

Jill:

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Kim:

Welcome back to #SistersInLaw with Joyce Vance, Jill Wine-Banks, and me, Kimberly Atkins Stohr. Barb is away, but she'll be back next week. As you all know by now, we are going on tour in May. We're going to go to Portland, Oregon on May 12th, to New York City on May 19th, and to D.C., my home, on May 21st. Listen, as we tape this, there's only one ticket left in New York, so hey, if you are a New Yorker, and you want to come, go right now to politicon.com/tour, and buy that last ticket. Also, if you're in Portland or D.C., you could find your tickets there too, but they are selling really quickly, so you want to act fast.

All right, well, let's get on with the show. Today, we're talking about big developments in two Supreme Court cases. We're also talking about Donald Trump's immunity dreams starting to fade, and we will talk about Florida men doing damage to the First Amendment. As always, we look forward to answering your questions at the end of the show. But first, before we get to all that, I've been thinking a lot about guilty pleasures. We all have busy lives, and there are just those little things that we like to do to unwind, or relax or just when we have a little moment to ourselves. For me, it's trash television shows. The seedier, the better.

I'm talking reality TV like if people are getting married before they meet, or if it's something with a housewife of some city or anything like that. I am all over it. My husband often, he'll say, "Well, I'm going to go watch a game or something." I'll say, "Okay, I'll be down here watching trash." When I say I'm watching trash, he knows exactly what I mean. What about you guys? Do you have a guilty pleasure?

Jill:

I do, but I don't consider it a guilty pleasure, because I think it's never something to be guilty about when you give yourself any kind of joy in your life.

Kim:

Good point.

Jill:

But when I was working for the city of Chicago, I had to live in the city of Chicago, which meant that I was not living with my husband. Every night to make myself get ready for bed, I watched The Nanny, which I found to be... I fell in love with that show. It made me laugh every night, and then it was on at midnight. Then I would turn it off, and I'd go to bed. It was a complete joy. I actually now own the CDs of every single season of The Nanny.

Kim:

Wow. Well, we hope Fran Drescher is listening. Listeners often talk about my laugh on this show, but mine has nothing on Fran's.

Joyce:

There's the laugh, right?

Kim:

Yes.

Joyce:

Absolutely.

Kim:

Yeah.

Jill:

What about you, Joyce?

Joyce:

It's funny, we seem to all have our television guilty pleasures, and I do the same thing, but it's only when I'm traveling, when I'm not at home. I have a traditional husband who believes in maintaining control of the clicker at all times, so I don't usually get to do that. But when I'm away at night, I'll get in bed, and I'll watch anything that has to do anything with decorating a home or buying a home or selling a home. I'm fascinated by those shows. We've lived in the same house now for about, well, for more than a quarter of a century. We will never move. We love our house, but I love watching all of the tricks that they use to pull off home decor, and it's just... I don't know. It just has my ticket.

Kim:

I like those too. I have to admit. There was one that focused on houses in Detroit, my hometown, and some of these houses had really fallen on rough times, and they came in and really made them into masterpieces. So, I like those too.

Hey, Jill, on rainy days like today, I'm so glad that I have my Kitsch satin line turban. It's really cute. I can throw it on my hair, and I can still go out and run errands, and make sure it doesn't mess up. Have you heard of Kitsch?

Jill:

I have, and I love my Kitsch heatless roller device. It is so much fun. It takes two seconds to put in your hair, and it really gives a nice little curl. I obviously need it today. I forgot that I had something after we record. I'm sorry I'm not wearing it, so I'm going to use it as soon as we're done. 2023 is the year of good, feel good, and do good, and being good to yourself as well. Luckily, Kitsch makes feeling good simple with luxurious game-changing essentials that our beauty enthusiasts swear by. Whatever your budget, your skin type, your hair type, Kitsch believes you deserve little indulgences at affordable prices, morning, noon, and night.

It was started in 2010 by selling hair ties door to door, literally just hustle in a dream. It's one that grew, and throughout, Kitsch has been a self-funded female founded company now carried in over 20,000 retail locations.

Kim:

We've gotten hooked on some of their bestsellers, especially while we rest up for a new day. Their satin pillowcases, I swear by satin pillowcase guys, it really is a good thing to have. I really.. I even travel with them. Their satin caps and eye masks, all vegan and cruelty-free, are so great for your hair and your skin while you're sleeping. We love their shampoo and conditioner bars, yes, bars, bottle-free beauty, baby. It's great for the environment, and with their heatless satin curling rollers that Jill was using, you can say bye-bye to heat damage.

There are TikTok videos of people throwing away their \$600 curls for this. We hope you won't need to go that far, because the amazing thing is the price is only \$18. But if you did, we would only be inspired. Kitsch also has quick dry hair towels, classic hair ties, and scrunchies and so much more.

Joyce:

Right now, Kitsch is offering you 30% off your entire order at mykitsch.com/sisters. That's right, 30% off anything and everything at [mykitsch spelled M-Y-K-I-T-S-C-H.com/sisters](https://mykitsch.com/sisters). One more time, mykitsch.com/sisters for 30% off your order. You can also find the link in our show notes.

Jill:

It was a busy week at SCOTUS as well as in every other part of the news. Two cases that I want to discuss today are the North Carolina Independent State Legislature Theory and an update on that, plus of course the arguments in the student loan case. I'm going to start with that one with you, Kim, because I know you were outraged listening to the arguments in that case. Tell me what the case is about, what the arguments on both sides were, and why you were so angry.

Kim:

It really was. It was quite a time this week. This case is a challenge to the Biden administration's student loan forgiveness program, which forgives up to 10,000 or 20,000 loans depending on the qualifications of certain borrowers, and stands to give tens of millions of borrowers some much needed relief coming out of the pandemic. Well, this law was challenged, in one case, by a group of GOP-led states, and in another case, by borrowers who did not qualify for this forgiveness, and they assert that the Biden administration exceeded its authority in implementing this program since the cost would be so high, and it affects so many people.

The Biden administration says, "No. No. We do have authorization. Congress authorized this through the Heroes Act of 2003, which has a provision that empowers the secretary of education to issue waivers or other alterations in the student loan program in the event of an emergency." So, the Biden administration argues that the pandemic was an emergency. It created such an economic crisis that this was necessary to keep these people from falling into crisis, and from further damaging the economy, but the challengers say, "No. No. Congress needed to authorize this specifically."

Look, when I was listening to arguments, I expected this case to be a winner for the challengers for the reason that this court's majority has on more than one occasion expressed a lot of doubt about expansive executive authority, basically the ability of the executive branch to do all kinds of things without the expressed permission of Congress. I think this was the thing that would likely raise that ire, but what made me angry, it wasn't even about the merits of the case. It was about something the chief justice said, chief Justice John Roberts. Now remember, this is the same John Roberts who during his confirmation hearing said he would be an umpire calling balls and strikes.

It would not be his job to pitch or bat, meaning that this is not about making policy. That's not what the court does. The court is just meant to rule on whether cases, whether it's due to interpreting a statute

or interpreting the Constitution who is right under the law. That's their job. Even years ago when the Obamacare challenge was before the court, and John Roberts cobbled together that opinion that made a narrow majority that said, "Look, when we are ruling on a law like Obamacare, it has nothing to do with what we think about the law, whether we like the law, whether we think it's a good idea or a bad idea. In this case, our job was only to decide whether it was constitutional, and I think that it was," and that gave the fifth vote in favor of that.

Well, fast forward to a few days ago during this argument when John Roberts started spewing Republican talking points about the law that had nothing to do with determining whether the Biden administration had the authority to enact this policy, he was saying things like, "Well, we need to talk about fairness." What about somebody who didn't go to college, but instead took out a bank loan to open a lawn service business? Nobody's given him forgiveness for the loans he took out. Nobody's helping him, but the government with the taxpayer's money is giving things for free to these student borrowers, which is just shocking to me. Honestly, if Sam Alito had said that, I wouldn't have batted an eye, because Sam Alito was known for saying things like that.

But the fact that it was coming from the chief justice at a time when the integrity of the court is in peril, and confidence in the court is at a historic low, he's somebody who's supposed to be an institutionalist who cares about how the court is viewed. I was absolutely shocked that he would resort to political talking points in the middle of the argument. It says to me, one of two things is happening, either that's the kind of justice he always wanted to be, and now he's just feeling empowered to do that, or maybe he's so tired of seeing all the headlines about how he's lost control of this court with the five conservative justices really taking the lead like they did in Dobbs, that he's thinking, "Well, if I can't moderate them, I guess I'll just join them."

Jill:

Joyce, beyond the facts and the legal issues that Kim has laid out for this case, it seems to me that there's a very good likelihood that this will more broadly redefine the scope of the power of the president. So, could you comment on that please?

Joyce:

I think Kim gave the best layout of this case and the issues that it raises that I've heard so far. It's complicated. There's a lot of really squirrely stuff going on here. The case could be decided very narrowly on standing grounds. I'm not an expert on standing, but to have standing defile a lawsuit, your ox has to be gored. That's the colorful way lawyers like to say it, right? You've got to have skin in the game. You've got to be the real party in interest. There are good arguments here, for instance, in the case of Indiana, that it's actually a separate board that they've created that has standing, and not the state itself.

That's what courts are supposed to do, by the way. They are supposed to decide cases on the narrowest grounds in front of them. So if parties don't have standing, you should dismiss the case. If this case goes on to be more than just standing, as Kim says, it will be because partisan politics, really hyperpartisan politics, have injected their way into the Supreme Court justice's reasonings and rulings, and it's worth being angry about that. By the way, this is my angry Friday afternoon voice. Look, to your point, Jill, conservatives want to use this case as a way to advance this really flaky major questions doctrine that they've been pushing for the last couple of years.

We've talked about it a bit, and this is this argument that says that unless Congress ultra explicitly delegated jurisdiction to act to an agency in a situation where what they do will have broad, expansive

impact on Americans, then they don't have the jurisdiction to do it, and it remains with Congress. As Kim points out in this situation, the Heroes Act would seem to be an appropriate grant of power when combined with the NEA, the National Emergencies Act, and yet it's tough to listen to this argument, and not walk away with the concern that the Supreme Court has a majority that will say, "Oops, major questions doctrine, and we're going to take away more power from the presidency and the executive branch not vesting it so much in Congress as we're going to vest it in the courts. We in the courts will decide when the executive branch can act." That's deeply offensive to democracy.

Jill:

That is a very important point, but it does raise some political questions. Kim, although we usually leave ourselves to just purely legal issues, you are an opinion writer and a political commentator. So, I'm going to ask you about the political impact that this decision could have. I mean, Democrats are clearly courting young voters, and this is a promise that was made to young voters that the courts may stop. What's the political impact going to be?

Kim:

I think if it were a different year, a different time, I would say this could be really problematic for Joe Biden who did promise that this would be a part of his agenda. Now, he did that after being pushed a lot by progressives in his party to say so, but he did. He did make the promise to rule on this. I think a lot of times when politicians break a promise, when something doesn't happen, especially in this case... Keep in mind, you guys, this forgiveness, this relief was already being granted. So if the Supreme Court rules that the Biden administration did not have the power to do it, it would have to be reversed for some people.

I mean, that's going to be a real mess, and that's going to hurt people. I think young people are going to see this and say, "Wait a minute, Joe Biden kept his promise, and the Supreme Court took it away." I think particularly if Democrats can message the importance of the Supreme Court, and why that's important for every voter who casts a vote for a senator in particular, I don't think it'll hurt him at all.

Jill:

Right, and I think people will know that the Supreme Court is the Trump appointees on the Supreme Court. All right, let's move to the other really big case, and this is one that I picked when we did the preview of upcoming cases. I said, "This is the one that you should watch, this term, Harper v. Moore, which is a North Carolina case that argues that the U.S. Constitutional Elections clause means that the new North Carolina legislatures gerrymandered map is not subject to review by any court or the governor." It argues something that was a right wing fringe legal theory known as this independent state legislature theory, and it was won, by the way, that John Eastman urged as a grounds for overturning the last election.

Joyce:

That fine legal scholar?

Jill:

Yes, a great legal scholar, but it is really still just a theory, but this case, the Supreme Court could change. It was argued before the Supreme Court last December, and we talked about it then. It hasn't been decided, but it's still back in the news. So, let's talk about why it's back in the news, Joyce.

Joyce:

Yes. So, this is really interesting. For Supreme Court procedure freaks, this is a case to get your geek on with. The court has ordered the parties to submit additional briefing after oral argument, and that's not normal. What happened is that the North Carolina Supreme Court has decided to rehear the redistricting lawsuit. That's the case that underlies this appeal. The United States Supreme Court now wants to know, "Well, how does North Carolina's decision impact our jurisdiction to decide this case?" What the court has asked for, it's called a letter brief.

It's shorter. It's less formal than the normal briefing. Here, there's a limit. I forget. I think it's 20 pages. Kim, is that right? You probably know off the top of your head. I think it's a 20-page limit, so it's much shorter, and there's not an extended briefing schedule. This isn't one party files, and then the next party has 30 days. This is both parties file cross briefs at 2:00 PM on the afternoon of March 20th, so it'll be over fast, but here's the thing about it. The court has asked the parties to address what their jurisdiction is in light of North Carolina's order granting rehearing, and typically, except in cases of very limited exceptions, the court only hears state cases that are final.

So, a North Carolina case that's not completely done wouldn't go up to the United States Supreme Court. That requirement is set out in statute. There's a case called Cox Broadcasting Court called Cohn that sets out some very limited exceptions. It looks like what's happening here is the Supreme Court is looking for an off-ramp to decide, or rather to avoid deciding this inflammatory case. This is really a neat trick. If they can just say, "We don't have jurisdiction. It's been divested by the North Carolina Court rehearing this. They conduct this whole nasty independent state legislature theory question," but that forces me to go back to the student loan case.

If you're supposed to decide cases on the most narrow basis available, and if they're going to do that here, "Oh, we must dismiss for lack of jurisdiction," why don't you do it there for lack of standing? It's very disingenuous. Then the last thing that I'll say is this. It is very disconcerting to me as someone who dabbles in election law that the North Carolina Court is rehearing this case at all. Rehearing is rare. It's reserved for situations where new facts come to light, or the law changes. It's changed in North Carolina. The composition of the court, this court flipped from Democratic to Republican in the midterm elections.

They're now rehearing this case and another one where a state law that would've required voting ID was not upheld. It is very clearly an injection of politics into the law. It is very concerning.

Jill:

That is a huge concern, and it is an unusual thing, I think, that's happened. So, Kim, let's talk about that. How unusual is it for the Supreme Court to ask the parties for additional briefings after argument based on this flip in the state's Supreme Court, which means I think that they're predicting the reason the court is rehearing it is it flipped to Republican, and it's going to change the underlying decision, which means it's not a final decision. So, it seemed to me that it was unusual because after the argument originally, three liberal judges and three conservative judges, Roberts, Kavanaugh, and Barrett seemed to not be buying the theory. So, it looked like it might have actually been a satisfactory outcome.

Do you think this is going to just delay SCOTUS ruling on the independent state legislature, or what do you make of all this?

Kim:

You're asking how unusual is it for the court to ask for additional briefing. As a base point, it's not terribly unusual for the court to ask for additional briefing if there is a change to the relevant facts or

law since the case was argued. That happens fairly regularly, and you can expect the court to do that, and the court should do that. Now, what I mean by that is if there is a subsequent ruling by a lower court that has bearing on it, if the case is dismissed, if it settles or something like that for the court to say to the parties, "Hey, let us know your arguments about whether you think this is even our business anymore essentially."

What is striking about this is that there was no ruling. There was just a rehearing set, so there is no resolution of this yet. So for the court to already be saying, "Hey, are we off the hook now, because we don't want to issue this opinion," is quite... Again, it's speaking to me in a different way, because that's not how the Supreme Court usually operates. The Supreme Court wouldn't even say anything. The fact that they are jumping in at this juncture raises a lot of red flags for me. I think on the one hand, I think what it says to me is this court, as Joe correctly said, was poised to not adopt this wild independent state legislature theory.

But, there are enough conservatives on this court who want to say, "Hey, if we can just say not it," we would prefer to say not it. What's concerning to me of course, is in North Carolina, you have Republicans on their Supreme Court who are now rehearing these redistricting cases saying, "You know what? It's fine. We got it. Nothing to see here," and bad things are going to happen, so I think ultimately, it looked like we may have dodged a bullet in this case, but now it looks like perhaps not.

Jill:

Kim, I have been using Thrive Causemetics for quite a long time now, and I am so proud to talk about them, and share it with you. I love it. What about you?

Kim:

I have too. I've used it for a long time. In fact, this past weekend, I was away on a trip with my law school girlfriends, and I was telling them about the Thrive eyebrow gel, which I think is really great. It's just enough to shape your brows, but it doesn't look crazy, and it's one of my favorite things. Thrive Causemetics makes high-performance beauty and skincare products with clean skin-loving ingredients. There are no parabens, no sulfates, no phthalates, and their products are certified 100% vegan and cruelty-free. Cause is in the name for a reason. We love how every purchase supports organizations that help communities thrive, and their products are perfect for any look.

Joyce:

We love the brilliant eye brightener. There's nothing better to give you a fresh look after a long night of preparing your notes, and researching for a big day ahead. It's a luxurious cream to powder highlighter stick that brightens and opens eyes giving you an instant eye lift. I mean, it really does. I was doing TV right before we did the podcast, and you can tell I may not have gotten quite enough sleep last night. This eye brightener is just like your eyes open wide up when you use it. You can also use it as eyeshadow for a perfect daytime glow, or apply the metallic shades for an easy smoky eye.

It's foolproof, and the eyeshadow highlighter stick makes it extremely easy to apply and blend. Just apply it to the inner corner of your eyes to look like you've had plenty of restful sleep even if you haven't. Something tells me this may be your secret too, Jill.

Jill:

It is. I have been using their white pencil highlighter on the inside lid of my lower lid, and it really makes my eyes look not only whiter, but it makes me look much more awake and more wide-eyed. It's a terrific

product, but let's not give away too many of my secrets. If you want to know more, you have to go to Thrive Causemetics, and check out their products. All of us can't get enough of Thrive, especially how they contribute to helping communities thrive with every purchase through their bigger than beauty program. They give to over 300 causes, spanning colleges, cancer research, and homelessness along with many, many more.

Kim:

You have to try Thrive Causemetics to see for yourself. Right now, you can get an exclusive 15% off your first order when you visit thrivecausemetics.com/sisters. That's Thrive Causemetics, C-A-U-S-E-M-E-T-I-C-S, .com/sisters for 15% off your first order, or you can look for the link in our show notes.

Joyce:

Kim, DOJ is not a party here. Why do they file the Amicus Brief, and what position are they staking out?

Kim:

Well, they filed the brief because the court asked them to. Very frequently, when there are areas of law in a case pending in federal court, the judge will reach out to the Department of Justice to ask their opinion on legal issues. In this case, the court did, and the DOJ complied and said, "No, Donald Trump does not enjoy absolute immunity in this case." The point is a very important public policy point. While generally speaking the president has really broad immunity in what he says during the conduct of his job, the conduct of his job ends somewhere before inciting an insurrection which he's accused of doing here.

If those are the types of activity that he's trying to use the immunity to shield, it does not exist. That makes perfect sense to me. This and some other amicus briefs also point to, I think, is another good argument why he should not have immunity, which is again, the immunity has to do with the conduct and the speech you make in terms of your job. This was a rally that he was putting on on January 6th as essentially a candidate. It had nothing to... It was a political rally. It was not a part of his job as the President of the United States.

So I think under that theory as well, it would be very easy for this court to find, "No, you are not acting as the president. You are acting as a political actor outside of your job as the presidency in urging these protestors to go to the court... sorry, in urging these protestors to go to the Capitol, and "fight like hell," and so there's no immunity there."

Joyce:

This brief is really interesting to me. I'm not sure how many of our listeners will have ever seen a legal brief, but something that you do after you finish writing a brief is you put a table of contents and a few other things, a list citing all of the cases that you've cited in the brief on top. I was always taught as a young lawyer, I bet you guys were too, that somebody should be able to read the table of contents, and it reads like a story, like a super tight summary of the argument that you're making in the brief, and that really happens here. I actually took a photo as I was reading the brief yesterday of the table of contents, and I tweeted it because it encapsulates the argument perfectly.

It just says, "The president has really broad power to do stuff, but this inciting private violence falls outside even that very broad scope of presidential duty." I think that's a great way of capturing this. Jill, this is not the first time, by the way, that we've seen this argument about when presidents should have immunity, this notion that a president can assert his official employment status to claim immunity from

being sued in a civil case. We've seen it recently in the E. Jean Carroll Case where DOJ actually asked for permission to represent Donald Trump. That case is scheduled for trial next month. The immunity argument did not work out for him there even with DOJ's backing. So, what's the difference?

Jill:

This is so interesting, and the cases are very, very related. As I'm sure our listeners all know, E. Jean Carroll Case is accusing Donald Trump of having defamed her, and brought a suit against him in his private capacity for having said, while he was president, something defamatory about her forced conduct that occurred years before he was president. So, it takes it even further afield from the other case which happened while he was still president. In this case, originally, the lower court, the trial court after it got transferred... We talked about removal a week or two ago, so everybody will understand that because of his involvement in the case, it got removed from New York State Court to the federal court in New York.

The district court said, "He is not an employee within the scope of the statute that gives immunity to federal employees, because he already is immune from suits for other reasons. So, he doesn't need to be within the Westfall Act." But it then went on to say that even if he were considered an employee within this law, he did not act within the scope of his job in defaming someone about something that happened years before he was president. It then went on to the second circuit which said, "Well, we think he is an employee, but we think we aren't the right court to decide whether or not it's within the scope of his job." The tort happened in the District of Columbia, and respondeat superior or vicarious liability, I never thought I'd get to see those on any kind of show, law should be decided by the court of the District of Columbia, because that's where the tort happened.

So, they referred that question back, but they made the other decision about whether he was an employee because otherwise, they wouldn't... Necessarily, the district court, this DC court, wouldn't necessarily take the referral of the question. So, the question has been referred to them to decide whether he was acting within the scope, although honestly, I'm going to give an opinion. No way he's acting in the scope of his employment. That is ridiculous.

Joyce:

Let me make the argument that DOJ made. I thought that this was a jaw dropper when they made the... Originally right, it was Bill Barr's DOJ that decided to represent Trump, huge surprise. The surprise here was when Merrick Garland's DOJ decided to continue that policy, and there was more than a touch of outrage out there as I recall. DOJ's argument is this, "The expanse of presidential duty is very broad. To make sure that we can protect the president's ability to do his job, we have to protect this," because when he made the defamatory statements, he was answering questions from a reporter, and that's within the scope of the president's job.

So, it was a defensible argument by DOJ. My sense is that they weren't particularly worried about Donald Trump, and would've been happy not to defend him. They were worried about federal employees down the road who they were going to have to defend. As a federal employee, I was sued a time or two by someone who courts ultimately found those lawsuits to be frivolous. But to get to that point, had DOJ not stepped into my shoes, I would've had to have spent tens of thousands of dollars that I don't have to defend myself. So, there's a legitimate reason for the government to protect its decision-making authority here.

Whether you love what DOJ is doing in the context of the Eugene Carroll or not, and I will confess I'm not a fan of what they're doing. I get the justification. I just don't like. It does make the government's

position even stronger in blazing them, where they say, "We give the president broad scope, but this is too far." I think it becomes a powerful argument. Kim, what happens in this case if the court lets it proceed against Donald Trump? What's he looking at? I see that grin on your face. This is the only good news this week.

Kim:

I think what that means is discovery. In civil cases, the rules of discovery, and discovery means evidence that can be gathered and used in the litigation of this case will be great, and it would exceed, for example, the kind of discovery that would be available in a criminal case. I think this could be one of these cases where civil justice may be just as satisfying if not more than criminal justice. I know we talk... The four of us talk a lot about the fact that I think for a lot of people, they look at the criminal system in terms of holding people accountable for the insurrection and other anti-democratic behavior, but the civil justice system has a role here.

We've already seen that with the Dominion defamation trials, which have brought forth a lot of evidence in discovery about how everything has worked from communications with the White House to what's going on at Fox News. That's really important, and I think the same thing can happen in this space.

Joyce:

I think this is such an important point. I see a lot of people and their reaction. It's a little bit of a knee-jerk, right? It's this very understandable desire to see Trump in an orange jumpsuit after what he's put the country through. I think a more nuanced view though is the one that you're saying, Kim, that there are some situations where civil cases can really provide a form of accountability that even in the criminal justice system is lacking. Jill, where are you on this?

Jill:

I would say that most of the input I get from my followers on social media is only an orange jumpsuit will do. I think for example, in the Dominion case, the civil liability, which could put Fox out of business, not because the 1.6 billion will do it alone, but because they'll have to change their practices, or there will be another \$1.6 billion case. In this case, I think that to use a phrase that you use, Joyce, a lot of things are awful but lawful. Our criminal laws have been designed not for the extraordinary cases, and there was never a prediction that we would have a president who would do the things that the former president did.

So, the laws may not have the right solution. In that case, I think civil liability is a terrific way to hold someone accountable, and the penalties have to match the severity of what he has done. I think this is a good one. I want to point out one complicating fact, which is I understand what you were saying, Joyce, and agree that there are legitimate reasons why the government needs to protect federal employees, and to step in in their place. But if they step in in this case, the government has not given permission to be sued for intentional torts like defamation, and that would be the end of the case.

So, it's one thing when it is the post mailman is driving the truck, and smashes your car. You can sue the government, and they'll pay your damages. In this case, if the government is substituted for Donald Trump, there is nothing that will happen for E. Jean Carroll. That makes it very different in my mind. As I said, I cannot see how anybody can say yes answering questions of reporters about your job is your job. Answering questions about your personal misconduct years before you became president is not part of

your job, and you can say, "I'm not going to answer it." So, if you want to go ahead and defame someone...

By the way, she does have a case to be brought, because he defamed her again after he wasn't president. He said the same thing over again, so she could bring a new lawsuit based on that defamation.

I just finished my lunch before we started recording, and I had a terrific Moink sausage for my lunch. What about you, Kim?

Kim:

Oh, I love Moink. The name makes you think of just meat, but one of my favorite things that I've had from Monk is the salmon. It really was fantastic. It was a big hit in my household. I just want to ask. What if you could support small family farmers, and reduce your environmental imprint all while enjoying the highest quality meat on earth? When you join the Moink Movement, you can. Their animals are raised humanely. Their employees are paid a living wage, and the quality is way better than anything you'll find in stores.

Joyce:

Jill, your sausage for lunch reminds me that I've used Moink sausage to make this simple sheet pan dinner with onions and green peppers sliced up, and just put on parchment paper on a sheet pan with the sausages. You pop them in the oven. It comes out. Everything is delicious. Now, my mouth is mouthwatering for some of that. It really is good. Moink delivers grass-fed and grass-finished beef and lamb, pastured pork and chicken, and Kim's sustainable wild-caught Alaskan salmon straight to your door. The Moink farmer's farm like our grandparents did. As a result, Moink meat tastes incredible. The family farm does it better. The Moink difference is one you can taste. Unlike the supermarket, Moink gives you total control over the quality and source of your food. You choose the meat delivered in every box, everything from rib eyes to chicken breasts, pork chops, salmon fillets, and much, much more. You can cancel at any time, but you won't want to.

Jill:

You definitely won't want to. The quality is extraordinary. Shark Tank host Kevin O'Leary called Moink's bacon the best bacon he's ever tasted, and Ring Doorbell founder, Jamie Siminoff, jumped at the chance to invest in Moink. Plus, they guarantee you'll say, "Oink. Oink. I'm just so happy I got Moink." I know it's Barbara's turn to say something like that, but she wouldn't do it anyway, but I love hearing it because it reminds me of the family farm and how good it is in terms of quality and helping the environment. You'll love it like we do. It's the perfect option for a family meal or a dinner party.

Joyce:

I know Barb is really appreciative, Jill. Keep American farming going by signing up at moinkbox.com/sisters right now. Listeners of this show get free filet mignon in every order for a year. Now, that's a happy lunch. When your family members, your partners aren't looking, go ahead and eat the filet mignon just for yourself. It's absolutely delicious. That's one year, the best filet mignon you'll ever taste, but for a limited time. It's spelled M-O-I-N-Kbox.com/sisters. That's moinkbox.com/sisters. Look for the link in our show notes. You'll be glad you did.

Kim:

A Florida man has exacted political revenge on the happiest place on earth. A new state law revising the governing structure of Walt Disney World went into effect, a law that according to Governor Ron DeSantis was meant to reign in Disney's "wokeness." Jill, tell us what this new law does.

Jill:

When we talk about bad news, when you get down to destroying the happiest place on earth, what is wrong with our world, really, truly? Ron DeSantis has done so many new laws that are hurting a lot of things. This particular one is taking away a tax and governance power that was granted to Disney when they agreed to build near Orlando. They've put a lot of money into the state aside from being one of the largest employers in the state, maybe the largest employer, but just in terms of building the Magic Kingdom, and in paying taxes, they tax themselves very, very highly.

What this new law does is it says, "No, there's a new sheriff in town, and we are going to create a new governing body, and we are going to take over for you." That's what this particular law, and it was provoked by the fact that Disney took issue with the DeSantis's Stop Woke Act, which was a really bad law that they spoke out against. So as a result, they have taken... DeSantis has taken vengeance on Disney, and that's where we're at.

Kim:

Joyce, tell us about the new five-person state board that DeSantis set up basically as part of this law, and he appoints all the five members of this board. Who are these people, and what does that tell us?

Joyce:

Talk about exacting political revenge on Disney, right? I mean, this is, I think, precisely what's happening here. The governor said that the five board members include people who "very much want to see Disney be what Walt Disney envisioned." Personally, I think it sounds a lot more like making Disney be whatever Ron DeSantis envisions, which is not pride celebrations at Disney World. The members of the board include Martin Garcia whose private investment firm regularly donates to Republican candidates in large dollar amounts, Michael Sasso, who's a local elections lawyer, which in Florida means that you're on the side of Republicans winning elections, Bridget Ziegler, a conservative school board member and wife of the Florida Republican Party chairman. There you have it.

It looks like the Magic Kingdom is now really a captive kingdom in DeSantis's would-be fascist state, and it's really, really troubling. This all comes from Disney's opposition to DeSantis's don't say gay law, and it just smacks of retribution.

Kim:

It really does. One thing that has been gobsmacking to me is the fact that you have Disney that, as far as we can see, did two things as we mentioned, spoke out in response to their employees, really pressuring the company to be more public about it against this don't say gay law and also against these laws that basically prevent schools from teaching anything about anything bad that happened to a black person in America, and also the fact that Disney, which has contributed a load of money to candidates including many Republican candidates, withholding some of that support in the wake of this law, and Governor DeSantis verbally saying out loud, "Oh, Disney's too woke, and that's why I'm doing this."

He didn't say he is doing this for tax reasons, for fairness reasons. He said he's retaliating against them. What I learned in my very expensive law school is that that violates the First Amendment. Congress can make no law, and it was extended through the 14th Amendment to apply to states. You cannot make

laws that violate this free speech. I also saw the Supreme Court said that corporations are people in terms of political contributions and speech high Citizens United. You guys, how is this not violative of the First Amendment? Well, the First Amendment doesn't enforce itself.

Disney would have to challenge this law in order for the First Amendment to apply, and Disney has chosen not to challenge this law. So, what do you guys think the calculation is here for Disney choosing not to engage? Do you think that's the right move? What about you, Jill?

Jill:

Well, I don't, but a lot of crisis management experts say that this is the right move. This doesn't mean it doesn't violate the First Amendment. It clearly does, but you're right, it's not self-enforcing, and unless they choose to take this to court, they won't be able to. I think the reason they're doing it is that they just feel like this is a bully they can't win against, and that it just isn't worth the fight, and so they're not going to fight it. I think the principle is worth the fight. If someone like Disney who has the funding and has the leverage...

I mean, imagine if they were going to pull out of Florida. That would be a devastating blow to the tourism of Florida. It would also be a devastating blow to employment in Florida, so I think they have a lot more power, and that they ought to use it.

Kim:

Joyce, do you agree?

Joyce:

I think Jill is right, but I've thought some about that threat that Disney would make of pulling out, and it seems like it would be a paper threat, because of their capital investment, right?

Jill:

Right.

Joyce:

You can't just pick up Disney World, and move it, which makes that difficult, but I think you're right.

Jill:

That's for sure.

Joyce:

I think that they have taken DeSantis's measure, and they've decided to live and fight another day. DeSantis won't be around forever, and I would hate to have Disney World as an enemy when it came up for the next primary races.

Kim:

Well, let's take a look at some other First Amendment problems in Florida, like a lightning round. Joyce, one is a bill that's been introduced. We have a new legislative season in Florida. One bill introduced would expand the don't say gay law in a way that I think violates the First Amendment. Tell us about that.

Joyce:

Well, violating the First Amendment seems to be a Florida specialty these days. In this case, it's just one state legislator who filed a bill that would impose restrictions on the use of pronouns in public schools that don't align with a person's sex at birth. Just let that sink in for a minute. Teachers can't use the pronouns a child wants to have them use for them. The bill would also prohibit classroom instruction on sexual orientation and gender identity in grades one through eight instead of just through third grade, which is what the original law does. The proposal also adds pre-kindergarten and private programs and charter schools to the law.

Look, I think the good news here is that right now, this is just one legislator. There's no real suggestion that this bill will gain traction, and will expand. Although there are fewer free speech concerns in a school environment, like you say, Kim, it is a bellwether First Amendment notion that states cannot engage in prior restraint. I think that there's a scope in here that's challengeable that will be challenged. Really, the problem goes back to where we started today's episode. What does the Supreme Court think these days?

Jill:

There is... It's worse even than all the things you've mentioned, which are a parade of horrors for sure, but it actually verbalizes that this is a policy that sex is an immutable biological trait, and that's where this is all going. It is really a horrible attack on the LGBTQ plus community.

Kim:

It is. It's hateful. Jill, there's another bill. I don't even think it's a First Amendment close call, but tell us about this other bill that would make bloggers who write about DeSantis or other state officials have to register with the state, and disclose their sources of income. I mean, that clearly violates the first amendment, but why do you think they're doing this?

Joyce:

That can't be America, right? I mean...

Jill:

We keep saying that, and yet this is America, and this is happening. That's why I'm getting so upset. I feel honestly like we're in a world where we're in 1939 in Germany, and saying, "This can't be happening here," and it is happening here. This law says that you cannot write about the governor, the cabinet of the governor, or any legislator without registering and without regularly recording who pays you for your opinions. So, you, Kim, cannot write anything about DeSantis, although you could because it excludes newspapers.

Kim:

It exempts the newspapers.

Jill:

It does. It has some exclusions. It excludes newspapers, but it's still terrible. It's terrible.

Kim:

The only people with the resources will challenge it, right? I mean, it's meant to make sure nobody will challenge it.

Joyce:

Exactly.

Jill:

Right. I mean, it is just a really bad, bad law.

Kim:

An individual wouldn't be able to.

Jill:

What's interesting is they also are trying to change the standard, and make it easier to sue for defamation, but I wonder how Fox is going to feel about that. I mean, think about it, because if it was just reckless as opposed to being reckless disregard and malice, if it was just negligent, well, my God, I mean, Fox is already being proved to be maliciously, deliberately untruthful. But if it was a lower standard, everybody would be suing them. So, I'm not sure that this is going to be that popular with the people that they want it to be popular with.

Kim:

Well, I hope not.

Jill:

It's a terrible law, and there's a fine if you violate it.

Kim:

I hope that it's not popular. Look, as a journalist who has been to China, as a journalist and seen how journalists are treated in China, and was so grateful when I got back to the U.S. of A ,and grateful for our laws, I hope that Americans see just how dangerous this is.

Jill:

For those of us who have worn glasses since we were in third grade, it could get boring to wear glasses, and to pick them out, but not if you use Pair Eyewear. It is so much fun, and you can change your look every single day. That's the best. Have you tried it, Kim?

Kim:

I really have. I was out running errands the other day, and I had my glasses on, but with the sunglass overlay on top, and it was great. I would go into a store. I would just pull that outside part out, and throw it in my pocket, do my shopping, go back outside, put it back on. It was so convenient and easy. When it comes to style, it's fun to keep things fresh, so why stick to the same old pair of glasses? With Pair Eyewear, you can switch up your look in a snap anytime with affordable base frames and customizable magnetic top frames in hundreds of styles.

Joyce:

Not only are they affordable, they have incredible looks for any type or mood. You can match your top frames for any occasion with only one base frame. They're easy to switch out, have hundreds of magnetic top frame styles to choose from. Top frames start at \$25, so you can build a collection that's unique to you. That means matching your outfit, supporting your home team, or repping your favorite superhero in a snap. It's so hard to keep yourself from picking less than a dozen.

Kim:

I really love mine. My base frame is a nice business in the base, and then I have party in the front. So, it's a nice neutral, translucent kind of frame frame, but then the sunglass snap on top is pink sparkles. We really can switch things up, especially given the usual price of frames, which is a lot. It's no wonder most people stick to wearing the same glasses pretty much every day. That's why we love Pair. With Pair, you can break up the monotony without breaking the bank. You can choose from a range of iconic base shapes starting at just \$60, including prescription. Then choose from hundreds of matching magnetic top frame designs that make it easy to switch up your look.

Jill:

The only hard part is picking which frames you're going to wear for a day. I now have so many. I have... You said the sparkle. I got a green sparkle for over my blue tortoise base frame, but I also have a red sunglass and a brown tortoise shell sunglass. I have a turquoise just plain frame one, so I can change to match any outfit I'm wearing. Even better, Pair Nose Vision is essential. Today, over 200 million children worldwide who need glasses can't get them, and beyond helping you craft a style that's yours, Pair wants to do some good. So for every pair you buy, Pair provides glasses to a child in need.

Get glasses that stay as fresh as your unique style with Pair. Go to paireyewear.com/sisters for 15% off your first purchase. That's Pair, P-A-I-R, eyewear.com/sisters. You can also find the link in our show notes.

Kim:

Now, we have come to what is truly our favorite part of the show is when we get to answer some questions from our listeners. If you have a question for us, please email us at sistersinlaw@politicon.com, or tweet using #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 questions there as many as we can. Our first question of the day comes from Stephanie in Durham, North Carolina, who asks, "I have a question regarding the Dominion versus Fox News case. If Fox is found to have violated Dominion's rights, what will the consequences be for Fox?"

Jill, what do you think?

Jill:

That's a great question, Stephanie. Thank you for sending that in. The damages being sued for by Dominion are \$1.6 billion with a B. That's a lot of money even for Fox News, but I think there's something more important than just the fact that the 1.6 could hurt them financially. It also means that there's a likelihood of recovery by smart Maddox, which is also suing them. It also means that if they lie again in the future, there will be more emboldened plaintiffs to bring those cases, and that they might have to start telling the truth. Based on the communications we saw through the discovery process, if they tell the truth, they're going to lose their audience.

So, this is a really big deal for Fox News, not just because of the damages, but because it could really run them out of business if they have to start telling the truth. It also is a way that can be used to let the audience know that their facts are not facts. They're lies.

Kim:

That's a great answer. Next, we have a question from Kathy who asks, "Please explain what the about to be in panel grand jury in Georgia is going to do. I understand that the special grand jury cannot bring charges. As for this new grand jury, will they reinvestigate by bringing in the same witnesses, new witnesses? How long will it take, et cetera? What exactly will they be doing, or is it a duplication of effort with ability to charge?" Joyce, do you have an answer?

Joyce:

Yeah. Jill, you said earlier that you thought you'd never be discussing respondeat superior law on the podcast. I thought I would never be talking about this level of detail on grand jury practice, but we are here because Georgia practice is a little bit different than federal practice. It's a little bit aberrational. What's confusing here is that in Georgia, prosecutors can't use their regular grand juries to conduct lengthy, extensive investigation like we could in the federal system? Those grand juries sit for a very limited period of time.

Fani Willis had to ask the court to end panel that special investigative grand jury spend her eight or nine months doing investigative work. Now, she, at her leisure, although she has said her decisions are imminent, can go to any one of these next few regular grand juries, and seek an indictment. She doesn't have to bring in all of the witnesses. You can use hearsay in the grand jury, so she can put on an agent to testify in summary form to what the evidence is, but she... It's not just going through the motions. She will have to satisfy this grand jury that she has evidence to prove all of the charges that she's seeking to bring an indictment for.

It's a lower bar in the grand jury. It's not proof beyond a reasonable doubt. It's just probable cause to believe that those crimes have been committed. It's tough to say how long it will take. I suspect that she will use summary witnesses for a lot of it. She may bring in a few witnesses in person, and we don't really know precisely how long it will take.

Kim:

Finally, we have a question from Doug who asks, "Under what potential circumstances would Trump be prohibited from running for office? What convictions would do it?" Doug, the answer is partially clear and partially unclear. The clear part can be found in section three of the 14th amendment, which prohibits anyone who participates in "an insurrection or rebellion" from holding any federal office. What is unclear is what actually constitutes that. Now, there is a federal law for incitement of an insurrection, but we've never been here before, so we don't know if that alone would trigger the 14th Amendment, that provision of it, or if there has to be some other enabling statute that says, "Once you get that conviction, then that statute prohibits someone from being on a ballot, or would invalidate their office if they were to hold that."

This is one of the many things that we don't know conclusively, because nobody else has ever done the things that Donald Trump has done. This is one of those areas that is unfortunately unsettled.

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Joyce Vance, and me, Kimberly Atkins Stohr. We miss Barb, and we look forward to talking to her next week. You can send in your questions by mail to sistersinlaw@politicon.com, or tweet them for next week's show using #SistersInLaw.

#SistersInLaw, we're going on the road, you guys. Come on and join us as we record the podcast live on stage, engaging with our listeners. It will be so much fun. Most of all, we'll be answering questions in our venues live. We're starting off in Portland, Oregon on May 12th, and we're going to New York City on May 19th, and Washington D.C. right where I'm sitting right now on May 21st.

There's still some tickets available. As of this point, there's literally one ticket in New York. New Yorkers grab that ticket. You have to hurry because the tickets in all our vineyards are going really fast. Go to politicon.com/tour to get your tickets, politicon.com/tour. We can't wait to see you. Also, support this week's sponsors. They're HelloFresh, Kitsch, Thrive Causemetics, Moink, and Pair Eyewear. You can find their links in the show notes, and if you support them, it will really help us to continue to bring this show to you, and make it happen. Keep up with us every week by following #SistersInLaw on Apple Podcast or wherever you get your pods, and please give us a five star review because it really helps others find our show.

See you next week with another episode, #SistersInLaw.

It's like Boogie.

Joyce:

That's funny.

Kim:

Boogie was a terrier, and I thought, "Great."

Joyce:

That's hilarious.

Kim:

He hunts rodents. I had a mouse once. He was lying on the floor, and he just looked up, and looked at the mouse walk across the room like, "Hi, welcome."

Joyce:

We had a cat who did that too in our old house. She literally watched a... I was like, "We're moving."

Kim:

I'm like, "What good..." I screamed.

Joyce:

It's true. It's why we have this house. We moved.

Kim:

Right? I screamed, and then Boogie looked at me like, "What's wrong with you?" I'm like, "It's a mouse." He's like, "Yeah, I know. I saw it." He was useless.

Joyce:

I am not a fan of rodents. Oh, no. They're so gross.

Jill:

I actually had an experience where when we first moved into this house, and Ivan, who is Michael's dog originally, but who really loved me... Michael was playing tennis in a midnight league, so he would go to play tennis at 11:00 at night.

Kim:

Oh my God. That's scary.

Jill:

I'm sitting watching television, and a mouse starts to come in the room. I scream, and the mouse runs away. Ivan is sitting next to me like, "So? Why are you yelling?"

Kim:

Calm down.

Jill:

Then the mouse comes back a little further into the room, and I scream, and Ivan doesn't move. Then the mouse comes in and runs all the way across the room, and I jump up. I'm standing on the chair. I grabbed the phone, and I'm calling the tennis club, and I... "Michael, you have to come home." They paged him. He comes to the phone. I said, "You have to come home. There's a mouse in here. I cannot... I'm standing on a chair." He said, "I'll be right home, dear." Then of course, several hours later after he finished his tennis, I'm still standing on the chair. Ivan is sitting there not doing a thing.

Kim:

I was like, "I don't see the problem."

Jill:

Oh God. Then Michael bought me a little teeny mouse that he named Ministry to put on my nightstand so that I wouldn't be afraid of the mouse anymore.

Joyce:

You better give me an exterminator.

Kim:

That's hilarious.