

Jill Wine-Banks:

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Kimberly Atkins Stohr:

Welcome back to #SistersInLaw with Jill Wine-Banks, Joyce Vance, Barb McQuade, and me, Kimberly Atkins Stohr. You might have seen that we tweeted some photos of ourselves wearing our pale blue women's t-shirt which is of course available at politicon.com/merch. Get yours now. We love them. Today, we'll be talking about the overturning of the federal mask mandate, the possibility of Marjorie Taylor Greene being bumped off the ballot for her role in the insurrection. And we will rethink the nine to five workday for lawyers as we begin to return to the office. And as always, we look forward to answering your questions at the end of the show. But before we get to all that, coming up this Friday, May 1st, is something called Law Day. It's really important to me and the other sisters because it's meant to underscore the importance of the rule of law.

We talk a lot about laws and the application of laws and what's illegal and what's not, but I think a lot of times Americans don't fully understand what the rule of law is and the importance of the rule of law. Law Day has been for decades a moment to consider that. It was started by the American Bar Association back in 1957 and it's meant to give an opportunity for everyone, not just lawyers, to understand how the law and the legal process protects our society, protects our liberty, protects justice and our democracy. I think right now, especially given what's been going on for the past several years, it's really important to remember that. I am not a member of the ABA, because as a journalist, we generally don't belong to groups like that. And I no longer practice law, but I was on an advisory commission for the ABA which brought in journalists and other people to talk about ways to better inform the public about the rule of law. I think that is something that is so important. It's very close to my heart. I know it's close to all of your hearts too, Joyce. Talk about how Law Day is a big hit in your household.

Joyce Vance:

You know, my husband is a judge. My father-in-law was a judge. Hence, Law Day is a big celebration around here. What I've always done and something that I really miss, I haven't done it for the last couple years because of the pandemic is my practice was always to go out and read in public schools in Birmingham and actually to spend time on Law Day with younger kids. I miss that a lot. Something we've talked about a lot on the podcast is the importance of civic education. And since that's something that I plan on devoting a lot of time to this year with elections upcoming and thinking about how important it is for people who, as you say Kim, aren't lawyers, to understand the rule of law to really understand their rights and their responsibilities.

My hope is that Law Day just gives us a moment where we can sit back, think about why it matters, and each of us can figure out what we can do in what's going to be a very important year. I know we always say that every election that's coming down the pike is the most important election ever. And in some ways I think that's true, right? Every election is important because it's the election that will determine the course of the next few years of our lives. This one is particularly important. Law Day is a great time to recommit to helping to enhance those values in American society. What about you Barb?

Barb McQuade:

Yeah, I'm a big fan of Law Day also, and public education I think is so critically important. Like you Joyce, the pandemic has stifled my efforts a little bit. But before the pandemic, I was a regular speaker in Ann Arbor public schools. They did a program which is wonderful, well-organized by our County Bar Association to send lawyers into public schools. Each grade had a different program and they would give us a PowerPoint to use in the class. It might be that one grade, and they'd have grade-appropriate materials, would be studying the First Amendment. Another grade would be studying the Fourth Amendment or the Sixth Amendment. It was wonderful. We would talk to the kids. We have a few high level slides to talk to them about the main concepts and then do Q&A, and they were super interested, super engaged. I think it's so important for everybody to understand the role, the important role that law plays in everybody's life. What about you, Jill? You're an old ABA executive director. What does Law Day mean to you?

Joyce Vance:

Barb, can I just jump in? I hate to cut Jill off, but I just have to say you haven't lived until you've answered 10 year old questions about what the constitution means, right? Their questions are piercing and tough and they're far more likely to stump me than my law students.

Barb McQuade:

Oh, it's the greatest. My favorite question, and I guess they asked more than once is they love this idea. What if you have a twin and your twin committed a crime but you got charged? Could you blame your twin? You ask like, do you have twins? No, they just think it's fascinating that you could blame your twin for your crime.

Joyce Vance:

I love that. Sorry, Jill.

Jill Wine-Banks:

That's okay. What I wanted to point out was the ABA of course is the one who started the idea for Law Day. In doing some research for this, I found out that the very person who started it was the President of the ABA whose name was Charles Rhyne. Charles Rhyne was also a law classmate of Richard Nixon and was the lawyer for Rosemary Woods. I know, yeah. So I have a very close connection to Charles Rhyne who founded the idea. It is such a great day to celebrate what the rule of law means in America. I too miss the past things that I did to speak to students about the meaning of it. I've coached a mock trial team, which has been so much fun. It was my goddaughter's daughter's trial team. I learned so much from how they approach the trial practice and presentation of evidence and thinking things through about what the law means that I feel like I learn as much from them as they learn from me, but it's been a fabulous thing.

Every year there's a different theme. Last year it was the rule of law. This year, it's the constitution in times of change, which is supposed to emphasize that we have set up a system of government under the constitution but we've also set up ways and mechanisms to change it. And so it opens up that idea of how do we interpret the constitution as a living document, because that's what this is. It shows it as a dynamic document. That is something that we've often talked about with how the Supreme Court analyzes, whether it's the totally textual view of the constitution. And so I think it's been a really interesting thing that we need to make sure that people celebrate every year. It's also, of course,

today is actually Earth Day, so I have to put in a good word for Earth Day and how we need to protect the environment and take action on that. I was very good friends with the founder, one of the founders of Earth Day, Congressman Pete McCloskey. So that goes back a long way.

Kimberly Atkins Stohr:

Yes, Earth Day is important too. And just a reminder that Law Day is not just for lawyers, it's for everybody. To find out more about it, or for ways that you can get involved, you can go to lawday.org or click the link in our show notes.

Barb McQuade:

You know, there are many things about my house that are in great disarray. If you're to come on any given day, bit of a mess, I'm afraid. But one thing that's not in disarray, and that is my financial house. That is because of Policygenius. If someone relies on you for financial support, whether it's a child or an aging parent, or even a business partner, you need life insurance. Typically, life insurance gets more expensive as you age, so it's smart to get a policy sooner rather than later. Policygenius is your one-stop shop to find and buy the insurance you need all in one place. Getting started is easy. You can click the link in the show description or head to policygenius.com and answer a few questions about yourself. In minutes, you can compare personalized quotes from top companies to find your lowest price. How about you, Joyce? Did your financial house in good order?

Joyce Vance:

You know, my financial house is a lot cleaner than the rest of my house right now. I was thinking this morning about pollen and other things that make it tough to stay neat and organized, but like you, insurance is one of those areas where we are well-organized. You too could save 50% or more on life insurance by comparison quotes with Policygenius like we did in our household. Their team of licensed experts will help you understand your options so you can make your decision with confidence. The Policygenius team works for you, not for the insurance companies. Whether you're just starting to shop or have questions about your active policy, they're your independent advocates for unbiased advice. They won't add on extra fees, require unnecessary medical exams, or sell your information to third parties. They've helped over 30 million people like me and Barb shop for insurance since 2014 and placed over 120 billion dollars in coverage. Policygenius has thousands of five star reviews across Google and Trustpilot. You can get coverage in less than a week. You can be next.

Barb McQuade:

So head to policygenius.com to get your free life insurance quotes and see how much you can save. That's policygenius.com or look for the link in our show notes.

Joyce Vance:

Barb and I were both flying home from separate trips on Monday when mid-air I saw the announcement that a federal district judge in Florida had entered an order ending the mask mandate on transportation on planes and trains and subways. She did so not just for the plaintiffs in her case, but she did it nationwide. You know, on my flight, people stayed masked. There was a little bit of surprise and people weren't quite sure what to do. But Barb, I think you flew home a little bit later than I did and you had a different experience. Can you talk with us about that and explain what the issue was in the Florida case?

Barb McQuade:

Yeah, so somewhere at 30,000 feet between Detroit and Minneapolis, a member of the flight crew came on and said, TSA has just ended its mask mandate. Masking on flights is now optional and you may remove your mask if you would like to. About half the plane erupted in cheers and ripped off their masks, and the other half booed boisterously. I'll let you guess which side I was on. That was what happened following this judge's decision. I question the judgment of announcing this mid-flight when people have passionate feelings about these things, but nonetheless, that happened. And then when I landed at the airport, I noticed that many people were not wearing masks anymore. Interesting, interesting times and interesting views, how people choose to wear masks. But the decision in the Florida case was to strike down a rule that was made by the CDC, the Centers for Disease Control.

The CDC had entered this masking rule pursuant to its powers. It has the powers to authorize regulations necessary to prevent the spread of communicable diseases between states. And so in carrying up that function, it had enacted this masking rule that said in public transportation, masking was mandatory. What the judge ruled in that case is that CDC had exceeded its statutory authority. Because Congress is the branch of government that has legislative power, the one to make the laws, they're the only ones that couldn't do unless they delegate that authority specifically to administrative agencies. The idea is that Congress has the ability to draw big rules, but when it comes to the fine tuning of rules, it really needs to be more nimble than that. And to pass big laws in Congress, it doesn't move quickly enough to be able to respond to the needs in various areas.

And so the CDC has this authority delegated to protect the spread of communicable diseases from one state to another. But what the judge found there is that the CDC exceeded its statutory authority, which says that the CDC may do a number of things including inspect and defumigate and disinfect and other things. The word she focused on was sanitation, and that was the word that the CDC had relied upon to require masks. The judge said, "You know, I'm one of these textualist, I'm going to look at the plain language. I look in the dictionary and sanitation says, removal of garbage and cleaning. Doesn't say anything about masks so no masks. You can't do that. CDC, you've exceeded your authority." She also said that they failed to provide with the procedural rules about the notice and comment period, which is normal that they post it and receive comment before they enact a rule to make sure that they're hearing from all the important stakeholders. But there's an exception when there's an emergency and they had operated under that provision.

So the judge said no. You know, really to me, the key issue here isn't whether you're for masks or against masks, but who gets to decide that? It seems to me that based on this delegation of authority, and it's only as good as what Congress gave them, but it is the CDC that has the letter of this authority and the spirit of this authority. The CDC is a group of career experts designed to look at these matters objectively. They don't change their jobs based on who's in power politically. They make their decisions based on what they think is in the best interest of health. They've enacted that mask mandate. For a judge to come in and second guess, and I've said this before, when it comes to textualism, I think that you can use a dictionary to almost always justify whatever end result you want to reverse engineer a result.

If you ever look at the seven times 13 equals 28, Abbott and Costello routine, no matter how they do it, they can prove that seven times 13 equals 28, when you know in your heart that just can't be right. But somehow they pull it off by using these numbers. You read this opinion, I get the same feeling, that this is the Abbott and Costello seven times 13 equals 28 routine. The question is whether that will stick on appeal.

Joyce Vance:

You know, Barb, I think that's the most succinct criticism of textualism that I've ever heard. This judge is a textualist. She came on the bench after spending time in the federalist society and law school and clerking for conservative judges, including Bill Pryor, the chief judge of the 11th Circuit, and Clarence Thomas. There was a lot of controversy, both about her and her background and about her ruling. Kim, do you think that the criticism was warranted?

Kimberly Atkins Stohr:

Well, I think it depends on what you think about what Barb just said. That very important point about who has the power to implement nationwide policy. Generally speaking, this is not something that trial level judges are in place to do. They're meant to oversee cases at the trial level that come before them in their local jurisdictions. Now those duties do include acting on things like preliminary injunction requests. The reason that people will seek a preliminary injunction in a case at the trial level is to hold in place the status quo while an issue of law, a novel issue of law is decided by the appellate courts and makes its way up the appellate chains, and that's basically to keep harm from being done. Usually, generally speaking, such injunctions apply to the parties in the case.

But in this case, the order by Judge Kathryn Kimball Mizelle who is based in Tampa, Florida, it prohibits anyone, any TSA official, anybody, anybody in any transportation authority from implementing this policy in the meantime so it amounts to a nationwide ban. Now that happened historically on a very rare occasion, but recently that's been happening more and more frequently where you have these trial level judges implementing nationwide bans in a way that wasn't meant to be their jobs. As Joyce said, she spent some time clerking for some conservative judges and justices. She did practice in private practice for a little while, but she still received a not qualified rating from the American Bar Association before she was confirmed to that post. Among other reasons that the ABA cited is that the only two cases she'd ever tried to verdict were when she was a law school intern.

And so, as Barb said, you have people at the CDC, experts, their job is to understand and implement rules that keep everyone in America safe. And then you have one judge who happened to have been rated not qualified by the ABA overriding their decision and making the call to end this mask mandate unilaterally in a way that's going to make it extraordinarily difficult regardless of what the legal findings are at the end to reimplement. You saw the way people reacted in planes and in airports. Putting that toothpaste back in the tube is going to be really, really hard. So it really makes you have to think about where this power is allotted and whether that's right. I'll leave that to our listeners to make that decision for themselves.

Joyce Vance:

You know, I think it's really fair to point out that this judge essentially got an unqualified rating when the ABA vetted her. That was based on her lack of experience as a lawyer that made her sufficiently experienced to become a judge. I think it's important to say that that's not an indictment of her personally. She was obviously a very good student. She clerked for two judges. She was a Supreme Court Justice. Not very many people do that. So it's not to say that this is someone who was stupid or who didn't belong in that fairly high level of the legal world. It's simply to say that the qualification wasn't there in terms of experience. The notion that you can become a trial judge without having as a bar certified lawyer tried even a single case to completion.

She had not even been the second share on a case, and that I think is what was so shocking to people. And Kim, I liked the point that you made and that Barb made that when we're talking about who decides these issues, that's a marker for the judgment that she exercised. Jill, I think I'll throw the appellate question to you because the case now hinges on what power the CDC has to exercise in a

crisis. What happens going forward? Given Judge Mizelle's ruling, it seemed fairly preordained to me at the time that DOJ would have to appeal. They dragged their feet a little bit. What strategic choices have they made?

Jill Wine-Banks:

It's really interesting, and of course, everything that Barb and Kim said is completely true, particularly about who decides these issues. Whether it's the experts at the CDC based on medical information and the health risk to our country, or whether it's a judge who has no such experience is really the fundamental issue. They're also correct in pointing out the political nature of this right now and how hard it will be for this to be undone. I'm sure that one of the things that the administration considered in deciding whether to appeal was the political impact. If we appeal and win and the mandate is put back in place, a lot of people are going to be unhappy because they were thrilled that it was removed. And it's harder to do that than to say, look, there's a health risk and you have to stay there.

They had to avoid that. But I think what they were really doing was weighing what are the legal consequences. What is the best way to decide the full scope of the powers of the CDC? And so there was some argument that if it was appealed and lost, it meant that there'd be a higher court decision saying that the CDC didn't have this power and that that could affect what happens going forward. It's important to note that in this case, the mandate was set to expire anyway. This almost became moot before it was actually brought because it was going to expire. And then there was a request that it just be continued to May 3rd, which is about to expire before this is going to ever be heard in an appellate court or briefed in an appellate court. And so then you get into the question of, well, if we don't do it, we're letting stand a decision of a district court that's very negative and that could be used as a grounds for arguing in future cases in a future pandemic or in a resurgence of COVID and that's bad.

On the other hand, if we let it get appealed and we lose, then we have a higher court decision saying bad things. To me, it doesn't really matter whether it's a district court or a court of appeals that makes the decision. It's taking away the power of the CDC. And so I personally on a philosophical basis would've said, yes, it needs to be appealed because there needs to be confirmation of the power of the CDC. There was also some arguments being made about the mootness issue and whether the Department of Justice was weighing if it brought the appeal and then the case became moot, it could be argued that under a case called *Munsingwear* that it would be vacated. It would be voided and nullified and that there'd be no presidential value to it. I don't think that's why they made a decision, because in the circumstances that the party who's appealing moots the issue by letting it expire, they don't have any protection of vacating the lower court decision. So I don't think that really played a role.

Kimberly Atkins Stohr:

I just have to say, I love it when my sisters-in-law nerd out and talking about mootness and *Munsingwear* and stuff. Just the lawyer nerd in me just rejoices.

Joyce Vance:

Well, we all got a little bit nerdy this week I think. Jill's assessment of *Munsingwear* I think is dead on the money. There's this notion that DOJ would not take such a risky position, which I think that was what the delay was about. They were trying to figure out, what are we going to do in a bad situation? We've got bad law in the district court. We don't want bad law from a court of appeals that might end up getting cited in other circuits. Then I'll just put the final cherry on top here and say, this is happening in the 11th Circuit, which is a very conservative circuit, very likely that we'll see more textualist and judges who believe in dismantling the nanny state on the 11th Circuit panel, the three judge panel that will

hear the appeal if it gets that far. So stay tuned on this one. If you believe that the CDC should be able to protect us in future crises, this may be a rocky road.

Barb McQuade:

Today's episode is sponsored by Honey. Honey is something I learned about from you, Kim. You have been a long time user of Honey. Why don't you tell us about it?

Kimberly Atkins Stohr:

Yeah. So just this past-

Barb McQuade:

And I'm not calling you honey, I'm talking about Honey. I would never call you honey or sweetie or anything like that, that would be demeaning Kim.

Kimberly Atkins Stohr:

Yes. I do know that. I would not expect that from you Barb. But one thing I do like about Honey is that-

Barb McQuade:

Are you calling me honey?

Kimberly Atkins Stohr:

Well, my husband won't call me honey when he realizes how much I've been shopping with Honey. You know, I have a tendency when I really like an item. I may buy multiples of it. So it's a pair of jeans that fit me really well and I found them online. As I put them in the cart, Honey popped up and saved me 20% off of these jeans so I love them even more. I know everyone who shops online can't help feeling when that promo code box taunts us at checkout and we don't have anything to put in it. But thanks to Honey, manually searching for coupon codes is a thing of the past. Honey is a free shopping tool that scours the internet for promo codes and applies the best one it finds to your shopping cart. They support over 30,000 stores online, with everything from tech to popular fashion brands like jeans, and even food delivery. And so far, Honey has found its over 17 million members more than two billion dollars in savings. That's billion with a B. Tell us how it works, Barb.

Barb McQuade:

Yeah. Imagine you're shopping on one of your favorite sites, and when you check out, the Honey button drops down and all you have to do is click apply coupons. Then you wait a few seconds as Honey searches for any coupons for that site. And if Honey finds a working coupon, you'll watch the prices drop. It's easy. Sometimes it finds more than one. It'll say Honey has found four coupons, and it does a little click and you'll just see your total steadily going down. So it's easy and it works really well.

Kimberly Atkins Stohr:

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Jill Wine-Banks:

Numerous cases have been filed to remove Republican candidates from primary ballots. Two have gotten the most attention. One was against Madison Cawthorn of North Carolina. One against Marjorie Taylor Greene of Georgia. These actions are based on the disqualification clause of our constitution, which is set forth in Section 3 of the Fourteenth Amendment. I want to read the relevant language because I want our audience to have that in mind as we proceed with our discussion. Section 3 of the Fourteenth Amendment says, "No person shall be a Representative in Congress, who having previously taken an oath as a member of Congress to support the Constitution of the United States shall have engaged in insurrection or rebellion against the same." The Cawthorn case was dismissed and is now on expedited appeal to the Fourth Circuit. It's going to be argued May 3rd. But the case to remove Greene from the ballot was allowed to proceed.

And as we record this episode, she is testifying under oath before a Georgia administrative judge who will make a recommendation on an outcome to the Georgia Secretary of State, Brad Raffensperger. Depending on that recommendation, the Secretary of State will decide whether she stays on the ballot. As we've talked about before, that's a very important decision because it does mean who we can vote for or not vote for. But let's start with understanding how these two conflicting decisions came down. Barb, tell us what the judges in Greene and Cawthorn cases said that led to the different outcomes.

Barb McQuade:

Yeah, we'll start with Cawthorn because that one came first. There was a judge in that case who said that the Fourteenth Amendment's prohibition, the one that you just read about how a person is disqualified from running for Congress if they have engaged in an insurrection is limited to people who fought in the civil war. That an 1872 statute called the civil war Amnesty Act limits the Fourteenth Amendment to those kinds of situations. Now I think a fair argument is a statute can't change the meaning of the constitution. If you're a textualist, you got to care about the language of the Fourteenth Amendment, right? Need to see it both ways. So that case was dismissed. It is now on an expedited appeal to the Fourth Circuit that's going to be argued on May 3rd. We'll see how that one comes out. But in the meantime, there's a similar challenge to Marjorie Taylor Greene in Georgia.

A group of citizens of Georgia in an organization filed a challenge to her with this Georgia Secretary of State that is Brad Raffensperger, who of course is a familiar name for all of us following the 2020 presidential election. He's the person that Donald Trump tried to shake down for 11,000 more votes. He will ultimately decide. But Marjorie Taylor Greene herself filed a lawsuit to try to stop that effort before the Georgia Secretary of State for removing her from the ballot for engaging in insurrection. To date, the judge in that case rejected her argument. Now you say, why is this inconsistent with the judge in North Carolina? Well, they're different judges. They're both U.S. district court judges. They are both of equal power, but they're out of different jurisdictions. One's ruling is not binding on another. They would have to go up to their circuit level and perhaps ultimately the Supreme Court to get a consistent ruling on this.

But what the judge said there is that there are some really important constitutional interests at stake, and there is some question here as to what does it take to engage in insurrection? And so it's important that we find out what the facts are before we dismiss the case. It may very well be that the plaintiffs are unable to demonstrate that she engaged in insurrection. It's also really unclear. I think it's fascinating just from a legal procedure perspective to try to get some clarity on how the process works in these cases. That you have to be convicted of a crime of insurrection. Can it just be a finding by the Secretary of State of your state like Georgia? Does Congress itself have to make this findings? We don't know. And so the judge here said, "This is an opportunity to flesh out the law and to make factual

findings so the case shall proceed," which is what brought Marjorie Taylor Greene to the witness stand today.

Jill Wine-Banks:

We're going to get into those facts and into the legal process. I'm going to turn to you Joyce first to talk about the definition of engaging in an insurrection and whether inciting an insurrection, because there is no evidence that she entered... Well, she was in the capital to do her job, but she didn't enter with the violent protestors. So is any prior action of hers inciting them to enter, would that count as engaging in an insurrection within the language of the Fourteenth Amendment?

Joyce Vance:

That I think is the key question and one of the questions that'll have to be decided in this hearing. I'm going to just skip a little bit ahead and say, I don't believe that she's going to be disqualified from running in Georgia. My belief is grounded more in the politics than in the law of the situation. Because after this hearing, judge makes his decision, it goes to Brad Raffensperger, the Secretary of State for a final decision. I doubt he has it in him to go mano a mano with Trump a second time, but even if he does, it can be appealed into the Georgia state courts. I just don't see that process working out in a way that removes her from the ballot. That said though, this question about her participation in the insurrection is an interesting one. Because Section 3, and there's a little bit more language at the end of it. It says, to be disqualified, she has to have either engaged in insurrection or rebellion or give an aid or comfort to the enemies thereof.

The thereof at the end of that phrase is the United States Constitution. And so you can contemplate really a pretty expansive set of facts that would justify this sort of disqualification. It will all come down to the specific facts that the lawyers for the Georgia voters are able to put into evidence and what the judge believes they establish. Because insurrection involves an element of violence. There was a lot of quibbling about that. Unfortunately, we're taping while the hearing is still ongoing. But most of what I heard from Marjorie Taylor Greene this morning was the lawyers offering evidence that might have suggested that she was interested in at a minimum, blocking Congress from certifying the election. She had one phrase down patch. She kept saying, "I don't recall." She said it over and over again in a way that would've made Jeff Sessions proud at his confirmation hearing when our listeners will recall, he didn't remember anything. Neither did she.

She wouldn't take responsibility for anything on her social media. She said, "I don't have any idea who did that." Items on her calendar, she had no idea how they got there. It looked to me like perhaps she was being set up for a vicious comeuppance at the end where maybe the lawyer had the receipts. We'll have to see how that weighs out. But ultimately, I think there's going to be a lot of legal noodling over the specific language and the law, and it may even come down to things like, who's an enemy of the constitution? If this comes down to not her active engagement in insurrection but giving aid or comfort to enemies of the constitution, who qualifies? So lots of unsolved legal territory there.

Jill Wine-Banks:

There is, and part of the argument I heard by her lawyer was that the part about aid to the insurrection is only for foreign enemies of the state so that it wouldn't count because these were Americans. That was one that took my breath away. But as you said, we're going to have to wait to see what the outcome of that case is and we'll see how far it goes. Kim, let's go to a different sort of aspect of this, which is the First Amendment. We've talked about the fine line between free speech and criminal acts.

Do you think there's a First Amendment argument here? Or is there any issue based on congressional immunity based on the speech and debate clause?

Kimberly Atkins Stohr:

Before I get to that, I want to start by saying, we already established that this rule came out of the civil war. So if they're claiming that it only applies to foreign people, I have a history book for them to read. Just moving on from that.

Barb McQuade:

That would be critical race theory.

Kimberly Atkins Stohr:

No, there is.

Barb McQuade:

You're so woke. You're so woke.

Kimberly Atkins Stohr:

You caught me, Barb. In terms of the First Amendment or the Speech and Debate Clause or any of the defenses that Marjorie Taylor Greene's lawyers hinted that they would be lodging affirmative defenses to this, I don't think any of them matter. Our listeners know that just as there is no First Amendment right to yell fire in a theater, there's no First Amendment right to incite or participate in an insurrection. That is also not protected by the Speech and Debate Clause of the Constitution. But I think I agree with the analysis of all of you so far, that I don't think it's going to get there. I think the reason is in this case, normally the burden is on the candidate to prove that they did not engage in this behavior that would disqualify them.

In this case, under the laws of Georgia that we've laid out, it is up to the challengers to prove that she did. I think that's going to be the hurdle. I don't even think they're going to get to these First Amendment arguments or other constitutional arguments, because it's going to be very difficult for them functionally, both legally and politically as Joyce very well pointed out to get to that. I mean, this is, as the judge said before, this is a complicated set of issues that involve state rules, that involve the constitution, that involve things that have not been considered since the civil war. I think the likelihood that a judge is going to step in and say, you know what, I'm going to for the first time ever decide, boom, this is what bumps someone off of a ballot. I think that is really unlikely. Especially since we have, it's not precedent, but we have the fact that the judge in the Cawthorn case didn't do that either.

I think it's going to be a not it situation where the judges are not going to be the ones to step on this, because it could be both a legal and political landmine. Also, as it gets appealed, time is going to run out. I don't think that there's enough time, even if it is determined that this is a viable legal argument. There's just not enough time to get her off the ballot before the election so I don't think that's going to work.

Jill Wine-Banks:

Before I get to my next question about the law and the basic problem with the Fourteenth Amendment not being self-enforcing. Does anybody want to talk about what evidence there is that either Cawthorn or Marjorie Taylor Greene engaged in the conduct that would be covered by the Fourteenth

Amendment? Is there any evidence that they actually did the incitement? Let's include incitement in that because I think it is included.

Kimberly Atkins Stohr:

Well, what springs to mind in front of mind is that she held the meeting before the January 6th insurrection in which she talked about ways that Republicans met and had a valuable meeting on how to stop Joe Biden from stealing the election. She also said or tweeted the facts of running together about a 1776 moment, which seemed to have the implication that violence would happen in order to essentially engage in a revolution. Those are among the factoids that lead in favor to that finding. I don't know what other facts others remember.

Barb McQuade:

There are also some tweets with Marjorie Taylor Greene saying, and I think a fair question is how direct does this have to be to engage in insurrection? She says things like, "We're going to flood the Capitol. We can't let Joe Biden steal this election. We hope we can do so peacefully, but if not, we need to be prepared to do what it takes to make sure that our election is not stolen." Is that enough to engage in insurrection? I don't know.

Joyce Vance:

You know, that's the problem here. Jill, I know this is where you're headed. But the voters, the lawyers for the voters weren't able to engage in any discovery here. So in part, they're operating just based on the public record, but there are legitimate First Amendment concerns here. Although when she was testifying, at least the part I heard, Representative Greene wanted to characterize it as her First Amendment right to speech. I think she was really talking about the First Amendment right to assemble. Americans do have a right to assemble and protest. I think we have to be very careful here about not throwing out the baby with the bathwater. What that may be points to is a little bit of giddy up justice department. But part of the accountability mechanism here is inherently going to be what the voters do when they go to the polls this fall as opposed to what any court does or what DOJ does.

Jill Wine-Banks:

Totally agree. One of the arguments that I heard by the way was that, as you mentioned earlier, she's been saying, "Well, I have no idea how that got on my Twitter account. Could have been somebody who manages my account." But there are also videos of her and that's her speaking so she can't evade responsibility for what she said. But let's go back.

Joyce Vance:

You know what, she kept saying though, she kept saying, "Well, that's from a CNN story and CNN lies about me all the time." And ultimately, I feel like under cross examination, she would just melt like a stick of butter. I mean, she was getting away with a good bit this morning. The cross examination wasn't pressing or grueling. She's got some real problems here, whether they come out in this proceeding or not.

Jill Wine-Banks:

Right. But that takes us back to this idea about the amendment isn't self-enforcing. There were some legal arguments being made that only Congress or a State after a DOJ indictment can enforce the

Fourteenth Amendment. That these cases, this particular one brought by voters can't stand. That would be important not just for Greene and Cawthorn, but for the half dozen other cases that are pending and for future cases, including against possibly President Trump. Joyce, do you have an opinion on that?

Joyce Vance:

You know, I read the piece in the New York Times that was advocating for this point of view. The argument runs something like this. The Fourteenth Amendment was ratified in 1868 in the wake of the civil war. Section 3 was intended to disqualify a lot of former confederates from holding certain types of public office. The argument that's made by two professors in the Times is that although there's not a lot of legal precedent in this area, there is a case called Griffin's case. It involves a defendant in a criminal case after the civil war and he's convicted and he challenges his conviction. Here's his argument. "The judge in my case had previously been a supporter of the Confederate Government. He'd taken an oath and then become a Confederate. And so he's disqualified from being a state court judge by virtue of that. And my conviction is no good. It needs to be tossed out.

Interestingly enough, it was Chief Justice Samuel Chase who heard that appeal, not as a Supreme Court case but as this sort of administrative function. He ruled that the judge wasn't disqualified because legislation by Congress is necessary he said to give effect to Section 3 of the Fourteenth Amendment, and only Congress can enact that legislation. And of course, Congress has never done that. So the point that these two academics were making here is that there's no way to make a finding that Marjorie Taylor Greene or anyone else participated in an insurrection and is disqualified. It's a very interesting argument, but I'm just not certain that it's correct. It's certainly something that would be litigated vigorously. And just without spending a lot of time thinking about it, it seems to me that candidates qualify under state law, right?

We don't have one national election. We have a series of state elections. Candidates qualify to be on the ballot in their state under state law. The states have created procedures for determining whether a candidate is qualified to be on the ballot. I think that there's a very good argument that this is a power that's reserved to the states, that they are entitled to decide who can appear on their ballots, and that a procedure like what we're seeing in Georgia or the one in North Carolina with Madison Cawthorn is the right way to approach this. But let me just be clear. There's very little law here and it's not at all certain what would happen. In the very unlikely event that Greene is removed from the ballot and she appeals the removal on this particular ground, we may get to find out what Griffin's case means and what it doesn't mean, but it's not a Supreme Court precedent. Like Barb started out by saying, one of the most interesting questions here is procedurally how this works. I'm just not sure we're going to find out, but I hope we will.

Jill Wine-Banks:

I hope so. I hope you're wrong because your theory about the state power would mean that the constitutional provision has no meaning. That the federal government, the constitutional frameworks were not able to say, you cannot be in office if you do this one thing. This is one disqualification, in the same way they say, how old you have to be to run for senator. The states can't change the rules of running for president, for example.

Joyce Vance:

I think it's a more finely tuned argument about whether or not Section 3 of the Fourteenth Amendment requires that only the federal government create a mechanism or whether the states too could have some sort of mechanism for determining whether someone had participated in an insurrection.

Jill Wine-Banks:

Hey Kim, today is Earth Day. One of the best things you can do in connection with that is to stop throwing away so much plastic. I have found a way to do that with a company called Blueland. Have you tried them yet?

Kimberly Atkins Stohr:

I really have. I really love Blueland, particularly the hand soap. They come in these really cute bottles and they're glass. They're not plastic. You can refill them very easily. They last a long time. They smell great. I'm a big fan. It's a great way to get rid of plastic waste and get powerful, effective cleansers for your entire home, and that's with Blueland. Their idea is simple and beautiful. Buy the bottle once, refill it forever, no more plastic waste. The only thing you'll need to discard is your outdated idea that eco-friendly products are more expensive and less effective. Just fill Blueland's beautiful Instagramable bottles, they really are very cute, with warm water. Pop in one of the hand soap or spray cleaner tablets. And within minutes, you'll have powerful, cleaning products in incredible scents like Iris Agave, Perrine Lemon, and Lavender Eucalyptus.

Joyce Vance:

You know, the scents really are amazing. I was a little bit worried it would be complicated to set up. But from the minute that I opened the box, all I had to do was throw a couple of tablets in, fill them with water, shake them up, and they really do look good. This is the only cleaning solution I've ever not been unhappy when someone leaves it out on the kitchen counters, because as Kim says, they're pretty cute, right? From their best selling essentials kit to their hand soap duo and plastic free laundry and dishwasher tablets, Blueland has something for every inch of your home. Also, just now back by popular demand is Blueland's toilet tablet cleaner. Get it before it sells out again. Blueland's stunning high quality forever bottles start at just \$10 when you buy a kit. They're meant to be used forever with money-saving refill tablets that start at just \$2. Try Blueland today. You'll love it and the planet will thank you.

Kimberly Atkins Stohr:

Right now you can get 20% off your first order when you go to blueland.com/sisters. That's 20% off your first order of any Blueland products at blueland.com/sisters. [Blueland.com/sisters](https://blueland.com/sisters), or look for the link in the show notes.

Barb McQuade:

Well, after more than two years of the COVID pandemic, we're starting to see large law firms and other employers requiring their attorneys and their employees to come back to work in person. In March, the law firm of Kirkland & Ellis, for example, started requiring all employees to be back in the office on Tuesdays, Wednesdays and Thursdays. So I guess they're easing back into things and experimenting with what might work in the future. There's certain workplaces that need to have employees together to even function, and other places that work pretty well remotely. I know for some people, the idea of returning to the office feels like going backward and reversing some of the progress that technology has brought to work.

And for others, it's a welcome return to normal. I'm curious about your thoughts about whether law firms or other employees need to work in person to achieve their missions. Or if instead this is a moment to reimagine work and think about what it could look like to make people as productive as

possible, achieve the mission of the workplace, and yet give people a better work-life balance. I don't know. You have any thoughts about that, Jill?

Jill Wine-Banks:

I do. I have mixed feelings about it because I'm one of those people who really likes to be with other people, to share ideas randomly. Not through a planned meeting or through a scheduled conversation, but to sit down at lunch and just talk about what are you working on. It's amazing how much you can learn from that that will help you. But I also see some of the advantages of not being in the office every day, the amount of time it takes to commute, which for me was always a nightmare and a hassle and a waste of time. And yes, I did some work in commuting when I took the train, but it's not the most efficient way to do your work so it takes twice as long as it would've taken if I was actually just sitting at my desk doing it. I know for all of us where I haven't been in the studio for, well, since March of '20. I no longer have to spend the time commuting to the studio.

I don't have to have to be there a half hour before the top of the hour, even though I'm scheduled for the D block and won't be on at the top of the hour. Well, it might change, they say, so you have to be here and you have to be there a half hour earlier than the top of the hour for hair and makeup. I also know from the NBC's point of view, think of how much money they're saving. They aren't sending a car to pick me up and take me there. They aren't paying for hair and makeup. They aren't paying a cameraman or lighting or sound. I do it all by myself. And so I think economically, there's going to be a real reason not to have us go back to the studio. I'm sure the same is true for other employers. A friend of mine who runs a management consulting firm, financial management, said, "We've learned that we can do everything on Zoom and we can save on the rent.

We don't need to have an office space anymore. We'll get somewhere for a conference room to have conferences with clients, but we don't need all that office space. We're going to save a lot of money." I think that there's a real reason for all workplaces, not just law firms, but for all workplaces to start looking at what are the advantages of this and to finding ways that you can do the kind of team building and mentoring that happen in a workplace without being there five days a week.

Kimberly Atkins Stohr:

Yeah. I too am have mixed feelings about it based on my own experience. I think the way that you ask the question Barb is, can we reimagine what our workplaces look like? I think that's really where it's at. It could look like limited meeting. So if you have a team, a law firm or other employer that has maybe 40 people, maybe instead of having a space that can hold 40 people, you have a space that can hold 20 people or 15. And so when people need to go in, when they need to have those face to face meetings, they can. When they need to conduct depositions, they can. When they need to do what they want but they can also shrink the amount of space that they had, to Jill's point, maybe save some money in terms of the physical office space while still giving that option for that face to face time that sometimes you will need to have. While at the same time, appreciating the flexibility that this, what we've learned over the last two years has given us.

I will say that I do get very isolated. I'm a person who has anxieties. So on the one hand, it was very scary for a while to go out into the world and to talk to other people. But at the same time, I also found that isolation was hard when I wasn't seeing people regularly and talking to them face to face. At the same time, my productivity has been so much greater. I mean, one of the reasons I'm able to do this podcast is because I'm able to, as soon as I file the story right at my home desk, I can pull out my equipment and start up a podcast and talk to you. I can pull out my other equipment and host an NPR show like I did today. I can put the camera on my computer and do an MSNBC hit.

I have been going back in the studio on occasion in the past couple of months. But I did notice, for one show that I was on TV for 15 minutes on set, it was great being on set with people. It took a total of two hours out of my day to do my own makeup, commute, because they're still not doing makeup in the studio. Commute all the way there, wait for your hit to come up, get back in the car, commute all the way back. That's two hours out of the day. I could've hosted a whole show on top of doing something else. And so it really does cut down on productivity. I think each law firm should really, each employer, regardless of where you work should really look at the needs of their employees and use this as an opportunity to say, we're going to craft this to hit that right balance between productivity, work-life balance, saving some money, and giving the opportunity to have the face time when you need it.

Joyce Vance:

Kim, I think what you're saying is exactly right. I'm going to be the glass half full person here. I usually am the glass half full person. I think the fact that we do have these conflicts about the value of the way we've been forced to work during the pandemic as opposed to the traditional thing actually suggests that we're at a moment of evolution. I think that there's so much opportunity for people to work in a smarter way and a better way. Frankly, Barb, you were the one that shared with us an article that talked about how the traditional workplace and the nine to five day was structured around the notion of the nuclear family, a traditional family with a man who had a wife at home to prepare his meals and iron his clothing. And you know, for me as a working mom with four kids, I would've loved to have had the flexibility to spend my lunch hour tossing something on for dinner. Right.

I've done that throughout the pandemic. I'll throw something into the slow cooker, or I'll pull stuff out to defrost. And it means that I'm much more efficient. I mean, I hate to say that it lets me work more, but to be honest, it does. It means that I'm able to work smarter in a lot of ways. I can work harder, but I also have the time for some passion projects. And you know, there's a lot to be said for doing a conference call while you're watering your garden. This notion that we can multitask while we're doing things. That I can drink coffee outside with my chickens and let my students see my chickens running around while we're doing Zoom office hours. It certainly has made my life richer and a lot more pleasant. What I'm hoping is that law firms, law schools, whoever we are, that we can craft these strategies that let us hang onto the good stuff about this, but also let us return to seeing people in person which I've missed so desperately so many times.

Kimberly Atkins Stohr:

Can I just add? I should have said that too before, it's not just allows me to work better and do more work, but it allows better work-life balance. At the end of the day, I go up into the kitchen and my husband and I prepare dinner together. We're able to sit down with each other, or with my stepchildren if they're here, and have a conversation with each other over the dinner table in a way. That if we were all commuting and exhausted and needed to unwind when we got home, that would be so much harder. So certainly, the time that I'm able to spend with my family has increased immensely and that is so important for a healthy, well-rounded people. That has to be a part of the equation too. I'm glad you brought that up, Joyce.

Barb McQuade:

Yeah, I think it's one of those deals where one size is not going to fit all. That's why I think it's going to be really tricky for employers to get this right. In addition to some of the things that you've mentioned, I think one thing I've been reading about also is that people who are returning to the office are finding that the cost of commuting has increased tremendously with inflation. Gas and parking and dry cleaning

and lunches out and those kinds of things in addition to the time of commuting, which is certainly time that could be spent on work or on self. And then there's been the issue with parents with spotty childcare during COVID or parents who need to care for elderly parents of their own, people with aging parents. And so as we have all these other responsibilities, it sure is easier when you can kind of work around those things and go to...

I too feel like I'm working all the time. From the minute I get up to before I go to bed. But the trade off is in the middle of the day, you get to do things that maybe you have to do because of other responsibilities. I think from the worker perspective, there are a lot of advantages, but I think we also have to think about from the employer perspective and the national perspective. We need our country to be productive. Companies, all businesses are in the same business, that's the business of making money. Whatever it is they make, at the end of the day, they're in the business making money. Maybe it makes more money to have people out and more productive working from home. But I also think that there are some businesses that require or benefit from having people together to collaborate. Joyce, our friend Tom Perez used to say that you got to make house calls in his job when he was the Assistant Attorney General for Civil Rights, Secretary of Labor, and later Head of the Democratic party.

Just the importance of a personal visit and being able, as Jill talked about, sit around a table and collaborate with people. There's a lot of value that comes from that. I think sometimes you don't quite get that through the Zoom, especially if you don't know people, if you're new to an organization or young people, recent graduates. How do they learn some of those. The official stuff, they'll get the training on, but all the side things about how work gets done and how relationships are built and all that sort of stuff. I think there is a need for some part of the organization to work together. But I think different organizations have different needs and I think different people within organizations have different needs.

I think that flexibility here is going to be really important. I think the employers who have that vision are going to be the ones who win. Because workers, especially younger workers are demanding. In law firms, workers have demands about portability in addition to salary. And so I think the employers who get this right are going to be the winners in all of this.

Joyce Vance:

You know, I think that makes sense. But one thing that we should acknowledge is that we are not necessarily out of the woods on this pandemic, and with climate change, there may be future ones. So keeping the opportunity to be nimble is really important.

Jill Wine-Banks:

I want to make one point that you just mentioned Barb, which is the being together and collaborating. I learned the value of that when I was General Counsel of the Army. The general officer's [mass 01:02:46] does not have very many small tables for two or four people. It has a giant table. The idea is you come in and you sit down next to whoever is sitting there. It fosters the kind of dialogue across very different perspectives. It was a very enriching experience, a great way to learn and get new ideas. And so I do see the value of being there sometime and just having those random experiences that you can't get when you're staying at home. But I see a lot of advantages to the time saved and the efficiency of being home.

Kimberly Atkins Stohr:

Just let those variants calm down first.

Barb McQuade:

Maybe it's this Tuesday, Wednesday, Thursday thing, or maybe your practice group meets on Tuesdays and a different one meets on Wednesdays. I also want to acknowledge all the workers who did not have the benefits that we all had of being able to do our work seamlessly online. In fact, in many ways our lives got easier by being able to do online. Plenty of people are out there who are the frontline workers, who are serving food, working in retail, public transportation, all those kind of things who don't have the privilege of having this conversation. Just a note of appreciation for them.

Kimberly Atkins Stohr:

Or who don't have access to the internet the way that we do.

Barb McQuade:

Note of appreciation for all those folks who stayed on the job and made sure the rest of us got what we needed. Hey, Joyce, I had a chance to see you in person recently. And I must say, your hair looked fabulous. What's your secret?

Joyce Vance:

Thank you, Barb. My secret is Function of Beauty. You know, all of us have unique hair. My hair is unique. It's sort of straight and thin and flat. I've been really happy with Function of Beauty. Because of our uniqueness, we need products that address our hair's specific demands, and that's where Function of Beauty comes in. Function of Beauty is the world's first, fully customizable hair care that creates individually filled shampoos, conditioners, styling, and treatment formulas based on your hair. It's founded by a dream team of engineers and cosmetic scientists. Each Function of Beauty product is individually designed to be as unique as you are.

Jill Wine-Banks:

Function of Beauty offers over 54 trillion possible formulations, all vegan and cruelty free. They never use sulfates or parabens. You can also go completely silicon free. Here's how it works. First, take the quick hair quiz to build your hair profile and select five goals like lengthen, volumize, and oil control.

Joyce Vance:

Does your hair get frizzy in the winter but oily in the summer? Function formulations are meant to be changed when your needs change. Choose your color and fragrance or go dye or fragrance-free. Then get your freshly filled formula delivered straight to your door and prepare for the good hair days ahead.

Jill Wine-Banks:

So say goodbye to generic hair care for good today. Go to functionofbeauty.com/sisters to take your hair goals quiz, and you'll save 25% on your first order. Go to functionofbeauty.com/sisters to let them know you heard about it from our show and to get 25% off your first order. That's functionofbeauty.com/sisters to take your hair quiz and save 25% on your first order. Or you can look for the link in our show notes.

Kimberly Atkins Stohr:

I don't know about you all, but my favorite part of each podcast is when we answer listener questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet using the

#SistersInLaw. If we don't get to your question during the show, keep an eye out on our Twitter feeds throughout the week where we try to answer as many of your questions as we can. Our first question this week comes from Margareta. The question is, "How difficult would it be to investigate and prosecute the wife of a U.S. Supreme Court Justice? Are there institutional barriers?" I think I might know who Margareta is talking about, but if the spouse of a SCOTUS justice committed a crime, are there institutional barriers? Who wants to answer that?

Joyce Vance:

Well, I'll take a start at it. I think the answer is no. Let's just say that the husband of one of our women who's on the bench decides that the family is running a little bit low on cash and walks down the street and robs the neighborhood bank, not immune from prosecution. Absolutely no reason that he shouldn't be investigated just like anyone else who commits the crime. I suspect in the real world there are some political sensitivities, but not inappropriate ones. The reason is prosecutors don't want to insert themselves into the public debate in a way that has an influence that unbalances our three branches of government sort of system. For instance, if you're investigating a senator because you believe he's been involved in a bribery scheme.

You're going to be very certain that the evidence that you have amounts to proof beyond a reasonable doubt. I think that there might be a little bit of doubt with the spouse of an elected official, but honestly, we should use that same sort of care in every prosecution that we undertake. I don't think the spouse of a Supreme Court Justice, if they're involved in criminal activity, deserves any special kind of protection.

Kimberly Atkins Stohr:

Jill, do you have anything to add?

Jill Wine-Banks:

No, I would've given the same answer. I guess I would say the same is true for anybody, including a member of any administration, including the president. That when they commit a crime, they should not be above the law. And so the same would be true for a Supreme Court Justice, as well as for the spouse of a Supreme Court Justice.

Joyce Vance:

We need to go relitigate that OLC memo that forbids prosecuting a sitting president at some point.

Jill Wine-Banks:

Bad decision, bad opinion. It's not a decision. It's an opinion and it should not be guiding anybody.

Kimberly Atkins Stohr:

All right. Our next question comes from Jay Kate Boston who asks, "What happens in the following scenario? One of the nine justices recuses her or himself from a case and the decision is split amongst the remaining eight justices." I'll give a start to this. Absolute chaos happens, Jay. Mayhem. No, that's not actually what happens. I'm kidding. What happens anytime there is a tie at the U.S. Supreme Court, whether it's because of a recusal or whether we've had several situations where there were an even number of justices on the bench due to a vacancy, what happens is that case essentially the lower court

appellate decision is upheld, but not for its presidential value. When the U.S. Supreme Court makes a ruling, that ruling is binding on everyone.

When the U.S. Supreme Court is unable to make a ruling or chooses not to take up a case from one of the lower courts, the result of that case stands. That's the end of that appeal, but it does not apply to everyone else in the country. Another challenge can come along based on the same issue and the Supreme Court can rule on it again in the future. Our final question comes from Karen Avaro who asks, "Can Michigan State Senator Mallory McMorrow file a defamation lawsuit against her accuser and maybe put a stop to the ridiculous accusations of grooming?" We're going to go to our Michigan expert, Barb McQuade. What do you think?

Barb McQuade:

Senator McMorrow got a lot of attention on social media with a really powerful rebuttal to this fundraising email that a Michigan State Senator sent out. It was a fundraising email asking for money, talking about how Democrats are out there making it harder for parents to influence what is taught in our schools so you should send me money. It said something like, "These are the people we're up against." She said, "Progressive social media trolls like Senator Mallory McMorrow who are outraged they can't groom and sexualize kindergartners, or that eight year olds are responsible for slavery." And then when she identify Senator Mallory McMorrow who is a Democrat from Royal Oak. And so ordinarily, I think you'd see, parens The-Royal Oak. It says The-snowflake. So that's very quaint.

I think it's interesting though. The question is, can she sue for defamation? A defamation lawsuit requires that you prove that a person made a false statement against you, that they knew it was false and that they did so in a way that has caused you harm. I think it could be difficult under this language because what she says, she didn't call her a predator or say that she's grooming kindergartners. She said, she's outraged she can't... Social media trolls like Mallory McMorrow are outraged they can't groom and sexualize kindergartners, or that eight year olds are responsible for slavery. It's one of those things where they say, I didn't actually call her that thing. I just said, she's unhappy that they can't be taught about these things. I think making proof here could be difficult, but certainly, it's false. Certainly she knows it's false. Did it harm her? I don't know, maybe within Republican quarters.

But I think if anything, it was just something that gave her a really good opportunity to speak out just about how outrageous this is. I thought one of the things about Senator McMorrow that was especially powerful is she said, "Why is she going after me of all people? I don't know her. I haven't done anything to her." She said, "It occurred to me it's because I'm the straight White Christian suburban mom. And so the way to get back at me is you can't paint me as some enemy, but you can say I'm part of the group that wants to eat and kill your children." So that's the way to frame her. And so I thought it was a powerful response. Can she sue for defamation? Maybe. But the standard that we hold public figures out to is so high of this idea of actual malice that I think there's a way to spin this as it was political speech about her viewpoint as opposed to calling her a name. I think it's an uphill battle, but certainly she could do it if she wanted to pursue it.

Kimberly Atkins Stohr:

Thank you for listening to #SistersInLaw with Barb McQuade, Jill Wine-Banks, Joyce Vance, and me, Kimberly Atkins Stohr. You can send your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. You can go to politicon.com/merch to buy our pale blue t-shirt that we've been modeling on Twitter all week. We want to thank our sponsors, HelloFresh, Policygenius, Honey, Blueland, and Function of Beauty. 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

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#SistersInLaw on Apple Podcasts or wherever you listen. Please give us a five star review. It really helps others find the show. See you next week with another episode #SistersInLaw. Sorry, I have to go blow my nose. Sorry.

Barb McQuade:

Too much information.

Kimberly Atkins Stohr:

Why it is like you all were talking and it was like, I just needed to run away for a second.

Barb McQuade:

We're glad you're back. You know, there is the mute function on the app, Kim. Have you not learned about muting in all two years of Zoom? You didn't need to run away.

Kimberly Atkins Stohr:

Okay. Sorry. Did you hear me?

Barb McQuade:

No, no, no, no.

Kimberly Atkins Stohr:

Oh my God, I'm mortified.

Barb McQuade:

No, I'm just suggesting you didn't need to [crosstalk 01:15:05].

Kimberly Atkins Stohr:

I thought I did mute. It's allergy season.

Jill Wine-Banks:

You did mute.

Barb McQuade:

I have often found lately also that maybe I've spent too much time in the virtual world or listening to podcasts. I'll listen to something in real time and want to rewind and hear it again, and you can't do that. Right?

Kimberly Atkins Stohr:

[crosstalk 01:15:32]. I didn't, Jill.

Barb McQuade:

Yeah. How do I listen to that again? Oh, it's over.

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Kimberly Atkins Stohr:

Or fast forward or double time.

Barb McQuade:

Make us speak two times faster.