

Barb McQuade:

Welcome back to hashtag Sisters in Law with Jill Wine-Banks, Joyce Vance, Kimberly Atkins-Stohr, and me, Barb McQuade. Today, we'll preview the cases coming before the Supreme Court when its new term starts. We'll discuss the dark art of gerrymandering. And we'll analyze the arbitrator's decision to strike down Donald Trump's nondisclosure agreement with Omarosa. As always, we look forward to answering some of your questions at the end of the show. Well, sisters, great to have everybody back. I know we've had some days without. I've been not thinking about pet peeves. I've got one and I don't know if any of you have noticed this. But it seems like people are dropping the T in the middle of words. I hear this especially among young people, maybe it's because I'm around people. I've got teenagers. I am around college students and law students. But I've even heard it with some people in the media.

Like the word important has become important or button has become button. The other day I was at an event at my daughter's school and I heard someone greet a man named Mr. Sutton, by saying, "Hello, Mr. Sutton." What's going on? Somebody needs to get to the bottom of this. Has anybody heard this? What is up with this? Why are young people changing the way we pronounce words?

Joyce Vance:

I don't think we do this in the south. We're guilty of dropping a G at the end of a word that ends in ing, but I haven't heard the T thing. What is that about?

Kimberly Atkins Stohr:

Yeah, I don't know. I mean, I lived a long time in Boston, and one thing that I noticed, I mean, obviously that R's are hard to come by when they're in the middle of a word when you're in Boston. But the one thing I always thought was funny is that they would replace them at the end of a word. So if somebody's name was Lisa, and you wanted to say Lisa and Jen, it'd be Lisar and Jen. And it's like, well, there's no R there. But then you don't say the R's in other words, which I always found this funny. One thing that bugs me, if we're talking about pet peeves, and this is just me, but I went to speech therapy when I was in college. I think I talked about that before, I used to have a lisp. And one thing I learned is that the word O-F-T-E-N, the T is silent. The word is often, that's the proper pronunciation of the word, but people will say often, or stick teas where they don't belong. So it bugs me less, Barb, when somebody drops letters.

Barb McQuade:

All right.

Kimberly Atkins Stohr:

It bugs me more when they just stick sounds, good morning.

Barb McQuade:

They add letters. All right.

Jill Wine-Banks:

And I have to say, I've never heard anything about a middle T being dropped, but of course.

Barb McQuade:

I'm sending you all an article. You will start hearing it and then you'll be as crazy as I am.

Joyce Vance:

You're really serious about that.

Barb McQuade:

Yeah, it's a thing. It's called glottalization. But go ahead, Jill. Do you have any pet peeves with language?

Jill Wine-Banks:

Well, not with language so much because after all I'm from the Midwest and was made fun of for my A's, because Chicago is how I used to say it. I try to be careful. But I feel great on this show because, Barb, you're from the Midwest, and Kimberly, you're actually from the Midwest. So at least three of us have that problem of having the Midwestern accent. My pet peeve is more people who take two spaces when they should only take one in parking garages. That just really annoys me.

Barb McQuade:

Yeah. Yep. Got to give you that one. That's a good one. All right. Well, I hope our listeners will share with us your pet peeves and we'll select our favorite pet peeve to report back next week. And tell me if you've heard the T thing, because it's making me crazy. Well, let's get right into our substantive discussion. Jill, I think you were going to talk with us about the Supreme Court's new term that is starting soon.

Jill Wine-Banks:

I am. Summer's over and Monday will be the first Monday of October. And you all know that that means it's the official start of the new term for the Supreme Court. So I wanted us to preview what we expect to happen. And let's start by asking each of you to say what case you are most looking forward to and why? Excluding, of course, Dobbs in the Mississippi abortion case, because we've already talked about that. So Barb, you want to start?

Barb McQuade:

Yeah. Looking forward to suggest that it's something that's pleasant or something you'll enjoy. And I guess, I don't know this is pleasant or enjoyable, but the Tsarnaev trial. This was the Boston Marathon bomber who was convicted and sentenced to death for his conduct in bombing with his brother who died. And the issue that's before the Supreme Court is whether his death penalty should be thrown out. The First Circuit Court of Appeals who heard that threw out the death sentence, because of two reasons. One was whether the District Court should have asked the potential jurors about the media coverage they had seen about his case. And then the other was about whether his older brother, who had some criminal history about a triple murder, should have been admitted into the evidence of that case. And so I think it's really important just because of the significance of the crime that the Boston Marathon bombing case.

But I think it could also have some other repercussions. One is it could have an impact on the way we select juries in high profile cases. Or should they have simply changed venue in that case, as they did in the McVeigh case, to send the Oklahoma city bombing off to Denver, where we didn't have to worry about whether people were tainted. But I think the even bigger picture on that case is the death penalty itself. The Biden administration, Joe Biden, has said that he opposes the death penalty,

would like to see an end to it. And yet the Justice Department filed a brief in support of the death penalty in this case. So I think it'll be interesting to see how the court rules in this case. I think it'll just give us some opportunity for some tea leaves about what they're thinking with regard to the death penalty.

Jill Wine-Banks:

Great insights. And Joyce, what is it that you are anticipating?

Joyce Vance:

I went with *US versus Vaello-Madero*. I almost went with *Mississippi versus Tennessee* though, because it sounds like an SEC football game, even though it's really a complaint by Mississippi that Tennessee is stealing its water. There's actually been a spate of water rights cases that have made their way to the Supreme Court. But *Vaello-Madero*, the issue is whether Congress violated the equal protection clause of the Fifth Amendment's due process clause when it created a supplemental security income, SSI. SSI is a program that provides benefits to needy, aged, blind and disabled individuals. The program exists for the 50 states, the District of Columbia and the Northern Mariana Islands, but Congress did not extend it to Puerto Rico. I have always been fascinated by how differently we get away with treating territories. The Supreme Court has held up a lot of inequities under a legal framework that protects what it calls fundamental rights, but allows differences in other areas.

Puerto Ricans are US citizens. They can vote in the primaries, but they, for instance, don't have voting representatives in Congress and can't vote in the general election for President, unless they move to one of the states, in which case they can. In other words, none of this has ever made a lot of sense to me. And in *Vaello-Madero*, the First Circuit held that Congress did violate equal protection when it excluded Puerto Ricans from receiving SSI. It would make a lot of sense for the Supreme Court to affirm that ruling, but my hope is that it will also spark a larger conversation about why we treat our fellow citizens in US territories differently, and maybe jumpstart some real interest in fixing that.

Jill Wine-Banks:

And Kim, what is the case you want to talk about?

Kimberly Atkins Stohr:

Yeah, I think one of the most consequential cases this term has to do with the second amendment, and it's called *New York State Rifle and Pistol Association versus Bruen*. And this case very well could give the court an opportunity to extend a ruling that it made about a decade ago, which gave individuals a right to own a handgun for self protection in their home to outside of the home. It could be a really big deal. So it's a challenge to a law in New York state, but there are six other states that also have this law. And it covers a lot of... These are states like Massachusetts and California. So we're talking about some of the biggest cities in the country that this would be covered by. And it's a challenge to a law that requires people who want to seek a license to carry a gun outside the home to show good reason why they need it for self protection outside of the home.

You can't just say, oh, I just want to keep a gun on me because crime is up. You have to say, well, I fear, I've been threatened or I have a stalker, or I have something. You have to give some sort of reason. And whoever the gun license authority is, it's usually your town or city where you go get this license, would decide whether that reason is good enough. And gun rights advocates say that is an impermissible infringement on their Second Amendment right. To leave a decision like that to the

arbitrary decision-making of these local officials. And of course, the cities and towns say, no, no, we have a very strong interest in protecting people and keeping people safe and just allowing anybody to take their guns outside of the house is not necessarily... it is certainly not a way to do that.

I think that this case is particularly important right now, because we've seen, during the pandemic, that crime has dropped in almost every category in this country except murders, particularly murders by handguns. And they're usually committed, not randomly, not in a mass act, although those get the headlines, people that you know. And we have seen that rising at this time of a pandemic and increased political strife in this country, which is really scary. Also, hate crimes are up. I think that it's super important that the Supreme Court recognizes that there are two words that are often forgotten in the Second Amendment, and that's well-regulated. In that cities and states need the ability to impose commonsense gun laws. And if they expand the second amendment to the point that they're no longer doing that, that could be a big deal.

Jill Wine-Banks:

So I'm going to give the case that I'm particularly interested in, but I'm going to give you, Kim, a second shot at this, if we have time. Because since you're married to a Supreme Court reporter, I want to know what his favorite case is. But for me, the case I'm concerned about is FEC versus Ted Cruz. And the reason I'm concerned is because I fear that it could be an expansion of Citizens United, which I already think is one of the worst decisions the Supreme Court has ever made. It undid the Watergate legislation protecting campaigns from the excess funding of corporations. And now he's raised a challenge saying it violates his First Amendment, right of free speech, to be limited in how much money he can raise to pay off a personal loan that he made to his campaign. And it's also interesting in the facts of this case because he made that loan like the day before the election. And he made it in the exact amount that it would take to violate the law.

The law says that you can raise \$250,000 after the election to pay off any personal loan that you as a candidate made. So he contributed \$260,000 deliberately as a means of allowing him to challenge this law. And the court so far has... The Supreme Court's taking the challenge. But in the Lower Court, it said that the government has not identified a single case of actual quid pro quo corruption in this context, which was the reason why this rule was put into place. And so I fear that this could be the end and could allow a greater expansion of corporate and other financing of campaigns. So I think we still have time. So Kim, if you could tell us what you think Greg's case would be.

Kimberly Atkins Stohr:

So Greg covers the court. He will be there Monday when it opens for the first in-person argument. And what he had told me, he was looking out for, was a case called Carson V Macon was it, which is out of Maine. And it asks whether the state... The state has a ban on giving any state funding to religious schools. But in some parts of Maine, there aren't a lot of schools. There aren't any schools in some areas. And so what they do is they give vouchers, essentially, to parents to send their kids to a private school because they don't have any public ones. And sometimes parents say, okay, well, I want to send it to this school that's right down the street. It happens to be a Catholic school or some other kind of religious school, but the state bars that. And parents brought suit saying that was a violation of their free exercise under the First Amendment. So that will be, I agree with him, that'll be an important case to watch.

Jill Wine-Banks:

I'm very glad I asked you that question because that was my second choice case that I wanted to mention. But we still have a few minutes left in this segment. So let's look at a couple things. One is if Joe Biden has a chance to appoint a Supreme Court Justice, candidate Biden promised it would be a black woman. So if he does get that chance, who do each of you think might be the nominee? And did women, particularly black women, have any additional hurdles that white men don't have? Who wants to start on that?

Kimberly Atkins Stohr:

Well, the answer to that question is yes, and all that specs. But that's the reason why we don't have any black women on the court. And there aren't even that deep a list of candidates from which the President can choose from. Not because they're not qualified and great and smart, but because they tend not to be appointed to the lower courts, whereas usually presidents go for their Supreme Court picks. So my guess is that'll either be Ketanji Brown Jackson or Leandra Kruger. They both have strong records. They're well respected. I don't see anything in their backgrounds that could be a potential problem in confirmation. I think some of the people who have been listed on the short list, they have lives, they tweet things. And lately that seems to be something that often is used against them, particularly women of color in confirmation hearings. Their records seem pretty clean. So I'm going to go with one of those.

Jill Wine-Banks:

Well, I just think it's great that President Biden has committed to putting an African-American woman on the Supreme Court, because as Joyce said, we don't have that many in the lower courts because of the history of racism and sexism. And so to build that bench is going to take decades. And I hope we do that. But in the meantime, how long do we wait to get the kind of diversity that we need? I don't know if any of you have read the memoir that Sonia Sotomayor wrote, but she talks about her perspective growing up in the Bronx, lower income, her parents came from Puerto Rico and English was not their first language. She talks about some of the challenges she faced. And I think having that kind of perspective on the court is so valuable. For so long we've had so many people who just have the same background, wealthy white men who went to Ivy League schools. And they're plenty smart. It's just that they have a worldview that's different from many other people who appear before them. And the court decides cases that affects everybody. So having that diversity of viewpoint I think is very important to make their work more effective.

Barb McQuade:

I think Ruth Bader Ginsburg made that same point about how valuable different perspectives are and how differently she as a woman might view a case of a girl being strip searched than the men on the court. And that is really true and needs to be kept in mind. So good for Joe Biden in his commitment.

Jill Wine-Banks:

One of my favorite things about Joe Biden's judicial nominees is that he's been so committed to diversity, which is something that I really liked. So, Kim, I think your choices are great, but I have one more. She probably won't get nominated because as you say, people have lives and they tweet, but I think Sherrilyn Ifill would really fit in with the Biden sort of notion of putting more civil rights lawyers on the bench. It's been a long time since we've had a straight up civil rights lawyer confirmed to the bench. RBG is probably the last one. I understand Sherrilyn's never been a judge, but she's a former law school dean. I think she's been one of the most smart, constitutional voices out there. So if I had a magic wand to get her through confirmation hearings, she'd be my pick.

Barb McQuade:

And what's the deal with justice Kavanaugh? He has tested positive for COVID, I guess. Does that mean he can... So is he going to hear argument next week? How are they going to do that?

Kimberly Atkins Stohr:

The court hasn't said anything about that. He wasn't at Friday's investiture ceremony for Justice Barrett. They just said that he tested negative before the conference, silent about what happens on Monday. So we shall see.

Jill Wine-Banks:

So Barb, one of my favorite things is Girlfriend Collective. And I know how uncomfortable you are talking about things like this, but have you been wearing girlfriend collective?

Barb McQuade:

I have Jill. And your efforts to make me feel awkward have failed because what I'm going to focus on with Girlfriend Collective is the fact that they have pockets in their leggings. I could give you an hour on an ode to the pocket, but I love girlfriend collective. I've got their skort and their leggings have pockets. So I think they're terrific. What about you, Joyce? Are you wearing girlfriend collective?

Joyce Vance:

I do. I really like girlfriend collective. I don't want to move in on your pocket action, but they fit, they're comfortable and they make so much sense with features like the pockets. What about you, Kim?

Kimberly Atkins Stohr:

I like them too. One thing I like about the leggings and the tops that I usually wear, if I go for a run or I'm doing yoga, is now that the seasons are changing I know that they're comfortable year round. Breathable, really nice fabrics and nothing bunches up or runs up. And you can move freely. So that's great for me. What about you, Jill?

Jill Wine-Banks:

Same thing. And I am a big fan of the skort. It really is a flattering look, and it's great for playing golf or any other sport, or just doing your errands around town. So for me, it's been a terrific find. And Barb is right, the fabrics are comfortable and the pockets are a big addition.

Kimberly Atkins Stohr:

Girlfriend collective is sustainable and ethically made with inclusive sizing from XXS to six XL, incredible bras, leggings, shorts, tanks, tees, and swimsuits, and escorts. The perfect choice for active wear. Whether you're working out running errands or doing nothing at all, Girlfriend Collective has functional fabrics, colors, and styles for any activity and all their clothes and packaging are 100% recyclable.

Joyce Vance:

Their best-selling leggings come with pockets for Barb and have different levels of support. You'll find the perfect fit. But my favorite thing about Girlfriend Collective is their garment take back program, Re-girlfriend. When you change styles, you can return pieces for upcycling into new Girlfriend gear.

Kimberly Atkins Stohr:

Join us in joining the Collective today. For listeners of this show, Girlfriend Collective is offering first-time customers \$25 off purchases of a hundred dollars or more when you go to [girlfriend.com/sisters](http://girlfriend.com/sisters).

Joyce Vance:

That's \$25 off 100 or more when you go to [girlfriend.com/sisters](http://girlfriend.com/sisters). Again, [girlfriend.com/sisters](http://girlfriend.com/sisters), or look for the link in our show notes.

Kimberly Atkins Stohr:

So you guys it's about that time, the great reapportionment where states are redrawing their voting district lines, and there are already claims of gerrymandering. So for a minute, let's just talk about where we are and how we got here. Recall that this census may have a lot of problems for a lot of reasons. One of them was the previous Presidents' attempt to put a citizenship question on the 2020 census resulting in a lot of confusion. It resulted in a lot of delays and it very well could have frightened people who are from other countries, keep in mind, the census is supposed to count everyone or their family members, from answering. Plus we had a pandemic. So usually when people don't respond to census forms, people go knock on doors, try to find them. It was harder to do that too. And so now we have maybe data that we can't 100% trust as an accurate reflection of the country, yet these maps are being drawn anyway.

The Supreme court a couple of years ago said, yeah, racial gerrymandering is unconstitutional. We've already held that. But if it's political gerrymandering, which means drawing lines in order to give an advantage for Democrats or Republicans, well, that's a political question. We really can't answer if that's okay or not, you guys are on your own. We also know that racial gerrymandering can be masked as political gerrymandering. So it's a tough space. And here states are trying to draw these lines. So Barb, how are state officials doing it? And are there any examples of states that seem to, despite all of this craziness, getting it right, and trying to draw things fairly and accurately?

Barb McQuade:

Yeah. Michigan is actually an example of a state that is doing something really well. And certainly, we've got our gerrymandered districts here. We've got one that includes a community in Southfield, and it goes through parts of Detroit. And it seems so clearly an effort to cabin African-American voters, to say you get that one, but that's it. And to allow those other districts to be controlled by Republicans. And so one of the things that our state has done is there was a ballot initiative in 2018 that created something called the Michigan Independent Citizens Redistricting Commission, it's actually a constitutional amendment. And it said that in the future, it isn't that the legislature, which is controlled by one party or the other, that gets to draw new district lines because the district lines get redrawn after every census, as you said Kim, it's going to be this independent commission.

And the commission is described. It's got 13 registered voters, four are affiliated with the democratic party, four with a Republican party and five not affiliated with any party. And people submit applications. The Secretary of State and members of the legislature decide who's qualified so they eliminate some that they believe to be unqualified. And then from the qualified applicants, they choose them randomly to decide who's going to be on this commission. They have currently been acting. They have been conducting meetings all around the state to get citizen input. They will propose their first maps by November 1st and they'll take effect in 2022. So I think there's a great pushback on this really undemocratic process of gerrymandering. It was called voters, not politicians. And the idea that it's



voters whose rights should be paramount, not politicians who want to choose their own voters by drawing district lines in ways with a thumb on the scale.

Kimberly Atkins Stohr:

Wow. Well, Jill, are there other states that are attempting these commissions and is it going as well as it seems to be going in my home state of Michigan?

Jill Wine-Banks:

Unfortunately, the answer is yes, there are others, and no, it isn't going as well. I can talk about Illinois in particular, where the attempt to create the independent commission failed twice now in having referendums. And so we're back to partisan drawing of the maps. And I will also say that there are many organizations within Illinois that have tried very hard to draw a fair map to show as a sample. And it's really hard. I'm on the board of the Better Government Association. And we hired someone to do a legitimately nonpartisan map and to take into account contiguous zoning and just draw a fair map. And it ends up that it's not really that easy to do. And it would upset a lot of our favorite members of Congress. My own very favorite congresswoman, Jan Schakowsky, would end up in a merged district, which I would hate.

So it's not all that easy. And the Supreme Court, as you've mentioned, has allowed partisan gerrymandering. I would say in a lot of cases, even where they've appointed commissions, you end up with four for one party, four from the other, and one who's supposed to be independent, but it never is independent. So they end up being someone who always votes with the Republicans other four, or with the democratic other four. And so you end up with the same divisions and the same political partisan lines. In Michigan, I have to say, even though Barb says it's working well, they ended up with a map where, although you have democratic candidates winning more votes, Republicans have been winning more seats. And obviously, that's not a fair outcome. So it's hard. Virginia and Colorado, there was an analysis that showed maps drawn by both parties would reduce the number of districts where minority voters would sway the election. So that's not a good outcome.

And I think in hold part of the problem is there's just too much writing on the lines that are being drawn now. Republicans only have to flip five seats to gain control of Congress. And there are very few swing states. So both parties are working hard to draw districts that will give them the advantage. And as long as the Supreme Court allows that. And I think Kim, you mentioned in your opening the most important point, which is it's very easy to cover up racial gerrymandering by calling it political. So you say it's Democrats, but it really is intended to hurt minority communities that might vote democratic. And if we don't recognize that and the Supreme court allows it to continue, they're really allowing racial gerrymandering. And that is a very bad outcome of all of this.

Kimberly Atkins Stohr:

So Joyce, what can be done to try to bring more fairness to this process? Is there anything?

Joyce Vance:

Other than all of us deciding to buy a desert island and go live there together, we're going to just have to get back into this messy fight and engage. After every census, redistricting happens, the census itself never seems to catch the public's attention. It never seems to really resonate with people when it's going on. For the next 10 years, our federal voting districts will be determined by the outcome of that census. And that can be a little bit frustrating because what comes after the census data is delivered to



the states really looks a lot like the hunger games. And you can feel that shift in the voting rights legal community, pretty much around the time that the pre-presidential litigation was wrapping up in this last election cycle, all of the groups were beginning to think about what redistricting litigation would look like.

It's always lawsuits. Redistricting is always decided in the courts in the contentious states and districts. There will always be a lawsuit in Texas. There will be again this year where the maps they're drawing have no majority Hispanic districts on them, even though that's where the greatest population growth is coming from. So who does that litigation? There are national groups that do a lot of the work. And this is a relatively recent development and I think an important one. Something that we haven't said by the way is that gerrymandering is not just something that Republicans do. It's something that Democrats do as well. And so I think we need to say that to be fair. But on the democratic side of the equation, there are now two groups that engage in the national level litigation. Marc Elias, who gained a lot of fame when he was litigating the big lie after the last election. And Eric Holder's national redistricting committee, which has filed lawsuits already, I think, in five states over new maps.

But as Kim and Jill have both mentioned, after *Rucho versus Common Cause* in 2019, the Supreme court says you can't challenge gerrymandering because it's politically motivated. They say that's a political question that's beyond the reach of the courts. And so we're left with arguing for racial gerrymanders. That is tough. In addition to the federal lawsuits, there will be state lawsuits where stakeholders like the League of Women Voters or the Black Legislative Caucuses will turn to state specialist lawyers in an effort to have districts drawn that better represent the voters. But the bottom line here is I think this basic principle and something that we should all try to encourage our politicians to adopt. Politicians should never get to choose their voters. Voters should choose their representatives. And so, as we look at gerrymandering, no matter which political party is in the fray, something that I think we can come together on, no matter what side of the political aisle we're on, is this notion that we need to reform the process. Barb, I hope your friends in Michigan will lead the way on that.

Kimberly Atkins Stohr:

Absolutely. And I also hope that the Attorney General is keeping a close eye on all of this. Of course, the voting rights act empowers the DOJ to monitor and react if they see racial gerrymandering or any sort of race based voting activity. But again, as we said a couple times, it's going to be hard to say that this is based on race, hard to prove that it's based on race and not by politics. And let's hope at the end of the day, that there is fairness in the process as much as possible.

Jill Wine-Banks:

Kim, can I mention two things. One is that representative Don buyer of Virginia has proposed something that would help curb the abuse of independent commissions. And it's a little complicated to explain, but it would create multi-member districts and rank choice voting. And that would allow a single district to have more representation and to allow a greater chance of it not being a partisan gerrymandered district. But the New York times in writing an article about how effective these independent commissions have been concluded that in all those states were an overwhelming number of voters voted to have independent commissions, they said, "Voters wanted the partisan manipulation to end. What they've gotten stead is partisans in too many states, twisting redistricting commissions into something resembling the old back rooms determined to continue contorting legislative maps and democracy itself into something all but unrecognizable."

Barb McQuade:

Kim, have you made anything delicious with Hello Fresh lately?

Kimberly Atkins Stohr:

Yeah. I really enjoy their pork burgers. I didn't think that I would, it sounds like a lot, but they're actually really tasty. My family loves them. And my family, everybody has their favorite and not favorite foods in general, but they tend to all really like Hello Fresh. What about you, Jill?

Jill Wine-Banks:

My family loves it. Of course, there's just the two of us. And I love that I feel so proud of what I put on the table. And it's so creative and inventive. It's not just grilling a piece of chicken or something. When you put it on the plate, it looks like you're in a restaurant and it tastes like you are in a restaurant. It's fabulous. And Barb, you've had the same experience, haven't you?

Barb McQuade:

I have. Though mine doesn't always look as pretty as yours Jill. It's tasty and delicious and also really healthy. That's one of the things I like about it. I've been trying to eat healthier and I find the ingredients are really healthy. Lots of vegetables and lean meats. I made something great recently. It was a Turkey chili, and everybody in my family really enjoyed it. Starting to get to be fall so chili's a good thing to eat here in Michigan in the fall weather's upon us. With Hello Fresh, you get fresh pre-measured ingredients and mouthwatering seasonal recipes delivered right to your door. So skip the grocery store and sign up with Hello Fresh to make home cooking, easy, fun, and affordable. Hello Fresh's family friendly menu is a big win for back to school season with easy, delicious recipes for drama free dinners, all tested by professional chefs and nutritional experts to ensure deliciousness and simplicity. Hello Fresh recipes save you the time you'd otherwise spend planning meals and shopping.

Jill Wine-Banks:

And I do love the nutritional information they provide for you. It really helps keep you on calorie track as well as healthy meals. And this season, we're really excited about the fall harvest options from Hello Fresh. You can count on amazing seasonal recipes like pumpkin cinnamon rolls and friendsgiving ready sides. With fresh high quality ingredients that travel from farm to your front door in less than a week. Hello Fresh gives you the flexibility you need to easily customize your order on the app within minutes. So don't wait to get started.

Barb McQuade:

Go to [hellofresh.com/sisters14](https://hellofresh.com/sisters14), and use code sisters14 and get up to 14 free meals plus free shipping. [hellofresh.com/sisters14](https://hellofresh.com/sisters14), and use code sisters14, and get up to 14 free meals plus free shipping.

Joyce Vance:

This week Trump campaign and White House aid Omarosa won an arbitration case the Trump campaign brought against her. They alleged, she violated her nondisclosure agreement with the campaign by making public comments about Trump and writing her book Unhinged: An Insider's Account of the Trump White House. This case might have more meat to it than is apparent at first. Barb, first off, can you start us with the legal conversation here? What's a non-disclosure agreement?

Barb McQuade:

So nondisclosure agreements are actually pretty common. Many times you'll get it in an employment situation. It might be with regard to trade secrets. It's basically an agreement not to share confidential information that parties need to exchange in the course of doing business. So if you're going to be doing business with someone else and you have to share your trade secrets, you might say you can't share them with anybody else. In the employment context, in government, it's pretty common to say we can't disclose certain sensitive information that we learned in the course of our employment. Like Joyce, when we were at DOJ, we signed agreements that we wouldn't share classified information, that we wouldn't share certain facts that we learned in the course of our employment.

Joyce Vance:

But I don't remember ever signing an NDA saying that we wouldn't talk smack about Eric Holder, right? So that's free game for future episodes.

Barb McQuade:

Smack away, right. Or each other. And that's the difference. And I think that's what we're seeing here, where the Donald Trump agreements are saying, you can't ever criticize me or say anything bad about me. And so I think that's very different. It's really focused on facts, confidential facts, that you learned in the course of your employment you can't share with others, with competitors, to the detriment of your former employer.

Joyce Vance:

Was this the expected outcome here?

Kimberly Atkins Stohr:

Yes, is the answer to the second part of the question. Well, the former president tried to enforce a nondisclosure agreement against Omarosa Manigault Newman after she wrote her book... Joyce what's the name of that book again?

Joyce Vance:

The title of the book is *Unhinged: An Insider's Account of the Trump White House*.

Kimberly Atkins Stohr:

That's it. And of course, Omarosa was the former Communications Director in the Office of Public Liaison during the Trump administration. And before that, she was a contestant on the *Apprentice* and later she worked in the Trump organization. But as you said, it was in a super broad NDA that basically was a gag order about anything that she could possibly say about anything related to anybody named Trump. It was way overbroad. And then New York arbitrator, Andrew Brown, said it was unenforceable because the agreement, "effectively imposes on respondent an obligation to never say anything remotely critical of Mr. Trump, his family, or his family members business for the rest of her life. And that burden was certainly unreasonable." And look, this is something that Donald Trump has done for years and years. He tried to do it when he was president. He ordered Don McGahn, remember that wonderful reporting from the Washington post.

He ordered Don McGahn to make people in the White House sign NDAs and Don McGahn wouldn't do it. He's like, dude, these are public officials. You can't do that in government. It won't be enforceable. They'll throw it out as against public policy. And Trump insisted. So just to pacify him,

McGahn drew up these nonsensical NDAs. And as he gave them to people to sign, he told them, this can't be enforceable, but just sign it, just make him happy. So this is what Trump has done for a long time. Nothing for nothing, when these NDAs are challenged, Trump usually loses because they are... I think it's more, the breadth of these things are more to please Trump than they are to actually try to be legally enforceable.

Joyce Vance:

I'm just impressed that he can still find lawyers that are willing to represent him. So Jill, is this a one and done, is this only about Omarosa, or does this have implications for some of the other Trump NDAs that are out there?

Jill Wine-Banks:

I just have implications, but it's not like a court decision. An arbitrator's decision isn't binding on other arbitrators. So if they get challenged in arbitration, they'll be one and done and they'll have to all raise it. But I think, and Omarosa's lawyer, John Phillips, has made this point. Is that it will encourage other people to speak out knowing that they will likely prevail in any challenge to the NDA. And that's an important fact. You can't have, particularly, the NDA that was involved here was as you mentioned, overbroad and although that was the basis of the decision, primarily, I would say that the fact that it's against public policy when it is applied to the President of the United States and limits anybody from talking about their time in the White House, that would be another reason why. And under this decision, Trump is going to have to pay Omarosa's legal fees. So there are some consequences to his continuing to raise these foolish challenges. And hopefully, other people will be encouraged and will feel free that they can go ahead and talk. And that's where its biggest impact will be is that it will free people who otherwise might think, oh, I signed this NDA, I'm not going to get into litigation.

Joyce Vance:

It says so much that Don McGahn, instead of just telling Trump no, went ahead and wrote up agreements that he knew were unenforceable and contrary to policy. So who else do y'all think is out there that might feel a little bit freed by this decision in Omarosa's case, and might now come forward.

Kimberly Atkins Stohr:

Everybody. Anybody who seeks to do, as some folks who've done, particularly folks who have written books that are critical in a way that seems to make it to be an effort to rehab their own reputation after being a part of it.

Barb McQuade:

One thing that I find so interesting is that there is no honor among thieves, right? Like these people go to work for Donald Trump and I assume pledge some sort of loyalty to his administration. And then the minute they're gone, they want to tell you all kinds of things. Like Stephanie Grisham wrote another tell all book about Donald Trump, where she says he cuts his own hair with scissors that are large enough for our ribbon cutting ceremony. It's all this, I don't know, embarrassing gossip behind the scenes stuff. And so it just says as much about them, I think, as it does about President Trump. These are the kinds of people that were attracted to his administration.

Joyce Vance:

It fills me with a profound amount of sadness though, that this is the tarnishing of the presidency, right? This is maybe, or hopefully, the last stage of the Trump presidency, where we have to hear these tell-alls that look like they're more suited for reality television than the White House.

Barb McQuade:

Kim, have you ever heard of this app called Honey?

Kimberly Atkins Stohr:

I have. Let me tell you. I am someone, if you ask anybody, it's impossible for me to pay full price for anything. I don't care if it's toothpaste or a designer bag, as long as it's on sale, or I get some discount, I need that to be able to purchase it. And what Honey does is rather than going to the internet and trying to find coupon codes or what the sale is, it's an app that as you do your shopping, it does all that work for you and puts in the coupon codes when you're at the checkout. It's fantastic. I love it. What about you, Joyce?

Joyce Vance:

You know, same here. The first time I encountered honey, I was shopping on my husband's computer. And when I went to check out, I got this little pop-up that searched for coupon codes for me. And I saved some money doing that, was pretty excited. And Bob had found out about it from his friend group. So I thought it was very cool. Jill, what about you?

Jill Wine-Banks:

Same thing. I'm not sure how I discovered it, but it popped up one day and it just automatically pops up whenever I'm online shopping, which is these days, very frequently. And it will automatically say, do you want to look for coupons? You say yes. And then it just goes in the background and it finds coupons and saves you money from, you never know, what source. But it saves money so that's a good thing.

Joyce Vance:

These days we all shop online and can't help feeling it when the promo code box taunts us at checkout. So thanks to Honey, manually searching for coupon codes is a thing of the past. Honey is the free browser extension that scours the internet for promo codes and applies the best one it finds to your cart, getting you the perfect deal. They support over 30,000 stores online with everything from tech to popular fashion brands and even food delivery. And so far, Honey has found its over 17 million members over \$2 billion in savings. So does it work for you like that, Kim?

Kimberly Atkins Stohr:

It absolutely does. It's great. Imagine you're shopping on one of your favorite sites and when you get to the checkout, the Honey button drops down and all you have to do is click, apply coupons.

Barb McQuade:

There's a Honey button? I'm all in there.

Joyce Vance:

There is a Honey button.

Kimberly Atkins Stohr:

There is a Honey button, it's the best button. And then you just wait a few seconds as Honey searches for the coupons and it can find your coupons for the site and then boom, you'll watch your prices drop. It's so easy.

Joyce Vance:

If you don't already have the Honey button, you could be straight up missing out on free savings. It's free, it installs in a few seconds, and by getting it, you'll be doing yourself a solid and supporting this podcast. Get Honey for free at [joinhoney.com/sisters](https://joinhoney.com/sisters). That's [joinhoney.com/sisters](https://joinhoney.com/sisters). Or look for the link in our show notes.

Barb McQuade:

Joyce, I'm going to start calling you Honey button.

Joyce Vance:

Oh, Barb. The bar is already low on this show. We're just going to keep going, aren't we?

Barb McQuade:

I want to take a moment to thank our wonderful listeners for always sending in such great questions. We really love the segment of the show. If you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet using #sistersinlaw. If we don't get to your question during the show, keep an eye on our Twitter feeds throughout the week where we'll answer as many of your questions as we can. So our first question today comes to us from @Oldenburghorses. And the question is, will you please discuss the checks and balances that are in place to prevent the Supreme court justices from being bribed or otherwise influenced by financial interests? Kim, you're our Supreme Court reporter. What do you say about that?

Kimberly Atkins Stohr:

So when it comes to the Supreme Court, the answer is there a very few checks and balances. That's because the rules that govern federal judges largely don't apply to the US Supreme Court. Meaning if it's a case, for example, if a justice has financial interests in the case, they should recuse. They don't have to say why, but because we don't know and it's up to them, whether to recuse, it's a really weak protection. It's very different than the judges at the trial and appellate level and the federal judiciary who have to recuse if they have a federal interest in the case, or if they know someone or there's some other conflict of interest, or else they face sanction from the US Judicial Conference.

Now, that's not to say that there is nothing can be done. If it is proved somehow that a US Supreme Court Justice was bribed, the solution would be an impeachment trial. The only way that a Justice can be removed from the US Supreme court is impeachment. I think it's only been tried, what, once before or something. It was a long, long time ago. I have to ask my husband, he's a Supreme Court walking encyclopedia. He knows all this stuff. But it hasn't happened in a long time. And we know from the impeachments that we've seen in the presidency, how difficult it is to actually remove someone from office under that process. But that would be the only one available.

Barb McQuade:

Yeah. And there have been impeachments of lower court judges as well. So a good question. We have another one from, @ElisaSDavis who asks, could R. Kelly's successful racketeering prosecution strategy also be used against the Trump organization. Jill, what do you think about that?

Jill Wine-Banks:

It's a great question. And I think the answer is yes. Not only can it be used against other perpetrators of widespread sexual abuse, but it can be that the White House itself and all of the associates who worked for Trump and enabled him to perpetrate some of the crimes he did could be considered the enterprise. And you would need a specific overt act in furtherance of that enterprise and that conspiracy. But I think that there are plenty of instances where those kinds of facts could be used to make a Rico case against either the Trump organization or against the Trump White House. So yes, is the answer to that question.

And we also do know, for example, just to mention bribery, if we go back to the Watergate era, the Vice President Spiro Agnew was indicted and ended up pleading nolo contendere to a charge that dropped the bribery. It was a tax count that he pled to. But it's because he was taking cash in the basement of the White House. He was taking actual bribes that he had done as governor of Maryland and then continued to do as Vice-President of the United States. So it's not unheard of that there could be bribery of the president or the vice-president, and that certainly could lead to charges directly on those counts.

Barb McQuade:

Thank you for listening to hashtag Sisters in Law with Jill Wine-Banks, Joyce Vance, Kimberly Atkin Stohr, and me, Barb McQuade. Don't forget to send in your questions by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet them for next week show using #sistersinlaw. This week sponsors are Girlfriend Collective, Hello Fresh and Honey. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow #sistersinlaw on Apple podcasts or wherever you listen. And give us a five star review, we love to read your comments. See you next week. With another episode, hashtag Sisters in Law

Jill Wine-Banks:

Is anybody else a ping like you get when there's a notice on your computer.

Kimberly Atkins Stohr:

No.

Jill Wine-Banks:

All right. So then it must be my computer that's doing it. Because I'm hearing it. And I have no notices set. So Mike, when we're done if you could-

Kimberly Atkins Stohr:

Do you have your do not disturb... I always put do not disturb on before we record.

Jill Wine-Banks:

I haven't.

Joyce Vance:



Jill, that's just the chip that was implanted in your head when you worked in the government.

Jill Wine-Banks:

No, it's from the vaccination I got. That's it don't-

Kimberly Atkins Stohr:

Oh right.

Jill Wine-Banks:

But seriously, I am hearing something it's quite annoying. Oh, well.

Kimberly Atkins Stohr:

I'm sorry.

Jill Wine-Banks:

Okay.

Barb McQuade:

If you put an aluminum foil hat on, that will help protect you from all that.

Jill Wine-Banks:

I don't know, in your day, in Washington, they used to let in oddball people who would come in saying that the mafia had implanted... filling in their tooth that let them over. And-

Joyce Vance:

Every day.

Jill Wine-Banks:

I had one colleague who sat... And we used to have to listen to them. They actually let them in and gave them to a lawyer to talk to. He sat there and he put together a chain of paperclips and said, if you put this on and let it drag on the ground, you will be grounded and safe and no one can overhear you and the person left ecstatic. So that was how we dealt with it back then.