

Boom! Lawyered: Forced Ultrasound and the First Amendment

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 brought to you by the letter A for abortion. Which is not a dirty word, and somebody please tell the presidential candidates that. 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 Gandy: So Jess, do you know what I love?

Jess Pieklo: Me. You love me.

Imani Gandy: Well, yes, yes, but something law related.

Jess Pieklo: Okay. Still me. I'm sorry, I saw Lizzo last night, I'm feeling myself and it's just, it's there. It's a Lizzo hangover.

Imani Gandy: But you're right, I do love you. It is known, but something that's not a person, or a dog, or breathing, something that isn't sentient really.

Jess Pieklo: Okay, so let me think.

Imani Gandy: Circuit splits!

Jess Pieklo: Oh duh, of course. Circuit splits, you love circuit splits.

Imani Gandy: Right, and do you know what else I love?

Jess Pieklo: Definitely me.

Imani Gandy: Oh, for god sakes. Okay, yes. But I love cases that force anti-choicers to reveal how hypocritical they are. And today we're going to talk about one such case.

Jess Pieklo: That's right. In this episode we're going to talk about a case out of Kentucky challenging that state's forced ultrasound law.

Imani Gandy: And we're going to talk about a giant, gaping circuit split surrounding the issue of forced ultrasound laws that require doctors to display and describe ultrasound images even if the pregnant patient does not want to see or hear them.

Jess Pieklo: Hold on, wait though, didn't the court already decide a similar issue? Don't you remember when California tried to require fake clinics to tell its customers that

they're not actually doctors, and then anti-choicers everywhere freaked out and said that that was a violation of their first amendment rights?

Imani Gandy: Yep, I sure do. That was NIFLA v. Becerra, We did a podcast on it, which everyone should go back and listen to.

Jess Pieklo: So if the Supreme Court has already said that these fake clinics can't be forced to speak on behalf of the states, why is it that real clinics can be forced to speak on behalf of states?

Imani Gandy: Because anti-choicers are hypocrites.

Jess Pieklo: Yeah, they really are.

[music]

Imani Gandy: A couple of weeks ago, the ACLU filed a cert petition on behalf of the last clinic in Kentucky. That clinic is called EMW Women's Surgical Center, and the case is called EMW Women's Surgical Center v. Beshear. Now the petition asks the Supreme Court to review a Sixth Circuit ruling upholding Kentucky's forced ultrasound law. Now Kentucky's forced ultrasound law is called HB2, so remember that HB2.

Jess Pieklo: Get out.

Imani Gandy: Yeah, why are so many laws that end up being HB2 such shitty laws, right?

Jess Pieklo: Seriously.

Imani Gandy: Texas HB2 being the main one that comes to mind. But this particular HB2 in Kentucky requires a pregnant patient to undergo a mandatory ultrasound, and that includes a speech and display requirement. Now, a speech and display requirement says that a physician must place the ultrasound images in the patient's view and read a state mandated script about the images, even if the patient does not want to see the images or hear the description.

The law also requires the abortion provider to use an ultrasound transducer, or a fetal heart rate monitor, so that the pregnant patient can hear the heartbeat if it's audible.

Jess Pieklo: Okay, Imani, I have to admit that I kind of thought we had moved on from mandatory ultrasounds. I mean, this feels like a conversation from, oh, I don't know, 2014 or maybe 2016. But here we are with the petition asking the Roberts court to rule on Kentucky's. Can you help me and the listeners catch up here? How are we here in 2019?

Imani Gandy: I wish I could tell you. The answer is just a whole lot of fuckery.

Jess Pieklo: Yeah.

Imani Gandy: That's the answer. So these forced ultrasound laws actually co-opt physician's voices. They co-ops their examining tables, they're probing instruments, in order to espouse a political message that is mandated by the state. Now this political message has no regard for the health of the patient, and no regard for the judgment of the physician.

So by requiring physicians to speak this state mandated script, they are ignoring that physicians are still actually private citizens who have first amendment rights.

Jess Pieklo: So in this case, the Sixth Circuit actually misinterpreted Planned Parenthood versus Casey when it upheld Kentucky's forced ultrasound law with this speech and display requirement. The court said that because the law requires providing information that is truthful, not misleading, and relevant, that it doesn't run afoul of the first amendment actually, according to Casey. But Imani, that's not what Casey says. And we're going to explain actually what Casey does say.

Imani Gandy: It really isn't what Casey says, and we have a circuit split on this issue. The Fourth Circuit on the one hand got it right, right? There was a North Carolina forced ultrasound law with the speech and display requirement, and the Fourth Circuit said, "No." On the other hand, we have the Fifth and Sixth Circuits, the Sixth Circuit, which is what we're talking about today, the Kentucky case, and then the Fifth Circuit, which encompasses Texas, which passed I think the first ultrasound law way back in like 2011 or something like that, right?

Jess Pieklo: It was in the way back days.

Imani Gandy: It is the way back, the way back machine. And actually, you know what, it's the passage of that law that really fired me up to actually do this work. Because I remember back in 2011 there were ... I have friends from Texas, activists from Texas who are like, "Why are we being ignored out here when all of this horrible shit is happening?" That's a sidebar. But the point is, is we have a circuit split between the Fourth Circuit on the one hand which said, "No," and then the Fifth and Sixth Circuits on the other hand, which said, "Yes, this is just fine."

Jess Pieklo: And how the Roberts Court resolves this split could really determine if abortion providers have at least the same scope of free speech rights as folks who own and operate those anti-choice fake clinics.

Imani Gandy: Yep.

Jess Pieklo: So why does this case really matter though, Imani?

Imani Gandy: Well, because these forced ultrasound laws have been passed under the guise of quote, unquote "informed consent", but they actually have nothing to do

with informed consent. And in fact, they fall outside the acceptable ethical standards and practices for informed consent.

Jess Pieklo: And I just really want to underscore that because that is a really important point that these laws are being passed under the guise of informed consent, but they have nothing to do with it because that makes the first amendment issues here extra really, really, really important, right? We've got doctors who are experts when it comes to practicing medicine, not lawmakers. Right?

Imani Gandy: Right.

Jess Pieklo: So the doctors, these experts, shouldn't be forced to communicate a state sponsored message that goes against medical and ethical standards. This is, I have to just say it, the exact kind of harm the first amendment is supposed to protect against, the exact kind.

Imani Gandy: Yes. And in addition, these forced ultrasound laws are cruel and they traumatize patients, particularly those who are terminating wanted pregnancies, but cannot keep those pregnancies due to fetal anomalies, or because it might endanger the health of the pregnant person. And they are also cruel and traumatizing for people who are terminating pregnancies that are the result of rape or incest. These patients don't want to have to be forced to sit and watch ultrasound images, and listen to a doctor explain them when they've already made a choice, and for whatever reason that choice may be, may have been an easy choice, it may have been a difficult choice, but it is a choice that has been made.

And so forcing this state sponsored nonsense onto a pregnant person in this position, it's just mean. It's mean.

Jess Pieklo: It is, and the ACLU of Kentucky actually gathered testimony from patients who had undergone this procedure and they talked about how dehumanizing it was, how they were in their most vulnerable state and felt absolutely abused and taken advantage of by the state, and how it interfered with the relationship that they had with their doctor because they could tell that their doctor was uncomfortable by it too. The state should not be in the business of traumatizing healthcare patients.

Imani Gandy: Absolutely. And finally, as Jess alluded to when she mentioned the first amendment, these forced ultrasound laws infringe on physicians' free speech rights by forcing them to parrot anti-abortion state ideology.

Jess Pieklo: They give them a script! There is literally a script! Shit is written down and they have to say it.

Imani Gandy: Yeah, yeah.

Jess Pieklo: I'm sorry.

Imani Gandy: If that's not a first amendment violation then the first amendment doesn't mean anything, as far as I'm concerned, right?

Jess Pieklo: Good grief.

Imani Gandy: So if the Supreme Court upholds the decisions from the Sixth Circuit and the Fifth Circuit, it would mean that according to the Roberts Court, anti-choice fake clinics that mislead patients have more free speech rights than actual doctors providing actual health care.

Jess Pieklo: I'm like chewing the inside of my mouth right now, I'm so upset-

Imani Gandy: It's irritating.

Jess Pieklo: And frustrated by this. It's like ... it's frustrating. Okay, so that's what's ... those are the big issues that are at stake here. Let's give a recap of the lawsuit and how we actually got to the point where the Roberts Court might take it up.

Imani Gandy: Go for it, it's all you.

Jess Pieklo: All right, buckle up, kids. In January 2017, the ACLU filed a lawsuit challenging this HB2, right, Kentucky's forced ultrasound law. Now in that lawsuit, the plaintiffs alleged that the law violates the first amendment by forcing them to deliver unwanted government mandated speech, which it is. It is.

Imani Gandy: Yep, yep.

Jess Pieklo: In particular, the law forces physicians to convey information that falls outside those accepted ethical standards and practices for medical informed consent. On September 27th, 2017 US district court judge David Hale struck down HB2, stating that the law violated the first amendment rights of physicians. Hooray!

Imani Gandy: Which it does.

Jess Pieklo: Spirit fingers!

Imani Gandy: Right, jazz hands.

Jess Pieklo: On April 4th, 2019, so fast forward two years, the Sixth Circuit Court of Appeals then said, "Nah, you know what? We like the law, so we're going to go ahead and uphold it." Then on September 26th, the plaintiffs filed a cert petition because that nonsense cannot stand.

Imani Gandy: It really cannot. It really cannot. So let's talk about what this case is supposed to be about, right?

Jess Pieklo: Yep.

Imani Gandy: It's supposed to be about informed consent. In issuing its ruling, the Sixth Circuit relied on the big daddy of informed consent cases, that's Planned Parenthood versus Casey, in order to reach its result. But, it reached the wrong result because it read Casey wrong.

Jess Pieklo: Yep.

Imani Gandy: So in Casey the court said that requiring physicians to provide information that is truthful, not misleading, and relevant cannot be a substantial obstacle to obtaining an abortion, and is therefore not an undue burden. What Casey did not say is that requiring physicians to provide this information is perfectly fine under the first amendment. But the Sixth Circuit read Casey in a way such that it interpreted it to mean that requiring physicians to read state mandated script is perfectly kosher under the first amendment.

Jess Pieklo: So that's really worth repeating and breaking down again. The Casey court considered the three elements as part of the undue burden analysis, right? That idea that the information is truthful, not misleading, and relevant. That's part of the undue burden analysis. If that information is truthful, not misleading, and relevant, it's not an undue burden.

Imani Gandy: Right.

Jess Pieklo: But the court didn't say that providing such information is just hunky dory, that that wouldn't be an infringement on physicians' first amendment rights. So it almost follows that if the information is misleading, it has to be an undue burden, right? Like-

Imani Gandy: Right.

Jess Pieklo: That's where my brain is breaking logically. Anyway.

Imani Gandy: Under the first amendment, a regulation that compels physician speech is subject to heightened scrutiny, unless it regulates speech as part of the practice of medicine, right? So if you have a law that says a doctor must say this, then that law is subject to the highest level of scrutiny, unless that law just happens to regulate speech as part of the practice of medicine. But forcing doctors to perform an ultrasound, and then describe those images to a pregnant person who does not want to hear them, is not part of the practice of medicine. There is a medical consensus that this nonsense does not have anything to do with the practice of medicine.

Jess Pieklo: You just threw out a heightened scrutiny out there-

Imani Gandy: I did.

Jess Pieklo: And it made my heart pitter patter.

Imani Gandy: I did.

Jess Pieklo: But I think we probably should go into some of those levels of constitutional scrutiny for our listeners for a moment, since we are talking about the first amendment and regulating speech.

Imani Gandy: Good call.

Jess Pieklo: Right? So in this podcast we've talked a lot about the first amendment, and the ways in which the state can regulate speech in the context of reproductive rights. The Sixth Circuit in this case made a mess of an already confusing area of the law.

Imani Gandy: So let's break it down a little bit. Under Casey, a regulation compelling physician speech is subject to deferential review only when the regulation is reasonable and conforms to the practice of medicine.

Jess Pieklo: Okay, so that sounds a little bit like rational basis review, where basically the government wins and the regulation compelling the physician speech is reasonable. So they don't have to recite it standing on their head or something, I don't know. Right? And so long as it conforms to the practice of medicine, and is reasonable, then it's okay.

And if it's rational basis though, hold on, stick with me, then didn't the Sixth Circuit get it right, Imani? What's going on? I don't understand.

Imani Gandy: Okay, yes, Casey says that rational basis is acceptable if the law conformed to the practice of medicine and is reasonable. But the Sixth Circuit did not get it right. They just didn't, because there's more, just wait. Wait, there's more. We could do this like an infomercial, right? So in the case NIFLA v. Becerra, which we did a podcast about in which we mentioned in the upfront, California passed a regulation requiring unlicensed facilities to display government drafted notices regarding the availability of publicly funded, low cost reproductive health services. Now California argued that that law facilitated informed consent. The Supreme court said, "No, it does not," because the provision of that information was not tied to a procedure, right?

Jess Pieklo: Okay.

Imani Gandy: Requiring unlicensed facilities to provide these notices about publicly funded services was not tied to any specific medical procedure. Instead, that regulation applied to all interactions between clinics and clients. Even if there was no medical procedure that was being sought or performed.

Jess Pieklo: Okay, I'm tracking.

Imani Gandy: With me so far? Okay, so the court said that this California regulation didn't actually facilitate informed consent, and did not regulate speech as part of the practice of medicine. It said that the law regulated speech as speech. And because the law regulated speech as speech and not as part of the practice of medicine, the court applied heightened scrutiny and then said, "This law is unconstitutional."

Jess Pieklo: All right, I don't want to fall into nihilism here, but I'm really starting to pick up on the vibe that the court is just upholding laws that it likes. Because otherwise, how do we go from Casey to NIFLA, and what in the hell the Sixth Circuit did in whatever it did here?

Imani Gandy: Well, the Sixth Circuit said that speech and display laws do not violate the first amendment because they regulate conduct only. And because they incidentally burden speech, right? So because it regulates conduct and it incidentally burdens speech, only rational basis review is necessary. And that's the sort of like, it's a law, fuck it, it's fine. But that's just not true, because as with the regulation at issue in NIFLA, the speech and display requirements are not a part of the practice of medicine, right? The NIFLA requirements-

Jess Pieklo: Yes.

Imani Gandy: That you have to post these notices about public funding, the court said, "That's not part of the practice of medicine," because these people aren't necessarily seeking procedures, and the law doesn't require them to seek a procedure before being forced to listen to this message, right? But the same thing goes for the S&D requirements, because while sure, the speech and display requirements are being conducted in conjunction with a medical procedure, an ultrasound, the requirement itself is not a part of the practice of medicine, right? In fact-

Jess Pieklo: Yes.

Imani Gandy: It actually goes against medical practice because it forces patients to look at and to hear information that they don't want to hear, and doctors are not in the business of forcing patients to do and listen to things that they don't want to do, right, they're supposed to work with their patients to figure out whatever the best solution for whatever medical problem there is.

Jess Pieklo: That is a really important point of nuance here, that when the medical profession says that speech and display requirements aren't part of practice, they can't be part of the procedure, right?

Imani Gandy: Right.

Jess Pieklo: Like it divorces them from that. And the law, HB2, actually recognizes this because it allows pregnant patients to cover their ears and look away as the

doctor goes on with the procedure. So if it was mandatory, if it was necessary for advancing informed consent, that kind of requirement wouldn't exist.

Imani Gandy: Right.

Jess Pieklo: In fact, Judge Bernice Donald, a Barack Obama appointee, issued a barn burner of a dissent in that Sixth Circuit decision on this point. And she specifically talked about how the fact that the law allows pregnant patients to cover their ears and look away actually shows that the speech and display requirements run counter to medical practice. And this is what she had to say. "This," the ability for patients to look away, "cannot be the saving grace of an informed consent statute. The purpose of informed consent is to ensure that the patient makes an informed, autonomous, and rational decision. Emotion should be subdued, not inflamed. Forcing a woman to undergo the invasive procedure, which adds approximately three to five minutes to a standard ultrasound, while also permitting her to avoid all of the information does nothing," let me underscore that, "nothing to facilitate her comprehension or free consent."

Imani Gandy: And that makes sense, right? If a patient can just ignore the information that's being provided, then it can't possibly be necessary to fulfill any informed consent requirement. It's just states forcing doctors to say shit that pregnant people are just plugging their ears and not listening to. It doesn't make any sense.

And in addition, it means that this is not the Casey standard, right?

Jess Pieklo: Yep.

Imani Gandy: This is not what Casey says. It's a content based regulation, and content-based regulations are subject to strict scrutiny, not to rational basis, meh, fuck it review. And that means ultimately that Kentucky should lose and this law should be struck down.

Jess Pieklo: Could not agree with you more, but here we are, right? We've got a circuit split and here's why this case is a good one for the court to take that circuit split.

Imani Gandy: I love circuit splits, and I just got excited as she was talking, I was like, please let me say it. Let me talk about the circuit splits.

Jess Pieklo: Do it, this is like your administrative log. Go.

Imani Gandy: Yes, this is my APA, okay? I'm having an affair, a very serious relationship with circuit splits. And I would ask that you respect our privacy in this very difficult time. Okay. So, there's a Texas law that was upheld by the Fifth Circuit, a Texas forced ultrasound law. I think that law was passed in 2011. Kentucky, the Sixth Circuit, upheld Kentucky's forced ultrasound law just like two weeks ago, right?

And then North Carolina had a forced ultrasound law that was struck down by the Fourth Circuit, I want to say four or five years ago.

Jess Pieklo: Time's a flat circle.

Imani Gandy: Yeah, whatever. Yesterday, tomorrow, three weeks from now, whatever, it's all the same. But the point is, is that because there is this split in the law, this conflict amongst circuits about what the law should be, the Supreme Court must intervene.

Jess Pieklo: Yeah. They've got to settle the fight.

Imani Gandy: Got to settle the fight. Get in the Thunder Dome, two laws enter, one law leaves. Okay.

Jess Pieklo: I somehow have Tina Turner going through my head now.

Imani Gandy: "We don't need another hero..." Okay, so let's talk about the Texas lawsuit for a minute.

Jess Pieklo: Yeah. Yeah, let's get into this.

Imani Gandy: The Center For Reproductive Rights sued to block the Texas sonogram law. In the Texas lawsuit, Sam Sparks, who was the judge for that case, blocked the-

Jess Pieklo: And can I just say that Sam Sparks is the greatest name for a federal district court judge-

Imani Gandy: It is great, right?

Jess Pieklo: In Texas to have.

Imani Gandy: Sam Sparks.

Jess Pieklo: I'm sorry, as an aside, Sam Sparks is a great judge name from Texas, go on.

Imani Gandy: So Sam Sparks blocked the Texas ultrasound requirement back in 2011. But then in 2012, the Fifth Circuit in its infinite wisdom, vacated that preliminary injunction and issued an order directing that the entire law should take effect immediately.

Jess Pieklo: The Fifth Circuit has been on its bullshit forever.

Imani Gandy: Forever. Honestly, like when we talked to you about the Fifth Circuit going rogue, they've been going rogue for a while. So Sam Sparks-

Jess Pieklo: Just our favorite judge.

Imani Gandy: Issued a decision stating that he disagreed with the Fifth Circuit's constitutional analysis. Specifically, he said that the Fifth Circuit has quote, "effectively eviscerated the protections of the first amendment in the abortion context. And in no other medical contexts does the government go so far in telling doctors what they must and must not do." He went on to say that there can quote, "be little doubt that the law is an attempt by the Texas legislature to discourage women from exercising their constitutional rights by making it more difficult for caring and competent physicians to perform abortions." But, despite saying that and being absolutely spot on, his hands were tied because of this Fifth Circuit ruling.

So he was forced to deny, plaintiffs in that case, he was forced to denied their request for a permanent injunction.

Jess Pieklo: I love how he's stuck, right? He can't do anything.

Imani Gandy: Right.

Jess Pieklo: But he's like, "These fools."

Imani Gandy: But on his way out, he's like, "Fuck you guys."

Jess Pieklo: He's like, "These motherfuckers just really ... " Let me say, because he's not wrong. He's not wrong.

Imani Gandy: No, he's not.

Jess Pieklo: All right, so that's Texas. Then we've got North Carolina. So around the same time that Texas' forced ultrasound law was in litigation, the Center For Reproductive Rights was also challenging North Carolina's forced ultrasound law and that's because anti-choice activists like to pass these copycat laws all over the place, and there we are.

So in October 2011, district court judge Catherine Eagles issued a preliminary injunction blocking enforcement of the law's speech and display requirements, the thing we're talking about.

Imani Gandy: Catherine Eagles is a pretty solid name for a judge as well.

Jess Pieklo: Also a very good name for judges here.

Imani Gandy: Sam Sparks and Catherine Eagles. It's like they should be-

Jess Pieklo: This is like a true crime drama or something.

Imani Gandy: Exactly, or like a buddy cop movie, Eagles and Sparks.

Jess Pieklo: Eagles and Sparks. Oh my gosh, I'm getting like airbrushed images of like a Trans Am and stuff.

Imani Gandy: Right, exactly. A Trans Am with like an eagle on it.

Jess Pieklo: Okay, anyway, we've sort of lost the thread, bring it back in. In October 2011, the district judge Eagles blocked the requirement. Then on January 17th, 2014 Judge Eagles permanently blocked the ultrasound requirements. She found that the speech and display requirement violates physician's first amendment rights because it is quote, "an impermissible attempt to compel these providers to deliver the state's message in favor of childbirth and against abortion." That case went up to the Fourth Circuit and the Fourth Circuit said, "Yeah, you know what, Judge Eagles, you got it right."

Imani Gandy: Yep, they sure did. They struck down the law as unconstitutional, finding that quote, "While the state itself may promote through various means childbirth over abortion, it may not coerce doctors into voicing that message on behalf of the state in the particular manner and setting attempted here." So in March of 2015, the state of North Carolina appealed that Fourth Circuit ruling to the US Supreme Court. And in June of that year, 2015, the Supreme Court said, "Nah, we're good," and declined to consider North Carolina's appeal. So that left the Fourth Circuit ruling in place.

Jess Pieklo: And what the Sixth Circuit did in issuing its ruling was to deepen this divide that existed between that Fifth Circuit Texas ruling and that Fourth Circuit North Carolina ruling. Which makes this case, this Kentucky case, a really perfect one for the Supreme Court to take up.

Imani Gandy: I mean, it's like the splittiest circuit split that ever circuit splitted.

Jess Pieklo: The splittiest split that ever split.

Imani Gandy: Exactly. I mean, it's just like dripping with circuit split. And you know, I do see a world where the Supreme Court says "Np, it's just part of the practice of medicine and you've got to describe the ultrasound, hey, how you doing?" And all that shit. But really we know-

Jess Pieklo: "How you doing" and all that shit-

Imani Gandy: Because Joey Tribbiani is now a gynecologist and abortion provider. Hey, how are you doing? Joey doesn't share food. Okay, moving on, my God, my brain is bouncing off the walls today.

But the point is, is that we can't have ... it can't be true that in some states doctors have no first amendment rights when it comes to providing care for their patients. But in other states they do, right? In the fifth and Sixth Circuits, doesn't matter. Whatever you think is part of the practice of medicine, we know

better than you. We're the state legislature, and we're telling you, you need to read this script, and you need to force your patients to look at these ultrasounds, and to listen to these descriptions. While in Fourth Circuit states it's like, nah, you don't have to do that. We're going to go ahead and let you, the doctor, the expert, decide what is best for the patient and for the medical care that you are providing, right? So-

Jess Pieklo: Yep.

Imani Gandy: If this is ripe for a split, so what's going to happen next? What do you think?

Jess Pieklo: Okay. All right, so like you said in the opening, the ACLU filed this petition just a few weeks ago. So everything is very new. Kentucky will get a chance to file its response, and they'll do that likely at the end of the month, maybe they get an extension, but we're in the briefing stage.

Imani Gandy: Right.

Jess Pieklo: So I expect with this kind of case a whole bunch of other folks are going to file Amicus briefs telling the court whether or not it should or should not take the case, so lots of folks are going to weigh in on this. Once those initial briefs are in, the court will put the case on its conference calendar, and then think about taking it. So they could do that sometime the end of this year, beginning of next.

The thing to remember is it only takes four votes to take a case. So if there are four justices that are super eager to talk about abortion this term, and we've got a deeply divided federal circuit courts of appeals, this is a good candidate. So definitely stay tuned on this one.

Imani Gandy: And stay tuned for the ways in which they are going to contort themselves to make it seem like forcing doctors to read state mandated scripts somehow was not a first amendment violation.

Jess Pieklo: Yeah.

Imani Gandy: Right? Like you said, they uphold the laws that they like, and they don't uphold the laws that they don't like. And Clarence Thomas loves to talk about how there are special rules for abortion that don't apply in any other areas of law. This is one of those times where he's actually right.

Jess Pieklo: Yep.

Imani Gandy: Because in this context, in the abortion context, it's okay to force physicians to say shit that they otherwise wouldn't say. But you wouldn't say ... I don't know, if a person had cancer, you wouldn't force an oncologist to read a state mandated script about cancer treatment. This is an area where we-

Jess Pieklo: Designed to like dissuade them from seeking chemotherapy or something.

Imani Gandy: Right, exactly, exactly. This is an area that is specifically regulated by states because these states don't like abortion.

Jess Pieklo: Yep.

Imani Gandy: So keep that in mind as we follow this case throughout the year, I guess.

Jess Pieklo: Yeah.

Imani Gandy: Yeah, all right. So if you want to talk to us about forced ultrasound laws, which we have been ... in this script that we're working from, it just says FU laws and I really feel-

Jess Pieklo: Yes.

Imani Gandy: Like that's just appropriate, because honestly FU law.

Jess Pieklo: FU law is right. We're getting a mug that says that, FU law.

Imani Gandy: If you want to talk about any of this stuff, you can find me on Twitter. I'm @AngryBlackLady. You can find Jess on Twitter. She's @Hegemommy. H-E-G-E-M-O-M-M-Y and you can follow rewire.news, @Rewire_News. And join our Facebook group, we have like 1.2 thousand members in our Facebook group, which is bananas. But it's great, people are talking, people are asking questions, people are posting photos.

Jess Pieklo: It's a wonderful community.

Imani Gandy: It's a great community, join us. You have to answer the questions, there are three questions and the answer to one of the questions. Judge Brad McBeer, keg stand, Chugs McCaverton, beer pong poop face, I don't know. Just make something up beer related.

Jess Pieklo: We get a new one each episode.

Imani Gandy: Add like a Mc or an O, like a O'Beerio. I don't know. But aside from that, we're going to see you on the tubes.

Jess Pieklo: See you all on the tubes.

Speaker 3: 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.