

Jill:

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Joyce:

Welcome back to hashtag SistersInLaw with Kimberly Atkins Stohr, Jill Wine Banks and me, Joyce Vance. Barb will be back next week. Big news, we the SistersInLaw are going on tour in May. We'll be in Portland on May 12th, we'll be in New York City on May 19th and we'll be in Washington DC on May 21st. Tickets are selling out fast, so go to politicon.com/tour as soon as you can to get your tickets. I know those of you who are in cities that we're not visiting on this first wave of the tour are feeling disappointed, but hopefully this will be a big success and we'll be able to expand in the future. So are you all excited, Kim and Jill? We haven't really talked about it a lot yet.

Kim:

I cannot wait. It's going to be so much fun just to not only be in front of a live audience, which just gives us so much energy and we love our listeners so much, but to be in person with all of you guys. We did that once before in Austin and it was just a blast.

Jill:

And I agree completely. It will be so much fun for us to be together, but it's also so much fun to meet the people who email us great questions, who follow us on Twitter and other social media and it does give us a new energy. And I'm excited about the cities that we're going to Portland, New York, DC. I went to law school in New York, I lived in DC for many years and I have basically family in Portland. So it's going to be really great. And I'm also, I'm just so pleased that the VIP tickets are sold out already and that there's not that many tickets left. I mean, we worried about would people actually come to see us and it's very rewarding to know that they are.

Joyce:

It's so funny that you say that because I was really nervous when we first started talking about doing this. I thought who would ever pay money to go and see a podcast live with us? And it's really nice to know the lot of people want to do that. And I was in New York last weekend, I was up for a knitting convention. I had tons of people... This was thousands of knitters from all over the world who get together once a year and I had people walk up to me and say, "Oh, I've got tickets for your Portland show or I've got tickets for the DC show." So it was really exciting. I'm looking forward to meeting our listeners, but you all looking forward to seeing you guys in person so much because there's always a lot for us to talk about and today isn't really an exception to that. In today's show, we'll be discussing the news involving witnesses and new investigative steps in the special council's investigation into the former President Donald Trump.

We will be talking about some of these new drag show laws that are cropping up in various states across the country, no surprise what states that seems to be happening in. And then we'll talk about the partial release of the Fulton County, Georgia investigative grand jury's report on Thursday and what we've learned from that. Lots going on. And as always, we look forward to answering your questions at the end of the show.

Jill:

I'm making a real effort to be environmentally friendly this year and Lomi is helping me to do that. We don't want to be feeling any echo guilt after a big meal. So it's amazing knowing you are doing your part to reduce waste. That's why Lomi has become such an amazing part of our daily rituals. Once I got a Lomi, I had the ability to turn my food scraps into dirt with the push of a button and the other sisters have been able to share in the experience. We all love it. If you haven't heard, Lomi is a countertop electric composter that turns scraps to dirt in under four hours. There's no smell when it runs and it's really quiet. Plus it looks sleek and fancy as part of a great kitchen setup.

Joyce:

Thanks to Lomi, I have way less garbage each week. We're talking two or more or less bags and that means our waste isn't going to landfills and producing methane. Instead like us, you can turn your waste into nutrient rich dirt that you can feed to your plants. I feel really great knowing that I'm composting and creating soil instead of waste. I love the extra supply of dirt for my garden and it makes cleaning up after a big family meal so much easier and also more environmentally friendly.

Kim:

Yeah, it's really a great feeling to know you're creating much less food waste and less waste overall. So if you want to start making a positive environmental impact or you just want to make cleanup after dinner that much easier, Lomi is perfect for you. Head to lomi.com/sil and use the promo code SIL to get \$50 off your Lomi. That's \$50 off when you head to [Lomi.com/sil](https://lomi.com/sil) and use promo code SIL at checkout. Food waste is gross so Lomi save you a cold trip out to the garbage can. You can also find the link in our show notes. Lomi is our homey.

Jill:

Today we're going to start with a very rich week of news involving witnesses and investigative steps in Special Counsel Jack Smith's investigation into Donald Trump. That means this will be a very full segment as we look at the subpoenas to former Vice President Pence, Trump's lawyer, Evan Corcoran and chief of staff Mark Meadows. We're going to talk about claims of executive privilege and attorney-client privilege by the witnesses and by the former president, but not by the current president. Kim, let's start. You're a lawyer and a journalist. So I want to ask you to fill in the factual context of the summary I just gave. Talk in non-lawyer language, and tell us about why these three witnesses have been subpoenaed and what it means in terms of where Jack Smith is in terms of his investigation.

Kim:

Well, in a nutshell so that everybody understands, these are three people who were very close to Trump and we've spoken in the past. When there are investigations, they tend to start more broadly and then circle closer and closer to the central person involved or the central set of facts involved. So this says to me that Jack Smith has been working swiftly and that he is getting pretty close to, in my opinion and you can let me know if you think I'm wrong, the conclusion of this investigation because he's getting to the people who are closest to Trump. And we're at the point now, as you said Jill, that this is all about privileges. And if Jack Smith is at the point that he's seems to be, preparing to try to make his arguments as to why each of these types of privilege, three different types of privilege that we expect these three individual to assert, to be pierced.

He must believe that he has the goods that can convince a judge to look beyond any privilege claim that can be made in order to make his case. So to me, this is saying that we are getting closer to the end.

Jill:

So these are really important witnesses and is it involving three different types of privilege. So Joyce, let's talk about Vice President Pence claimed executive privilege to evade testifying before the House January 6th committee, now he's claiming a legislative privilege, the speech and debate clause privilege, about testifying before the Department of Justice grand jury. And Trump has indicated he's going to also claim executive privilege to prevent Trump's testimony. Let's start with those before we get to the attorney-client privilege that we expect the lawyer to claim and talk about what the speech and debate clause grants and to whom, and discuss what Pence would have to prove to prevail on each of those privileged claims and why he'll likely fail, in my opinion, in this attempt.

Joyce:

So this is so interesting. We've got Trump saying that he will assert executive privilege on Mike Pence's behalf. I think we can dispense with that one pretty easily. It's a loser. The reason that we know it's a loser is that the Vice President's closest advisors have already testified in front of the grand jury, both his Chief of Staff and his Legal Counsel. And that implicitly means that those executive privilege issues have already been litigated and they've lost. The reason that we don't know the details is because this is happening in the context of grand jury proceedings, so it's all sealed. And you can actually see a little bit of stuff on the court's docket reflecting that there were some sealed matters under consideration. We don't know for certain what they were, but the timelines match up pretty well. Executive privilege is going to be a loser for Pence just like it's been for others. But this speech or debate clause argument is a new one, and our listeners could be forgiven if this one is a little bit of a head spinner.

Because Mike Pence was elected Vice President of the United States last time I checked, he was not elected to the United States Congress. So he's taking this very narrow slice of pie and trying to make a privilege argument. He's saying because on one day out of the year, January 6th, I was acting as the President of the Senate when they certified the electoral college vote, I'm entitled to the same speech or debate clause privilege that every other member of the Congress is entitled to. And this is his newest argument for avoiding testifying before Jack Smith's grand jury. So sure it was okay for Mike Pence to write a book and do this broad speaking tour to sell copies of it, all of that was fair game. Mike Pence was willing to answer the questions that he wanted to. What he's not willing to do is to answer the questions that prosecutors want to put to him.

So just that starting playing field there suggests that Mike Pence is not doing this out of principle, even though he's gone on television in the last few days looking very serious and somber and saying it's all about the constitution. Pence just isn't willing to answer, DOJ's questions. And I think here he will ultimately lose to, the problem is it'll take a little bit of time, it'll delay the process further. I think though that two, three years down the road, the courts are a little bit wiser about the delay game that comes from members of the Trump administration. We've recently seen the 11th circuit handle a Trump challenge expeditiously. I think at least the Chief Judge in the Federal Court in the District of Columbia, Barrow Howell will dispense with this one quickly because there is precedent here. Lindsey Graham was testified to subpoena before Fannie Willis's grand jury in Georgia and he, perhaps a little bit more legitimately as a sitting senator, asserted the privilege speech or debate, "I was involved in my work for Congress." And what the courts told Lindsey Graham was,

"Sorry, you've got to go testify. If you're doing legitimate investigative work, that's part of your function as a senator that might be privileged and you can object to those questions. But what you don't get to

do is go talk with states about a little plot to have a different slate of electors." That sort of a thing. That's outside of your senatorial function that's beyond the protection of the speech and debate clause. Mike Pence is going to have to make the argument here that when he was talking with the former President about a coup that, that was part of his job as the President of the Senate, that is not going to fly. That should not fly. You're going to hear a lot of pundits on television parsing the technical niceties of this privilege, but ultimately I think you'll hear leading constitutional scholars say, "Pence loses because this sort of conduct doesn't fall within the protections the Constitution envisioned."

Jill:

And also the exact language of it refers to someone who is a member of the Senate or the House. And in any event, he is not that even as President of the Senate. So I agree with you, they are both-

Joyce:

Can I just say Jill, I hear you and I read the language the same way. And this is why I think we're going to see some delay, I think the issue is a little bit of a closer call because there's not really definitive case law. And my fear is that the courts are going to feel the need to parse that issue and write about it. I mean, he clearly is the President of the Senate when he's acting, and a lot of people have made some noise about what they're calling a DOJ concession that, that means he's covered by speech or debate. That's actually not what that brief, that DOJ wrote about a couple of years ago, says. So be very careful, but there's still will be some need to parse his role here.

Jill:

Right. I'm not disagreeing on the delay Joyce, I'm only pointing out one other reason that ultimately the decision will go against him.

Joyce:

Yes.

Jill:

It is undecided, but it also doesn't have to take a long time. Executive privilege and having it be limited was undecided until US v Nixon, and it only took the court a few months to accept, cert and decide the case. So it can be done quickly and if the delay goes on too long, it will be a denial of justice. Kim, Neil Katyal said Pence is claiming he's doing this objecting to testifying for lofty stuff like the constitutional separation of powers. But Neil went on to say, "But we all know that in actuality this is just about Pence's fear that he will be separated from power." So the question is, will the claim claim of either speech and debate or executive privilege gain him delay and or political advantage and if so, for how long?

Kim:

So first I want to say both I and Joyce wrote about this and we'll put our pieces in the show notes. So I think that Neil Katyal is exactly right. I think this is a delay tactic. Look, what is so rich about this is for the January 6th congressional committee, Mike Pence... First he flirted and is like, "Oh, maybe I'll cooperate. No, the legislature has no right to my testimony because I'm covered by the executive privilege." He was as Vice President, the conversations that he had with the president are privileged and there is no way for Congress to call him and to testify that. Well now that the DOJ comes knocking and

we know that there is clear precedent that the executive privilege will not work against a DOJ subpoena, Mike Pence is like, "Wait a minute. No, I was actually a legislator. I was the President of the Senate. So now executive branch, as a legislator, you cannot touch me because you're separating the legislator from the exec..." It's like that is quite some constitutional jujitsu. That's really clever, but I don't think that it's going to work.

I do think that it will be a delay because anything involving January 6th, the courts take seriously. They take as much time as they can to try to decide it. And I think that's what he's counting on, that this will go to the US Supreme Court to decide just what the extent of the legislative privilege is. Again, I stopped predicting what the Supreme Court will do but I hope in the end that they say look, the speech and debate clause is meant to cover the speech that legislators engage in to advocate for or against a piece of legislation and the debate that is involved in bringing legislation to the floor and building a consensus about this. Mike Pence by his own admission... Remember that statement he issued on January 6th where he basically said, "I have no choice. I have no constitutional power here to do anything other than nod my head as these votes get counted and put my rubber stamp on it." So that is not legislate. He undercut his own argument in real time.

So the goal that he has to now step up and claim to love the constitution and to respect the founders... He had conlaw just like all of us. He knows exactly how this works. And so that is what is so unbelievable about all of this. This is just about him trying to salvage some remnants of a political career from the ruins that is the Trump administration. He's trying to do this any way he can and I hope that the courts set him straight and send him on his way.

Joyce:

Do y'all ever think that historians are going to look back on this era and wonder why the American people sat back and let people like Mike Pence and Donald Trump make these ridiculous claims? I mean it's like, it's what we're watching with Dominion and Fox News in real time right now, where we learned that Fox News hosts didn't believe what they were saying. And I wonder if historians will talk about us as the gullible generation or just the stupid generation in hindsight.

Jill:

I think they will.

Kim:

I hope they see it clearly for posterity's sake. I hope this doesn't just look like something that's normalized and regular.

Jill:

And all of our listeners just make sure it isn't normalized and fight back against this. But let's move on to the attorney for Trump, Evan Corcoran and what his role was and what his attorney-client privilege claim is all about. And Joyce talk about that and whether you think he has any chance of succeeding in that claim.

Joyce:

So Corcoran is an interesting figure here. He's not a household name like some of the other Trump lawyers, but he's been with Trump since the beginning on this Mar-a-Lago piece, that increasingly it looks like is headed towards some sort of legal action. A and so what happened, what triggered this

news news cycle about Corcoran is that he went into the grand jury and testified, and Jack Smith does not seem to have been satisfied with his answers. And so this has triggered additional legal proceedings. Corcoran, our listeners may recall, was the lawyer for Trump who pushed Christina Bobb to sign that fake certification that said that Trump had turned over all of the classified material after DOJ issued a subpoena. Of course that was a fake, Jack Smith wants to know how that happened. And presumably the breakdown in the grand jury happened when Smith or whoever was doing the questioning asked Corcoran about conversations with the former President. And Corcoran said, "Sorry, can't answer that. Attorney-client privilege."

So now we know that Jack Smith is trying to pierce that attorney-client privilege saying, "Most of the time, attorney-client privilege does work. But when it doesn't is under the crime fraud exception." And here Smith is making that argument that they are entitled to do what's called piercing the veil. Pierce the veil of the attorney-client privilege, force Corcoran to talk about those conversations with Trump because what you can't do is you can't use the attorney-client relationship to drop a drop cloth over criminal activity and keep it from coming to light. This now goes to Judge Howell who is currently, but not for very much longer, the Chief Judge in the DC District Court. And Smith will have the job of convincing Howell that she should let him pierce attorney-client privilege, he will have to show that the communications were made in furtherance of criminal activity and he will have to prove that it's more likely than not.

So it's a much lower standard than the criminal standard. We talk about a lot, proof of guilt beyond a reasonable doubt. Here, it's just more likely than not, I suspect Judge Howell will rule in the government's favor.

Jill:

And there's still another witness that's been subpoenaed that came to the floor this week and that's Mark Meadows. So Kim, could you talk about that because he cooperated with the January 6th committee, at least until he didn't. And will he cooperate with DOJ's criminal grand jury or is he going to seek to avoid testifying? And what privilege or privileges might he invoke and will he succeed? Because he also has a Fifth Amendment privilege in addition to all these others.

Kim:

Well, I mean haven't talked to him but based on the past, I assume that he's going to try to avoid this in some way, in the same way that everybody else in Trump's circle has been trying to avoid testifying. Of course, Mark Meadows is in the middle of this, he was his Chief of Staff. He was right at the center of January 6th, and also as chief of staff when it came to classified documents, not for nothing, he is one of the people who by statute is authorized or required to keep track of classified documents that are handed to a President and make sure they get back. So he's central to both of these investigations. He will try to claim an executive privilege, that will be pierced likely for all the reasons Joyce set out, with the crime fraud exception. He can also, plead the Fifth if he himself faces some criminal liability.

But all that will take would be a waiver. The DOJ saying, "Hey, we won't prosecute you so you can testify now." So we'll see what happens. Again, I don't know. Mark Meadows has always been an interesting character who has talked out of both sides of his mouth. First saying he cooperating and then not. Something else came to me today, remember when Trump got COVID and the whole line from the doctors and everyone from the White House like, "He's fine." And then Mark Meadows went over, took the reporters aside is like, "Oh my God, he's on death's door." He's such a weird character, that I'm not exactly sure what he will do. But these are the ways that both asserting either Fifth Amendment or executive privilege may not work out the way he intends.

Jill:

And is there anything else that either of you wants to add about developments in the Department of Justice special counsel investigation this week or any predictions on the date that there might actually be some indictment on any of these cases?

Joyce:

So I never crystal ball dates where prosecutors are concerned because there are so many moving pieces. I do think though there's an interesting data point that we learned about this morning when it comes to people fighting subpoenas. It used to be that Americans complied with subpoenas. That people, whether it was in courts or Congress, would actually go and do their duty. That's yet another norm that has devolved under Trump. So I was happy to see the news this morning that Kathy Chung, the former executive assistant to Joe Biden, not even subpoenaed, received a request from the House Oversight Committee, now led by Republicans. That she come in and have a chat with them. Of course, they want to talk with her about classified documents and how they were packed up at the end of the Biden administration. No need for a subpoena, no lengthy court proceedings. Kathy Chung says, "Of course, let me know when I'll be happy to come over and talk with you and testify to you about what I know." That's how democracy is supposed to work.

Jill:

And that's how it is working under President Biden. It just isn't as we are talking about here with all these claims of privilege in the past administration. Last year I got a new mattress and I got it online after taking a quiz. To find your perfect mattress, take Helix's two minute sleep quiz and match with a customized mattress for your body type and your preferences for the best sleep of your life. You'll get your personalized mattress shipped straight to your door in a box free of charge, and they're fast and easy to set up. Amazingly so. When I took the Helix quiz, I matched with the Helix Midnight Mattress and it was exactly what I needed. I've had great sleep ever since. So buy one tailored just for the way you sleep. The last year has been the best sleep of my life. Not only is the mattress the best I've ever slept on, but my husband loves it too. Helix knows there's no better way to try out a new mattress than by sleeping on it in your own home.

So test yours out for a 100 night risk free trial and see how amazing your rest is. If you don't love it and we know you will, they'll pick it up for you and give you a full refund. Plus Helix mattresses are American made and come with a 10 or 15 year warranty depending on the model.

Kim:

Everybody is unique and everyone sleeps differently. That's why Helix has several different mattress models to choose from. Each is designed for specific sleep positions and feel preferences. Their memory foam layer models provide optimal pressure relief if you sleep on your side, like I do. And it cradles your body for essential support in any sleeping position from back to stomach with enhanced cooling features that keep you from overheating at night. And if your spine needs some extra TLC, they got you. Every Helix Mattress has a hybrid design, combining individually wrapped steel coils in the base with premium foam layers on top. It's the perfect combination of comfort and support.

Joyce:

My kids love their Helix mattresses. And no matter how you like to sleep, Helix has you covered too. The Helix lineup includes 14 unique mattresses including a collection of luxury models, plus mattresses for

big and tall sleepers and even for kids like mine of all different sizes and ages. Helix has been awarded the number one mattress pick by GQ and Wired magazines. It is even recommended by leading chiropractors and doctors of sleep medicine as a go-to solution for improving sleep. And now Helix is offering up to 20% off all mattress orders and two free pillows for our listeners. Go to helix.com/sisters. This is their best offer yet and it won't last long. I think I'm probably going to use it to replace the last mattress in our house that is not a Helix because with Helix, you get better sleep starting now. That's helix.com/sisters. You can also find the link in our show notes.

Kim:

GOP state legislators across the country are trying to make it illegal for Shante to sashay, at least anywhere near children. That's right, drag shows are the latest target of Republicans in at least 14 states where legislation to bar drag performances in public or anywhere else where children may be present like schools. Impose restricting classifications on establishments that hold drag shows or even criminalize it in certain situations. So Joyce, what are some of these laws seeking to do and why are we seeing this flurry of laws about drag performances now?

Joyce:

I loved it when you proposed this topic Kim, because it just is such a low watermark for Republicans. Just when you think we've hit the low watermark, you find a new one. So this year, serious legislative work going on in Republican delegations nationwide. At least 26 bills introduced in 14 states by Republican legislators that focus on that incredibly difficult American problem, drag events. If you thought Republicans ran on inflation or immigration or even violent crime in the midterm elections, you were wrong. They were running so that they could take office and make new proposals to limit drag events. And I wish our listeners at home could see me rolling my eyes in my head as I say this because I think that they are about to fall off. I can't imagine anything stupider for a ruling majority to spend its time on. The bills that are proposed do things like banning children from drag performances, blocking shows from public venues, forcing places that host drag events to register as adult oriented businesses.

And so explicitly the goal here is to make these businesses think twice, rather than hosting these events. There are some laws that would expose them to more civil lawsuits. There are all of these annoying and sometimes expensive licensing procedures. This comes amid really ridiculous allegations by some conservatives, that drag performers are trying to recruit children or to groom children. And it's a very familiar trope that we've seen in the past used to generate fear. Fear is what drives the Republican base. None of this is sincere. There are no real concerns here. It's just about magnifying culture wars in advance of the next election cycle.

Jill:

And can I add something to that? Because it's not just what they're banning, they're doing it in such broad, vague language that you could easily see how this would be used to say that any trans person walking on the street could be charged with this crime. And it goes way beyond whatever they thought they were doing. The laws are terrible. And that's not just me as an ACLU former board member saying that. I just think it's a real invasion.

Joyce:

But seriously, have you all ever been to drag events? We have drag bingo here, it's lots of fun. I was dropping one of my kids off when, the Republicans would be shocked, I think he was 13 or 14 dropping him off at summer camp and we went to drag brunch before that and he had a blast. And he sat there

and talked to people and maybe had conversations he wouldn't have the opportunity to have if those events weren't hosted. It's just astonishing to me.

Jill:

So if we come to your town for a SistersInLaw tour, that has to be on the agenda that you provide us with.

Joyce:

Bingo. Absolutely.

Kim:

And it's important to note that we are at the beginning of every legislative session, not just here in Washington, the congressional session but also all the state sessions. So the fact that these are coming up now, means that they are messaging bills. That the Republicans really do want to place this at the center of their agenda, this culture war that they love to engage in, which as Joyce and Jill mentioned is absolutely right. It's just meant to demonize LGBTQ plus people at large and specifically trans people. So Jill, what about the First Amendment? Don't drag performers have rights and how do they play out here?

Jill:

Yes, definitely. And I'm glad that you asked that question because the First Amendment protects not just speech, but artistic expressions of speech. And these are performances that I think fall within First Amendment protected artistic expression. And so I think that will be something that will be used to argue that these laws are unconstitutional and cannot stand, in addition to what I mentioned earlier, which is they are so broad that they cannot possibly... Because when you're looking at the First Amendment and what it would take to strike it down as violating the First Amendment, that would fall within the category of it's not the least restrictive means to achieve this end. And I think that you would have a very good chance of it becoming something that would be struck down under the First Amendment.

Kim:

And Joyce, these are just some of the hundreds of anti LGBTQ plus focus laws that are being proposed in real time, according to account by the ACLU, which is tracking them. Can you put this in a broader context for us? To me, this feels like an effort to push us back before Stonewall.

Joyce:

It really does. It feels like a very pre Stonewall environment, perhaps that's because a lot of the population wasn't around in 1969 when those riots happened and maybe the notion of living in a culture that was anti-gay where everyone was forced to the margins is no longer something that people contemplate. But I do think it's important to remember that progress is not linear and progress can be stripped out of our society. I am frankly finding it difficult to stay on top of all of the anti LGBTQ legislation that's coming out in these legislatures. I think you're really smart Kim, by the way, to point out that it's messaging laws that are being proposed. For instance, these laws that are being proposed in states where legislatures are democratic led or are a mix, those bills aren't going to pass. It's purely to make the point that they're doing it because they don't like gay people. And the hatred that's being

directed against the trans community, I think is really the worst of it. There's so much animus here and we've talked about it.

The reason that you bring drag into the mainstream is because it really does so much to advance inclusivity. I mean, the whole trajectory of America is about making America's promise more broadly inclusive so that more people can participate. We would be a much less rich country if we hadn't integrated waves of Irish immigrants and waves of Italian immigrants and Jews and had the Civil rights promise that expanded opportunity for black and brown people. I just can't imagine our country without that level of inclusivity. And in a larger context, it doesn't really do us any good to marginalize people who are smart, creative and highly productive. So when you look at these laws, this new wave of anti-gay animus and particularly anti-trans animus, it is clearly just about political muck breaking and not about progress for the country. I woke up this morning to news that one of my senators, Tommy Tuberville, former Auburn football coach, has decided to co-sponsor Marco Rubio's fabulous new bill that he has proposed, that has picked up co-sponsors like Marsha Blackburn from Tennessee. And here's the bill, the bill says trans people can't serve in the United States military.

Kim:

Didn't we do this already?

Jill:

No.

Joyce:

I mean you all, last year the military did not make its recruiting goals. There was a 25% deficit. There is strong evidence that trans members of the military are accepted, are strong service members and what we should be doing is expanding that, not restricting it. But that's where we are with the culture wars.

Jill:

Oh God, as someone who worked in the Pentagon and someone who worked on a sexual assault in the military committee and has recently been in touch with generals who are in charge of this, there is no legitimate reason to create this ban on enlistment. And gay and trans have been integrated and successful in the military. It's really terrible. I'm so sorry to hear that.

Joyce:

It really is awful because what they're doing is they're equating being trans with not being ready and fit to deploy.

Kim:

Or disruptive in some way.

Jill:

It's the same argument that was made against women, women can't do it.

Joyce:

Or frankly against integrating. Right?

Jill:

Yes.

Joyce:

The military, I had a moving conversation yesterday with the former Birmingham Police Chief, who's now Lieutenant General in the Guard, someone who's black who is telling the story about here he is serving as one of the highest ranking black members of the Guard, but his grandfather was a buffalo soldier, was in a segregated unit when he deployed. And that's the story of America's progress. I don't know when we became a country that wanted to turn our backs on progress.

Jill:

When I was general counsel of the Army and we were integrating the military with women, they were doing tests to see how it affected unit cohesion but they set it up to test only up to 30% fill of female because they were sure that if it exceeded that, that the unit could never achieve its mission. And I went, that's really wrong and you can't do that. So I mean, this is something real.

Kim:

So Jill, these bills seem to me, to be specifically aimed at attacking trans and gender nonconforming people. So why is that and what are the stakes here?

Jill:

I think you have hit on what this is and that's what I was alluding to earlier when I said this isn't just about drag queen performances, it is about attacking anyone who is a nonconforming identity person, a gender nonconforming. And it will hurt that community who should be protected under our constitution. Why it's happening now, it's because I mean, I would say it's been part of what the GOP has been working for in terms of cutting back on a lot of rights. Reproductive freedom and also this. And even the Supreme Court gave a hint when they ruled in Dobbs that maybe they should be re-looking at for example, same sex marriage. And I think it's just part of what the MAGA crowd is interested in and the people they elect are starting to move in that direction and making this a big issue. But I will say, I can remember when we were talking about well, you might have to share a bathroom with either same sex as an ERA argument or if someone was not the gender that they had been born, what bathroom they would use.

And Democrats took up that argument and were defending opening to whoever identified in the way they were currently. And the argument was, Democrats are killing themselves because people aren't ready for this and that it's too hard. So I hope that the same is true going to the extreme end by the Republicans, and that it will hurt them because I think most Americans are much more accepting of inclusivity and this is a terrible way for it to go. And these bills are really, I mean just you have to read the exact language but it really is if two trans people are... Or on a gay pride day, if you're in a parade, that could be a crime under these laws. So I think we have to look at them very carefully and start restricting them and holding them unconstitutional.

Kim:

I just have three quick points to make to this idea that oh, you might have to use the bathroom with trans people. Newsflash, all you all have already been using public bathrooms with trans people, you have since the beginning of time and they've just been really good at hiding it and nothing has happened

to you so get over that. To a very serious point, when it comes to trans people in particular, LGBTQ plus people at large for sure but trans people in particular, the statistics that we have, which I think are a low ball because of the way they're not reported completely, is that trans people in America are four times more likely to be victims of a hate violent attack. And trans women, particularly trans women of color, and we don't even have exact data to put on it because it's not tracked. But they are so much more likely to be killed based on the fact that they're trans. These are people.

We're talking about young people, we are talking about Americans and this kind of tripe only foments the kind of hate that is behind the real peril that, that puts in Americans. So these people should be ashamed of themselves. Also, on a lighter note, who doesn't love a drag show? Hello, have you all seen RuPaul? I think there's this idea among the people pushing this stuff is that okay, well Americans have come to accept same sex marriage and we can't fight that anymore. And Americans have come to accept gay people adopting and all, this is like the last vestige that we can fight against. Wrong, don't go after drag shows. Everybody loves RuPaul. All I can say is, and I'm going to switch around RuPaul's catchphrase, if you can't love somebody else, then how in the hell can you claim to love yourself? Can I get a amen up in here?

Joyce:

Amen.

Jill:

Amen. And RuPaul is in his 13th season? Obviously it's very popular and one of my favorite movies of all time is Birdcage. Have you all seen that?

Kim:

Yes, I love Birdcage.

Joyce:

I am sensing a SistersInLaw night out here.

Kim:

There's something about me that I don't know if you guys know, and that is I wash my hands a lot. Even pre pandemic. I am a big hand washer, but I also care about the environment. So I love the fact that Blueland gives me a wonderful eco-friendly way to make sure my hands are clean because I like clean hands, but also be good for the planet. And if you're anything like me, you want to do the same, and it feels daunting sometimes to try to make environmentally friendly choices. So try this instead. Start small and think about the little habit changes you can make one step at a time. That's why Blueland is perfect because they make it easy to start a new low waste lifestyle. No massive overhaul of your routine, just tiny changes that add up to a huge impact. And Blueland is on a mission to eliminate single use plastics, including those little hand wash bottles, by reinventing cleaning essentials that are better for you and for the planet.

Joyce:

So I love how this works. We've become a Blueland household because the idea's pretty simple. They offer beautiful... They really are really pretty. Endlessly refillable cleaning products. You just fill up the bottles with water, drop in the tablets and wait for them to dissolve. And you'll never ever have to grab

bulky cleaning supplies on your grocery run or get those big huge boxes that we all get in the mail. Refills start at just \$2.25. You can even set up a subscription or buy in bulk for additional savings. From cleaning sprays to hand soap, toilet bulk cleaner and laundry tablets, all Blueland products are made with clean ingredients that you can feel good about.

Kim:

Also try their Clean Essentials kit, which has everything you need to get started. Three bottles of cleaner plus a bottle of hand soap. And it comes in beautiful light scents such as Iris Agave, Fresh Lemon and Eucalyptus Mint. Plus Blueland has a special offer just for hashtag SistersInLaw listeners. Get 15% off your first purchase of any product to get you and your year started right. From the amazing sense to the reduced waste, I don't think you'll ever use other cleaning products again. Do your part and fall in love with the way Blueland can refresh your home.

Joyce:

To get 15% off your first order, go to blueland.com/sisters. That's 15% off your first order right now when you go to blueland.com/sisters. You can also find the link in our show notes. Kim, there was a partial release of the long awaited investigative grand jury report in Fulton County, Georgia yesterday. What did we learn?

Kim:

Oh man, it was so anticipated but we did not learn much. It wasn't even redacted, it was just bits and pieces of it that were released on the order of Judge Robert McBurney in Atlanta. And we learned that the grand jury's done, that they wanted their service to end at the end and there's probably some juicy stuff in there. But the one thing we did learn is that the grand jury said that they do believe that some of the witnesses who testified before them lied and they let prosecutors know that in case they want to go after perjury charges. So that says two things to me. We may see more charges coming out of this than we thought, but the one thing that tells us is some of the witnesses who may have perjured themselves, perhaps prosecutors can lean on them a little bit and try to get them to cooperate against some of the other people for whom charges may be imminent.

We heard District Attorney Fani Willis say a couple weeks ago, that charges were imminent. Maybe one reason we haven't heard them yet is that she's trying to see if any of these witnesses might cooperate, now that she's got them on potential perjury charges.

Joyce:

It's so interesting. I mean the whole report is only nine pages. We got just a small fraction of that. But Jill, did you see anything important that came out of the report?

Jill:

I did. I mean obviously we want to see the indictment, not just the list of names that they thought committed crimes but I think we did learn that there was no fraud that in any way, impacted the outcome of the election. The report says that this special grand jury was unanimous in the conclusion that there was no fraud, that a majority felt that there were witnesses who had perjured themselves but it was unanimous. So that's a pretty big finding, and I think that we're pretty clearly looking for indictments and for just substantive crimes as well as perjury.

Joyce:

Yeah, it seems to me at this point almost a foregone conclusion that we're not asking whether there will be charges, but when there will be charges. I suspect that, that's a calculus that's going on inside of the DA's office that involves when their new grand jury start, how much time they have to present evidence, what would the speedy trial time clock look like if they indicted us at a certain point in time? Sometimes there are even considerations like you can't really indict a case so that you end up in trial the week of spring break when nobody's there. I mean lots of really little considerations that aren't really public domain sort of things, that inform a prosecutor's use of the language, charges are imminent. I think that means something different to prosecutors than it does to the public, but I think that that's caused a little bit of frustration for a public that feels like it's been waiting too long as it is.

So Jill, no huge surprise. It did not take Trump long to issue statements following this release and he issued one absolving himself from any responsibility in the matter. What's your assessment, do you think somebody told him that he's getting a pass? Does he know what he's talking about here?

Jill:

Does Donald Trump ever know what he's talking about? Let me read the statement because you really have to know what it says before I can answer your question fully. It says, "The long awaited important sections of the Georgia report, which do not even mention President Trump's name..." Notice he talks in the third person. "... have nothing to do with president because President Trump did absolutely nothing wrong. The President participated in two perfect phone calls regarding election integrity in Georgia, which he is entitled to do. In fact, as President, it was President Trump's constitutional duty to ensure election safety, security and integrity. Between the two calls, there were many officials and attorneys on the line, including the Secretary of State of Georgia and no one objected, even slightly protested or hung up. President Trump will always keep fighting for true and honest elections in America." Well, of course no one hung up on the President. They followed what would be normal protocol when the President calls you. They don't hang up. And this is Sidney Powell's argument or Fox News'. Well, no one would believe what we're saying.

I mean, it's so absurd that he issued the statement and that unfortunately he has millions of people who will believe this nonsense. But no, I don't think anyone has given him a clue that he's getting a pass on this, I think quite the opposite. The little bit you can glean from the excerpts that we've seen, which total maybe two pages out of the nine, show that there will be indictments and it won't be just for perjury of people who testified there. It will be for substantive crime of election interference.

Kim:

He knows that we all heard the call, right?

Jill:

Yeah.

Joyce:

Right.

Kim:

We heard the call.

Joyce:

Did they push back the whole time in that call? No sir. We've looked at that. There was no fraud there. No dead people didn't vote. I mean it's like really? It's nuts. Jill, I want to pick up with a thread though that you pulled. We're all reading tea leaves. It's not at all clear that this grand jury recommended charges against Trump. Maybe they did, maybe they didn't. We just don't know. And Fani Willis gets to make her own decision, she's the elected district attorney in Fulton County. It's up to her to exercise her prosecutorial discretion. But if I was a tea leave reader, I might look at the part of Judge McBurney's order where he talks about not releasing the full report right now out of the need to protect the due process rights of people who didn't testify in front of the grand jury and didn't have their opportunity to present their side of the story. And that sure sounds to me an awful lot like the former President and he's about to get whacked in Fulton County, but maybe I'm just being overly optimistic.

Jill:

No, I think you're right. That's a very good way to read what that was all about. It is the due process rights of defendants who might be named, but there's also people who might not get indicted, who the grand jury names in their report, who for some reason the DA thinks it's not a strong enough case or as I think Kim was just saying, who might be the ones who are going to flip. And so they're not going to get indicted, and you don't want to have that out there until a decision is made by the official person who can make that decision and by the regular grand jury that will actually vote to indict or not indict.

Joyce:

I think that's all fair because this case has always been a little bit weird in that, there's two separate pieces. There's the Georgia fake slate of electors, and then there's the Rudy Giuliani Trump lawyers, leading up to the Trump call who tried to do this. And it has always seemed to me that if there are some people among those Georgia State Republicans who pushed the state elector scheme in Georgia, who ultimately decide to flip and who become willing to testify to... Rudy Giuliani must have reached out. Somebody has to have reached out to them to initiate them. That could be case making testimony. And I do note that one of the Georgia politicians has in the last week, indicated that he will not be running for reelection, which is something that you sometimes see when someone's getting ready to flip and cooperate. So lots to look for here.

Kim, what happens next in Fulton County? I mean, we all have our suppositions, but Fani Willis did say charging was imminent a couple of weeks ago. What do you think that means given where we are now?

Kim:

Yeah, I think that it won't be too long. I mean, I was expecting to see indictments by now frankly, given the way she said imminent. But the thing that made me change my mind is the idea that some people may have perjured themselves, and so there may both be more time needed to put together these perjury charges. And also perhaps some of these people might be willing to flip on others, and that's why we haven't seen it yet. I was saying for a long time that I thought Fulton County will be the first place that we would see any indictments come out. I think now it's a race between Jack Smith and Fulton County, so we'll see.

Joyce:

And don't count Alvin Bragg out in Manhattan right?

Kim:

Right. Alvin Braggs back in the mix.

Joyce:

There's a new grand jury being seated in Fulton County in early March. You got to wonder, is Jack Smith and is Alvin Bragg, are they looking at that Fulton County grand jury schedule and thinking, I want to beat Fani to the punch? Or maybe they're all working together behind the scenes and we just don't know. But lots of fascinating timing issues there. So Jill, there's a little used federal statute, I think people are largely unaware of this, and it permits a defendant who's a federal official to remove a case where they're being prosecuted in state court to federal court under certain circumstances. If Trump were indicted, I'm wondering if you think he would rather be tried in state court or federal court? It's showing good cause for the removal revolves around your status as a federal official and whether you're entitled to make an immunity argument. We see this argument come up in cases where you've got federal agents, FBI agents or US Marshals, who get charged in state court following a violent encounter and they say, "I'd like to have my case transferred to federal court because I'm entitled to qualified immunity there."

And typically those cases are transferred. The court doctrine says that it should be construed liberally. It's an interesting decision point for Trump though. If he faces charges, does he want to go in state court or federal court?

Jill:

Well, there are some arguments for why he might want to... And there's also a question of whether he was acting in a way that was in his official capacity and whether he would actually get removal. But let's just take the question of what would be the advantages to him of removal? Sometimes defendants think they're better off in front of a federal judge, especially if they're one that he appointed. So that might be a consideration. Another in his case is if he gets convicted in a federal court, there is a possibility that a Republican president would then pardon him, which wouldn't happen in Georgia where, by the way, even the governor does not have the power to pardon. And there are some procedural rules that people like in federal court that make it something that might lead him to think he's better off there or discovery rules that he likes or rules of evidence. All of those are things that could make him want to do that.

Interest rates, it's interesting, if there's in addition to any kind of jail time, if there were to be a fine, the states usually have a higher interest rate. I actually had a judgment in Florida, and of course the defendant didn't pay it and I put a lien on his house and when he went to sell the house, he had to pay me. And I learned that Florida has a 10% interest. I mean, it was the best investment I ever made letting him not pay me. So I think those are some of the reasons he might want to go with a federal case. And so then the question is this complicated one, of whether under the removal statute he can do that.

Joyce:

So Kim, what do you think? You're Donald Trump. I know, perish the thought but just for the moment, would you rather face a Fulton County, Georgia or a federal jury in the Northern District of Georgia?

Kim:

Honestly, I'm not sure it makes a difference. I mean, I think that in this case, from what we see and the case that's being put together, it would be clear enough that if prosecutors have as strong a case as Fani Willis is saying that they do, it will not matter.

Joyce:

Yeah, that seems fair to me. I just think about how prone Trump is to do anything that inserts delay or uncertainty into legal proceedings. There would be a lot of questions if he does this federal removal. Like Jill, you were talking about who then would have the ability to pardon him, and I'm not sure that those issues are clear. Is it still a state prosecution that's happening in federal court? A lot of interesting issues there, right?

Kim:

Yeah.

Joyce:

Well, it's murky and you know Trump loves murky. So stay tuned on this one and we'll have to see how he plays it if and when he's indicted.

So it has been quite a week, but from our listener questions, it's clear to me that there's just so much going on that people have a lot of questions. We've looked through them. We've picked a few to answer, a little bit more than three this week because there are just so many good ones. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet them to us using #SistersInLaw. If we don't get to your question during the show, keep an eye on our Twitter feeds during the week because we'll answer as many others as we can get to. But this week our first question comes from Deborah in Nashville, Tennessee. Jill, this one looks like it's up your alley. She asks, "What's the convention of states? Would it have the power to change the Constitution without citizens input?"

Jill:

Well actually, all amendments to the Constitution are pretty much without direct involvement of citizens. Article V of our Constitution defines the amendment process of how you amend the Constitution, and it can be done directly by Congress. So indirectly of course, people have elected the members of Congress, and so Congress can propose a amendment to the Constitution. It then goes to the states for ratification, and it requires that 38 of our 50 states ratify it. And again, the state ratification is based on the elected representatives, so people have the power to have their say by notifying their representatives how they should vote on the amendment. The other way that it can happen is rather than it being initiated by the members of the federal legislature, the states can petition the national legislature to appoint a convention of states, where they will make the initial proposal for amending the Constitution. But then it still has to go to that same convention, can then vote to approve the amendment.

And there is actually right now, a effort being made by a very conservative MAGA group to limit the power of the federal government, and it is calling for the convening of a convention of states to amend the constitution, to limit the federal power.

Joyce:

Thanks, Jill. Kim, this one is for you. This is something you and I have both been involved in writing about and thinking about. Next Friday, a judge in Texas will be ready to consider a case involving an abortion

pill ban, and it's a little bit confusing. This is one federal judge in Texas. The question from our listener Yvonne is, "I'm concerned about the birth control pill. How can the ruling of a local federal judge in Texas impact every state? Would every state have to appeal the ruling? How is this going to work?"

Kim:

Yeah, so this is a great question from Yvonne, and it's very similar to questions that were asked by Catherine in St. Catherine's, Ohio and Helen and Katie, about these rulings and cases involving the birth control pill and other things and forum shopping. So I'm going to try to answer them all in tandem. So to Yvonne's point about a local federal judge making a ruling that impacts the whole state, this is something that we have seen happening increasingly in recent years with some challenges to federal policy where it's done by design. There is a challenge to a federal policy that is brought in a forum that seems friendly to the person bringing the challenge, more on that later. And usually when a judge in a certain district or even an appellate judge in a circuit makes a ruling, it only impacts the parties and at most the people who are covered by that circuit.

But more and more when we're seeing challenge to federal laws and judges are holding nope, that law is unconstitutional, in effect that has a ruling of nullifying that law or preventing it from being enforced nationwide. That was never how it was intended, but this is how it's been working, and it's been by design and it is a problem. Now, getting to the forum shopping side of it, when you have people talking about Judge Matthew Kacsmaryk in Amarillo, Texas, why is it by chance he's getting so many of these challenges that are being brought by Republicans? Well, that's because when Republicans, including Greg Abbott, who has the whole state who can choose Austin, the state's capital or Dallas, the biggest city or somewhere else to bring these cases, he keeps going to Amarillo, Texas because this one judge, Judge Kacsmaryk will be guaranteed to be the one who hears this case. Rather than another states where judges are rotated on their bench or there are multiple judges and you don't know which one you're going to get when you file a case because they rotate within a court, that's what usually happens.

In Texas, they set the rules that they unevenly distributed judges so some jurisdictions only have one judge, and if you know that he's a Trump appointee, if you know that he's very conservative and likely to rule on your side, which Judge Kacsmaryk is allegedly meant to be, he's going to get a lot of these cases. And that is beyond something that's called forum shopping, which we all learned in law school, is something that courts used to try to guard against because you don't want to try to pick a court that's going to put a thumb on the nail on one side or another, but this is something even more serious. I call it judge shopping. I didn't invent that, that's something that I heard from a friend of mine who's written a lot about the Steve Vladeck, who is a law professor in Texas, who has warned against this, he's also talked a lot about the shadow docket. In these procedural ways that Republicans are trying to put a thumb on the scale of justice and ensure that things are happening on their side. It shouldn't happen that way.

The only way to fix this would be for one, either for Congress to pass the law, to make it harder to form shop. I know right now it's hard to think that Congress might do anything, but courts themselves, federal courts and federal court systems, the Chief Judge in the District Courts of Texas could pass a rule saying no, we're going to move judges around and we're going to create more of a system where people don't know what judge they're going to get. So one of these two things can happen. It's worth noting that, even that in more liberal jurisdictions, that they don't do this. When Democrats challenge Donald Trump policies, even when they went to very favorable jurisdictions like San Francisco or Honolulu, the judges there are rotated. So they didn't know which judge they were going to get. Because strangely enough, when more liberal justices are in charge, they have more fair rules.

Joyce:

So interesting counterpoint, Kim. I don't think we've talked about this but in Alabama, there's been an outcry in the federal courts. All three of the chief judges in all three Alabama districts have been involved looking into whether lawyers in a case forum shopped to get a judge that they wanted. It turns out it really wasn't forum shopping, it's sometimes lawyers will dismiss a case when they think they haven't stated it properly and they want to refile and bring it differently, but there was a lot of concern. Very interesting. That is a case that challenges Alabama's new anti-trans gender law.

Kim:

Wow. It all comes full circle.

Joyce:

[inaudible 01:07:06] Yeah. Here we are with the pill. No real outrage. Well, our last question today comes from Judy and she asked a question about something that I wrote about on my sub stats. She says, "Joyce noted a difference between arresting and charging individuals versus convening a grand jury first to potentially get an indictment for the two individuals arrested and charged for the threatened terrorist attack on the Maryland energy grid. Can you clarify the differences between these two routes?" And Judy, this is such a good catch because there are two different ways that we can charge people in federal court in this country. And you're referring to this federal case in Maryland where a woman named Sarah Beth Clendaniel from Maryland, and a man named Brandon Russell from Florida are charged in a conspiracy to destroy an energy facility. They were not indicted by a grand jury. Instead, they were arrested and charged by a complaint, and that's a signal that law enforcement was very concerned about what they were doing.

Felt like some kind of criminal activity was imminent. Could not wait to the next conveniently located grand jury to get an indictment needed to get them in custody for public safety. But even in our federal system, when you do charge via a complaint like this, there's still a requirement that federal prosecutors go to a grand jury. The constitution requires that all charges be instituted via the grand jury process. So it's really one of the ways that we can discern whether or not criminal activity was imminent. These prosecutors will have to go back to the grand jury, and that's the process that's used in most cases. The federal government tends to be more proactive than responsive with the sorts of cases it brings. But you do see a number of cases where, for whatever reason, prosecutors will use a complaint in an affidavit to make an arrest and then go to the grand jury later.

Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks and me, Joyce Vance. You can send in your questions by email to SistersInLaw@politicon.com or tweet them for next week's show using #SistersInLaw. As you all know, we're taking #SistersInLaw on the road, I hope you'll come and join us as we record the podcast live on stage. We'll be discussing the legal topics of the day and answering your questions. Starting off in Portland, Oregon on May 12th, New York City on May 19 and Washington, DC on May 21. Get your tickets because they are going fast. You know we have a lot of fun recording the podcast, I hope you all will come and experience for yourself. Go to politicon.com/tour to get your tickets today. Please support this week's sponsors, HelloFresh, Lomi, Helix and Blueland. You can find their links in the show notes. Please support them. They really help make the show happen.

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I'm going to go out before I do TV and see the progress on my new chicken coop, which is much larger than I anticipated it was going to be. It's so big that we're talking about having a dinner party for our neighborhood in it.

Jill:

Oh no, really?

Joyce:

It's huge. I mean, I knew-

Jill:

It didn't look that big in the picture you put.

Joyce:

It's huge. Well, when we do the #SistersInLaw in Birmingham, you guys will all have to come. I'll do dinner for you guys in my new chicken coop, and I don't know what I'll serve. Maybe something made with eggs.

Jill:

Oh, yes. I can't wait to meet some of yours that have become real personalities in my mind. I think they're going to be adorable.