

[Boom! Lawyered: 'June Medical Services v. Russo' Preview](#)

- Imani Gandy: Hello fellow law nerds, welcome to another episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that wants to take the democratic primary and drown it in a pool. I'm Imani Gandy.
- Jessica Pieklo: And I'm Jess Pieklo. Rewire.News is dedicated to bringing you the best reproductive rights and social justice news, commentary and analysis on the web. And the team legal podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners!
- Imani Gandy: Jess. I'm so tired.
- Jessica Pieklo: Why is that Imani?
- Imani Gandy: Well this primary is literally sucking the life force out of me, figuratively speaking, but also because you and I have been writing about admitting privileges laws for about seven years now. We've written about them and we've spoken about them ad nauseum, and we keep mentioning and talking and discussing how pointless they are, and yet these laws won't stop happening.
- Jessica Pieklo: They just won't, and then there's the 2016 case Whole Woman's Health vs Hellerstedt, where the Supreme Court confirmed just how pointless these laws are.
- Imani Gandy: Exactly. So why the fuck are we still talking about them? I want to stop talking about them. I want people to quit pretending that we're all Ma and Pa Joad living in the dust bowl, waiting for the doctor to swing by with his black medical bag to check up on us, like I'm just tired of it.
- Jessica Pieklo: Hold up, hold up, Ma and Pa Joad?
- Imani Gandy: Yes, Ma and Pa Joad, from the Grapes of Wrath, right? That was Ma and Pa Joad, Grapes of Wrath. I barely remember. Look, I don't really remember what that book was about. I know it had something to do with like angry grapes and dust, like that's about it.
- Jessica Pieklo: Angry grapes.
- Imani Gandy: Well, the grapes they're of wrath, aren't they? I mean come on people.
- Jessica Pieklo: Amazing.
- Imani Gandy: The point is back in Ma and Pa Joad's day, it was perfectly common for there to be one doctor in a community and that one doctor covered all of the medical needs of that community. If you needed to be hospitalized, that one doctor

would carry you piggyback style to the hospital and then hold your hand while the other doctors had a good look at you.

Jessica Pieklo: Imani, Imani.

Imani Gandy: What?

Jessica Pieklo: I'm pretty sure that's not how it worked.

Imani Gandy: Wait, they didn't carry people on piggyback? Are you sure?

Jessica Pieklo: I mean, I watched a lot of Deadwood and I didn't see any piggybacks. I mean, I'm pretty sure. Your point stands though, right? Like we don't live in olden times anymore, people have multiple doctors, they have specialists and they also frequently have to travel pretty far from where they are to get care.

Imani Gandy: Especially people who need abortion care, with all the clinic closing thanks to laws like these goddamn admitting privileges laws.

Jessica Pieklo: Exactly. So why the hell are we requiring abortion providers to have admitting privileges at hospitals within 30 miles of where the abortion is performed, when it's unlikely that the patient lives within 30 miles of either that particular hospital or whatever hospital the doctor is able to get those privileges at?

Imani Gandy: Right, right, right. So what the hell? I ask you Jess, what the hell?

Jessica Pieklo: That's the name of this episode? What the hell.

Imani Gandy: Yeah, what the hell.

Jessica Pieklo: I mean, the court doesn't seem to care about precedent Imani, that's what the hell.

Imani Gandy: Speaking of precedents, Roe vs Wade is on the chopping block, this term. And guess what listeners? We did an entire series about it.

Jessica Pieklo: We did?

Imani Gandy: We sure did. It's called, we'll hear arguments and it's basically us listening to the oral arguments in Roe vs Wade, breaking them down and throwing tomatoes at them.

Jessica Pieklo: The tomatoes part was really great. No, seriously, it's fantastic, the entire series is available now on your podcast app and you should subscribe right now. We'll wait.

Imani Gandy: We'll wait, while you go and find, we'll hear arguments and subscribe, we're just going to sit here and tear out our hair about how ridiculous admitting privileges laws and how depressing it is that Roe vs Wade is on the chopping block. So we're just going to wait, we're going to wait, we're going to... Done. Okay, perfect. Let's move on to the show. Please hold.

Jessica Pieklo: So next week the Supreme Court is going to hear arguments in June Medical Services vs Russo.

Imani Gandy: That's actually the same case as June Medical Services vs Gee, the case out of the Louisiana that we've spent approximately eleventy billion hours yelling about on this show and on Twitter and well basically everywhere.

Jessica Pieklo: But now the case is called June Medical Services vs Russo because there's a new head of Louisiana's department of health, Steven Russo, and that agency head is who gets to be named a defendant in these lawsuits, and also lawyers are the worst, so we make it complicated.

Imani Gandy: I was still going to say, and why did these case names have to change? I understand the reason why, because the defendants change and the public officials change, but come on man, can we just get it together?

Jessica Pieklo: It's so hard to keep track.

Imani Gandy: It really is. So what's this case about? What is June Medical Services vs Gee/Russo about? It's about Louisiana acts 620. Now that's a law that mandates abortion providers maintain admitting privileges at nearby hospitals. Act 620 is identical, identical, to HB2 which is a Texas law that the Supreme Court declared unconstitutional in the 2016 decision Whole Woman's Health vs Hellerstedt.

Jessica Pieklo: It's so identical that Whole Woman's Health vs Hellerstedt also changed its name. It was Whole Woman's Health vs Cole.

Imani Gandy: That's right, it was, I forgot about that.

Jessica Pieklo: Right, and then like seriously this is what happens, having lawsuits that take years and years and years and agency heads change, it's just a mess. Anyway, Louisiana wanted to be Texas so bad that it even went and like modeled its litigation after it, including the name change.

Imani Gandy: Yep. Yep. And even though act 620 is identical – identical -- to HB2, the Fifth Circuit court of appeals ruled that act 620 could take effect.

Jessica Pieklo: And next week the Roberts court will hear arguments on whether that fits circuit decision to let act 620 take effect was wrong.

Imani Gandy: The court is also going to hear arguments on whether or not abortion providers have legal standing to bring challenges to certain kinds of abortion restrictions on behalf of their patients. We've talked about this before, it's the idea of third party standing, that doctors can bring claims to challenge unconstitutional laws on behalf of their patients as well as on behalf of themselves. And third party standing has been an established legal doctrine for nearly as long as Roe versus Wade has been law.

Imani Gandy: But the Roberts court is giving that precedent a second look, and that is very troubling because apparently precedent doesn't really matter in the age of Donald Trump.

Jessica Pieklo: Ugh, just flake. I'm so sweaty, we haven't even like really gotten into it and I'm already so sweaty.

Imani Gandy: I know, I know. I was born sweaty.

Jessica Pieklo: We're going to add that to the list of Boom! Lawyered swag. Born sweaty.

Imani Gandy: I was born... We really should, actually, that's funny. It's like born free but born sweaty.

Jessica Pieklo: Oh my gosh. I mean there's good reason to be sweaty, right? There's so much on the line in June medical services, if the Roberts court sides with Louisiana, access in the state could be decimated. Whole Woman's Health is precedent, could be gutted.

Imani Gandy: Abortion patients may be forced to bring legal challenges on their own or as class actions like Norma McCorvey had to do as Jane Roe in Roe V Wade.

Jessica Pieklo: Now listeners, we'll be at the Supreme Court covering the arguments, and we'll have a very special Boom! Lawyered for you just a few hours after the arguments are done. But right now here's a preview of what we are looking for in those arguments.

Imani Gandy: So one of the things we're going to be looking for is how the lawyers injustices talk about abortion providers, right?

Jessica Pieklo: Mm-hmm (affirmative).

Imani Gandy: So Louisiana is challenging the standing of abortion providers to bring certain claims on behalf of their patients, and this is really the sleeper issue of this case. Now, we've talked about this issue before, if the court were to decide that abortion providers don't have standing to bring certain claims on behalf of their patients, it could usher in a new era of abortion patients being forced to Sue on their own or in class actions in order to block these anti-choice bills.

Jessica Pieklo: And the argument challenging standing is super cynical and really gets to a values fight here. Anti-choice advocates are arguing basically that abortion providers can't be trusted to bring these kinds of claims.

Imani Gandy: They are claiming that because abortion providers need to earn a living, that is, they need to support themselves as doctors, and that they have a financial incentive [inaudible 00:09:23] health and safety regulations and just abort all of the things.

Jessica Pieklo: It's absurd, I mean they're basically claiming it's a conflict of interest here.

Imani Gandy: So this sleeper issue that we're talking about in June Medical Services is the claim that the parties don't have standing because they're trying to skirt these health and safety regulations, right?

Jessica Pieklo: Mm-hmm (affirmative).

Imani Gandy: But this assumes that the regulations that they're purportedly trying to skirt actually are health and safety regulations, that they actually promote health and safety.

Jessica Pieklo: Sure.

Imani Gandy: But that's what the case is about, right? Like do admitting privileges laws promote health and safety? And the answer to that question is no, the Supreme Court has already said the answer to that question is no. So one of my pet peeves is when people use the phrase, beg the question, improperly, like they'll often say, I'm really hungry, which begs the question, should I eat a sandwich? And that's not what begging the question is, that's just raising a question.

Imani Gandy: But it's one of those things that even though I know that it's improper to use it to mean raise the question, I can never actually come up with an example of what begging the question is when someone's like, Oh, so if it's not this, then what is it? I'm like, I don't know, I just know you're using it wrong. So when I thought about this issue, I was like, this is an example of begging the question, right?

Jessica Pieklo: It is.

Imani Gandy: It literally begs the question, and so I'll explain what begging the question is. It's when the conclusion of an argument is based on a premise that lacks support, and is just assumed. So in this case, the conclusion of the argument that providers don't have standing, because they're trying to avoid complying with regulations that promote health and safety, begs the question that the regulations actually promote health and safety.

Imani Gandy: And I know I just went on a tangent about that, but you have no idea how freaking excited I was when I realized I could finally point to an example of begging the question that I understand.

Jessica Pieklo: It was like a long Slack chat in all caps and exclamation. It was amazing.

Imani Gandy: I was so excited. I'm such a dork, but that's why we're here, but moving on.

Jessica Pieklo: I know, I mean it's a really good point, it does beg the question and the anti-choice advocates have come up with all sorts of good talking points for the court to make this terrible claim to beg this terrible question. Things like quote unquote only women can speak for women's rights, right? Like listen to this nonsense from ADF. Hold on, listen to this nonsense from ADF.

Imani Gandy: My head is already going to explode. Okay, go ahead.

Jessica Pieklo: ADF is the Alliance defending freedom, they are a conservative litigation mill and we drag them a lot on the show for good reason. Here's another example of why. ADF says it would be like an employer with a hazardous work site suing on behalf of employees to invalidate OSHA and other safety regulations that benefit those same employees.

Imani Gandy: I mean, what?

Jessica Pieklo: Right, I mean what?

Imani Gandy: What are you talking about?

Jessica Pieklo: ADF, go home. I know you probably don't drink, so maybe get a cranberry juice, but do something, this is absurd.

Imani Gandy: But again, this is begging the question, ADF is assuming that these admitting privileges laws are safe when that's not an assumption that can be made, that's the assumption that we're trying to prove. These regulations are not designed to promote the health and safety of pregnant people, they're designed to reduce abortion access. And I'm not just saying that because that's what I think, I'm saying that because that's what courts have said, that's what the Supreme Court said, that's why Louisiana passed it, it said that that's why they were passing it. Lawmakers in Louisiana saw how effective these admitting privileges laws were at closing clinics in Texas, and that's why they decided to pass it in Louisiana. But we're going to talk about that a little bit more in a minute, because I'm doing that thing where my voice gets really high, which means I'm really about to lose my mind.

Jessica Pieklo: It's too early in the episode to completely lose your mind, hold on, there is time.

Imani Gandy: It really is.

Jessica Pieklo: But really how much of this conflict of interest stuff that justices buy into could tip their hand on just how hostile they're going to be to abortion rights, not just in this case, but in other cases moving forward too?

Imani Gandy: And that's a big deal, because we know that there will be more abortion cases before the court, maybe even again next term. And it's also really bad to have an institution like the Supreme Court pushing these extreme talking points about abortion providers and how they exist in conflict with the interest of their patients.

Imani Gandy: Right? Like we know that threats against providers have spiked, especially in the wake of the whole, Oh my God, Planned Parenthood is selling baby heads on the black market for pennies on the dollar. I mean that, like we laugh and joke about it now, but there are really serious consequences about that campaign, and abortion terrorists feel emboldened particularly now under the Trump administration. So the last thing that we need is them thinking that they have the Supreme Court any more on their side than they already actually do.

Jessica Pieklo: Oh, that's such the truth. Okay, so the first thing we're really watching for is the way that the court and the lawyers talk about abortion providers. Are they slandered or are they not slandered? The second thing we're watching, well people really, are Justices Breyer and Justice Kagan. Now let's start with Justice Breyer, we're keeping an eye on Justice Breyer because it's his decision in Whole Woman's Health vs Hellerstedt that's really in the cross hairs here.

Imani Gandy: Breyer's opinion, the data nerd is so, I mean he really is such a data nerd.

Jessica Pieklo: I love him.

Imani Gandy: Got to love him. But his opinion is so good, precisely because he is a data nerd, because of his focus on evidence. Whole Woman's Health says that courts can't just rubber stamp law makers claims that an abortion restriction is necessary to advance patient safety.

Jessica Pieklo: Nope, they can't. Breyer and the majority in Whole Woman's Health said that courts have a job to do in evaluating abortion restrictions, and that's to make sure lawmakers have, again, actual evidence. Fancy that Imani, evidence to support your claim, what? That's wild, but seriously. Breyer and the majority said that lawmakers have to have that actual evidence to support those health and safety claims.

Imani Gandy: And on this point, Louisiana should be absolute toast, right? For starters, law makers on the floor, while debating the bill, said they wanted to pass it in order to close clinics. I mean, what more do you want? It's like they weren't shy about it either, they specifically pointed to Texas and to HB2, which while Louisiana was debating act 620 which was predicated on HB2, Texas was using HB2 to

close clinics all across Texas. Right? So Louisiana is watching Texas do this, and is thinking Amazing, let's do it here to guys.

Jessica Pieklo: Basically.

Imani Gandy: That's basically what happened.

Jessica Pieklo: So I really think that Breyer needs to push the attorneys for Louisiana hard on this data point, because it needs to be made clear in the record for the justices as they're writing their opinions, that the only evidence Louisiana could offer to support acts 620 is this drive to close clinics, right? I mean they wanted to create a health crisis in their state, not advance the health and safety of patients.

Jessica Pieklo: The Fifth Circuit blatantly ignored Breyer and the entire Supreme Court when they said that this law could take effect. And then the justices now have to send a clear signal that that shit is not okay, this will not stand.

Imani Gandy: Absolutely, this aggression will not stand man. And we're also keeping an eye on Justice Kagan because she's the member of the court's liberal wing, who's going to be most able to bring Chief Justice John Roberts to their side, right? So I mean Kagan, can we just do a little... We talk about Sonia Sotomayor a lot, but we should just clap for Kagan.

Jessica Pieklo: We do. We do need to do an episode probably devoted to our nerdy love and appreciation of Justice Elena Kagan at some point, because she is really kind of underappreciated. In fact, I think it was a McSweeney's post I saw this week that said that she was feeling neglected because she had not been attacked by Donald Trump the way that Justices Sonia Sotomayor and Ruth Bader Ginsburg were, and so she wondered if she was still on the court. It was pretty amazing. Good job McSweeney's there, that was very funny.

Jessica Pieklo: But the thing about Kagan is that if there are any of the justices on the bench who are going to bring old Johnny boy over to our side, it's going to be Justice Kagan.

Imani Gandy: Oh, Johnny boy.

Jessica Pieklo: That's going to be a real ask of Justice Kagan, because remember Roberts did vote to let HB2 take effect.

Imani Gandy: Right, he voted to let HB2 take effect, he's no friend to abortion rights, the only thing that I think would, that might make him sort of look at these people and go, "Bitch, what?" Is the fact that, they just did this four years ago, right? I mean, they just did this four years ago. The court set down rules, set down principles, and the Fifth Circuit is throwing the middle finger up at the court. So no matter how hard Johnny boy wants to decimate abortion rights, he probably

doesn't want to decimate the way in which the rule of law is supposed to work. Although given what they did with the Indiana or with the Illinois public charge rule, that may not be the case anymore.

Imani Gandy: So I don't know, maybe he's just flapping his gums when he's talking legacy because, I thought he was just like... I just had a very expressive reaction to an image of John Roberts flapping his gums...

Jessica Pieklo: Those are all really good points, I do think that Roberts might be a little pliable here and if anyone is up to the task, it's going to be Justice Kagan. I do expect her to lean hard on the value of precedent and stare decisis like you mentioned since, I mean basically Robert's entire legacy is up for grabs here. Are you going to be that dude, John?

Imani Gandy: Right, right, exactly. You remember we were like, don't be that guy, John, just don't hashtag, don't be that guy. Feel free to tweet, I know he doesn't have a Twitter account, but just tweet about John Roberts and just say hashtag don't be that guy, because honestly man, like come on man.

Jessica Pieklo: Don't be that guy.

Imani Gandy: Okay, so that's the second thing we're going to be looking for, right? We're going to be looking for what Justice Breyer and what Justice Kagan have to say about this.

The third thing we're going to be looking for is: does the court even care about the impact of this law? Do they care at all? So in order to answer that question or mull it over, we need to talk about what's at stake here. If the court sides with Louisiana, it is absolutely going to decimate abortion access. Louisiana will likely be down to only one clinic and only one provider. One clinic, one provider. And advocates are worried that a bad decision in June Medical Services could make the state the first without an abortion provider at all.

Imani Gandy: Here's the thing about the one clinic, one provider, one doctor has been able to keep admitting privileges like this one guy, but he said that he's going to probably stop providing abortions if he's the only dude left in the state providing abortions because of the threats that have been lobbed against him, right?

Jessica Pieklo: Right.

Imani Gandy: Being a provider is dangerous, and if you're one guy in an entire state, you're putting your life on the line every time you go to work. That's just the fact.

Jessica Pieklo: Especially when the Supreme Court is going to hear all these arguments about how abortion providers can't be trusted, right? This is why that first point is so important, okay?

Imani Gandy: Absolutely.

Jessica Pieklo: So also and this just, I mean, this drives me so batty, Louisiana has one of the worst racial gaps in maternal mortality rates in the country, all right? So according to the center for reproductive rights, who represents the abortion providers in this case, black women in Louisiana account for 39% of women who give birth but account for 68% of patients who die giving birth.

Imani Gandy: 68%, that hurts my soul, that's ridiculous.

Jessica Pieklo: It's terrible, black patients are four times more likely than white patients to experience a pregnancy related death in Louisiana. That's tragic.

Imani Gandy: It is tragic.

Jessica Pieklo: And in Louisiana, approximately 44% of patients have no paid parental leave either. So like you're getting screwed on both ends here.

Imani Gandy: Right. And meanwhile anti choices are saying, well, just have the baby, it's no big deal, abortion isn't healthcare. I mean if getting pregnant could lead to your death, then I would say that abortion is pretty much healthcare, you know what I mean?

Jessica Pieklo: I mean that begs the question Imani, you've got your second example.

Imani Gandy: But these aren't just data points, right? They should matter to the justices in terms of impact when they analyze Louisiana's law, because these data points about black women and about the threats to the provider, to the one sole provider that would be left, these matter, they speak to the burden of act 620.

Jessica Pieklo: Yes.

Imani Gandy: The Fifth Circuit ignored all of this evidence when it ruled that the Louisiana law could take effect. And if the conservative justices on the Supreme Court also ignore all this evidence, then it could signal to this newly Trumpified federal court system that we're now laboring under, that it's open season to enforce whatever antiabortion restrictions they want to. Irrespective of the evidence that the restrictions actually unduly burden rights. I mean it's just, it would send such a bad-

Jessica Pieklo: It's constitutional chaos.

Imani Gandy: It's constitutional chaos, and the federal courts are just, they're lousy with Trump judges, right? They're just everywhere, and these are people who are not the brightest of the bunch, they're not people who particularly know what the law is, much less care about the rule of law and care about precedents. So these are malleable people who have been installed and they've been installed for a

reason, because they're dipshits and because they do whatever the Federalist society tells them to do, right? And it's just, if the court doesn't send a signal, it's going to be bad.

Jessica Pieklo: Yeah. So hopefully Chief Justice John Roberts is listening and hears all of that and understands that data matters, that facts and evidence matter and that precedent and Stare Decisis matter, and most importantly these people's lives fucking matter.

Imani Gandy: Yeah, yeah, yeah. It's not good. All right, so that's going to end this episode, yeah. Next week is going to be a doozy, we're going to be in DC for the arguments and like Jess said in the upfront, we're going to have an emergency reaction podcast for you available almost immediately, because our producer is like a Ninja when it comes to podcasts. So keep an eye out for that. And again, got to tell ya, Jess and I are so jazzed, like I'm doing literal jazz hands slash spirit fingers right now about our new series, We'll Hear Arguments. It is, we dissect the oral arguments in Roe vs Wade. It's fun, it's funny, it's not a boring podcast, you won't fall asleep and it's-

Jessica Pieklo: And it's relevant.

Imani Gandy: ... it's relevant.

Jessica Pieklo: All of the stuff that we're going to be talking about next week when we're at the court for June Medical Services, we hear that come through the court in this archive audio, it's amazing, like you hear the most sexist, horrific jokes, and I guarantee you someone from Louisiana is probably going to try some of that next week, we'll see. So it's really, it's so good.

Imani Gandy: It's good. So you can find it on your podcast app, Apple podcast, Google play, podcasts 'R' Us, podcast.netscape.org, I don't know, just wherever you find your podcasts, go and subscribe.

Jessica Pieklo: Podcast.hotmail.com.

Imani Gandy: Dot excite, dot yahoo. So please join our Facebook group, Boom! Lawyered, If you want to talk about, We'll Hear Arguments, there are people talking about it there, you've got to answer the questions I'm telling you people, I will come over there. Answer the questions and we'll let you right in, and on that note, what are we going to do Jess?

Jessica Pieklo: We're going to see you folks on the tubes.

Imani Gandy: See you folks on the tubes.

Speaker 3: Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Marc Faletti produces the show.