn't have to fund abortion services.

Let me say that again. By the time the Reagan administration decided it needed a gag rule, and by the time John Roberts decided that he was going to defend the gag rule based on this idea that we don't have to publicly fund abortion, it was already banned. There is no taxpayer-funded abortion. None. Zero. Just to be clear.

Now there should be, and I will argue till my dying breath that publicly funded abortion should be a thing, but right now there is not. That should be the end of the story. There's no funding for abortion. What the hell is all this Title X crap all about?

Jess Pieklo: Because the argument that Roberts crafts in *Rust versus Sullivan* to defend that Reagan era rule extends the logic of the government doesn't have to pay for abortions, to essentially, the government doesn't have to facilitate abortions. Right?

Imani Grandy: Yep.

Jess Pieklo: That should sound familiar, because that's the entire argument the Trump administration is using to attack reproductive autonomy writ large. Right?

Imani Grandy: Absolutely. We saw this in several cases. We saw it in the *Garza* case-

Jess Pieklo: Yep.

Imani Grandy: ... we saw it in the *Hobby Lobby* case. This idea that insurance companies don't have to facilitate the provision of birth control in employer-based health insurance plans.

Or in the Garza case, the government doesn't have to, I don't know, follow the rules of Texas, which had already decided that this young woman was entitled to an abortion, but to actually give the abortion on American soil to an undocumented immigrant? Well, that was facilitating abortion and we're just not into facilitating abortion.

It doesn't even make any sense because what the fuck does facilitate mean anyway? Does it mean, is it referral? Is it thinking about, is it a wink and a smile?

Jess Pieklo: Right.

Imani Grandy: It's just this very ambiguous term that the Court has used to essentially strip reproductive rights and reproductive autonomy from people.

Jess Pieklo: Right. We had the hard stop in Harris v McRae with the Hyde Amendment, and then we get Roberts to get the Court to extend that logic that upheld the Hyde Amendment and endorse the Reagan era rules.

That's what we've got facing the Court now with these Trump administration rules put in place.

Imani Grandy: Yeah. Yeah. And just to reiterate the fact that Roberts was arguing this in, what was it, 1991, is that when Rust v. Sullivan was?

Jess Pieklo: Yup.

Imani Grandy: You can be damn sure that that's what he's going to be arguing, now that he's sitting as Supreme Court Justice on the bench. It's depressing. It's depressing.

Jess Pieklo: We should mention the only reason that those rules never really substantively took effect is because we had an election that brought President Clinton, and Democrats took power.

Imani Grandy: Right. That's something that's important, I think, to just put a pin in, is the fact that these are regulations that agencies are development. They're not statutes, they're not case law. A Democratic president could just undo all of this, right?

Jess Pieklo: Yup.

Imani Grandy: A Democratic president could say, "Okay, Planned Parenthood, come on back." We're going to give you the Title X funding and blah, they can do whatever they want.

But aside from that, what happens next? What can we do now? What can people do now?

Jess Pieklo: Sure. Let's first talk the legal challenges, because that litigation is still going on. There are oral arguments at the end of September at the Ninth Circuit. We have talked a lot about Rust versus Sullivan, and how Roberts has airlocked a lot of these arguments. But these challenges do make some slightly different legal claims.

Goonies never say die, Imani; I'm not going to say all hope is totally lost at the Court because of some of those tweaks. We'll see what the Court does. I think it's a long road ahead, but there is still the litigation process that needs to work itself out.

Imani Grandy: There's also a political process that can work itself out.

Jess Pieklo: Yep.

Imani Grandy: Right? The House has passed a bill that would fully fund Title X without the gag rule. Now would be a fantastic time to pressure Susan Collins to get the Senate to do the same things.

Jess Pieklo: Whoo, yeah.

Imani Grandy: She's supposedly all pro-abortion rights and pro-choice and blah blah blah. I haven't quite seen it yet, but there's still time. Susan.

Jess Pieklo: Hey, Suze.

Imani Grandy: I know some states are stepping in and providing funding where Title X is no longer an option. Places like Illinois, Maryland, Vermont, and Washington are all doing what they can to make sure that folks don't lose access to comprehensive reproductive healthcare.

That's a good thing, but it's also scary that we're living in these times, that there's this patchwork of rights depending on what state you live in. It's just not possible for people.

I know a lot of people like to say, "Well, you shouldn't be living in the south or you shouldn't be living in these states." It's not possible, a), for people to just up and move and leave their families and jobs; and b), there are a lot of progressive people who are doing a lot of really good work in these states. It doesn't really help them or boost their ego to hear people saying, "Oh yeah, screw that state. Everyone should leave."

Jess Pieklo: Imani, I was just going to say, I yelled at you in Slack for a full hour about this, but we have to call out the grift that the Trump administration is turning the Title X program into for anti-choice clinics, right?

Imani Grandy: Yeah.

Jess Pieklo: The Federal Family Planning Program is now going to fund a whole lot of Christian and Christian-adjacent clinics that offer nothing close, nothing close to the full spectrum of reproductive healthcare. That is in direct violation of the mission of Title X, which is expand access to healthcare.

Imani Grandy: Right.

Jess Pieklo: It makes me very mad.

Imani Grandy: Yeah, it makes me angry. It makes me sweaty. It makes me want to, I don't know, throw a box of baby turtles in the air, but then catch them because I like-

Jess Pieklo: Catch them!

Imani Grandy: ... baby turtles; they're cute. I will catch them.

Yeah, that's our fun and exciting and very, very happy episode for today. We apologize. But we're living in Trump's America and it's just not all going to be good news, but we're going to try and find hope where we can.

If you'd like to talk to us about any of this, you can follow me on Twitter @angryblacklady. You can follow Jess on Twitter @hegemommy, H-E-G-E-M-O-M-M-Y. You can follow Rewire.News @rewire_news.

And you can, and should, join our Facebook group because it is awesome, and you will like it. We will let you in if you answer the questions.

If you don't understand the Brad McBeer, Justice Beer Kennel ... Beer Kennel? Beer Funnel, Justice Kegstand, Chugs [McKaverton 00:24:08], which is something that I [crosstalk 00:24:10]. I nearly died when I saw it. She was like, "I don't know Chugs McKaverton."

Those are any of the sort of funny names that we've come up with for, I don't even know his real name. Anyway, what's his name? Brett Kavanaugh.

Jess Pieklo: Right. Kavanaugh.

Imani Grandy: Anyway, what are we going to do, Jess?

Jess Pieklo: We'll see y'all on the tubes.

Imani Grandy: See y'all on the ding-dang tubes.

Jess Pieklo: 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. The Rewire.News editor in chief is Jodi Jacobson.