

Barb:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, Joyce Vance, and me, Barb McQuade. This week we'll be discussing the new legal challenge to legacy and donor college admissions, the court order banning government agencies from communicating with tech firms and the growing threat of political violence. And as always, we look forward to answering your questions at the end of the show. And remember, go to politicon.com/merch to buy our shirts, totes, and other goodies just in time for summer. We'd love to see you wearing something out and about. Before we jump into it, Kim, I wanted to follow up on something I saw you posted on Twitter that your new dog, Snickers was scared of the fireworks.

Kim:

Yeah.

Barb:

And you said you seem to be rather judgy on the fireworks. Are you anti fireworks?

Kim:

Well, now I am. I can see what it did to my puppy. DC has a very, very vibrant fireworks culture of people who live here understand it. And I never really grew up with that. I mean, I grew up in Detroit and yeah, they would set off some, but it wasn't quite the way that people do their own full on fireworks display from their backyards here in DC. It's an amazing thing. It was fine, whatever. I didn't really care about it. And my last dog was impervious to, I mean, Boogie slept through the DC earthquake. Boogie, didn't care about any noises or anything.

So now I have Snickers. She's one, she's a sweet girl. She came from a rural area. And let me tell you, I didn't even hear them at first because the TV was on and the fan was blowing, but she did. And she was freaked out for the whole night and we had to wait till almost 1:00 AM for me to walk her because of the noise going on outside. And it just made me think, now that I think about it from her point of view, shooting off loud noises at night is... Why do we do that? We don't have to replicate the rockets red glare on the 4th of July. We really don't. Like it's okay. We don't have to do... And let me be clear, it's not the national fireworks that she was freaked out by. We're far enough away from that, she couldn't hear that. It's the ones that people are shooting off in the house.

Barb:

Yeah, I'm with you on that.

Kim:

Like why?

Barb:

I'm with you. And Kim, I'm still here in Michigan and I don't think it is... Here's my theory. I don't think it's a difference in DC versus a difference in Detroit. I think it's just the timing. I think that it has just grown everywhere. It's a big thing. Like I love the city puts on a big fireworks display.

Kim:

Yeah, down over at the Detroit River.

Barb:

And they've got professionals doing it right and it's great and it's well organized. It's the goofy guy who got a bunch of stuff across the state line and wants to blow it up in your yard. The stuff I worry about. But-

Joyce:

That's my husband. That's my husband.

Barb:

Bright lights and big booms. So it's exciting on the fourth. How about you, Joyce? Do your animals do well with the fireworks?

Joyce:

You know, they don't. And so we've sort of radically changed our views. We used to always have a big 4th of July party. We used to always set off fireworks. I hope my mayor is not listening to this right now because we really liked them. And I mean, part of the thrill beyond the kids getting to hold sparklers was my husband inevitably lighting one and having it go skittering across the backyard. It was just sort of a spectator sport. But our animals hate it. The chickens were really upset. I spent a lot of time down at the chicken coop on 4th of July talking them off the ledge. And my sweet German shepherd, Bella, she's afraid of thunder, but it's worse than that. She's afraid of rain and when she thinks it's going to rain, she starts getting all shaky. So we had to pull out her little gummies and give her anti-anxiety gummies. And it was sort of an ordeal. I think I'm with Kim on this. I'm willing to give up my old love of fireworks for my pup. Yeah.

Barb:

How about you Jill?

Jill:

So my best fireworks were 1976 at the Washington Monument.

Barb:

I love it.

Jill:

There was a really big show and I was there with my Watergate colleague, Rick Ben-Veniste and it was really beautiful. Now most fireworks are the same old, same old every year. Brisbee doesn't care about noise, he's just fine with it. We did have a dog, Finnegan who had to wear a thundercoat and be held and take anti-anxiety pills because of noise. And the fire fireworks really made him upset. So we were confined to our house to take care of him on the 4th of July. And also I have it on very good authority that a lot of veterans and others with PTSD really get upset with fireworks. So maybe we should go back to the days when a city did one big show and it wasn't everybody in your backyard. And there are dangers of those. People get hurt every year with putting off fireworks they don't know how to manage.

When I was a little girl, my dress caught fire with a sparkler.

Kim:

Oh my God.

Jill:

Yeah. I mean that those are in the old days before we had inflammable fabrics for clothing and I wasn't hurt. One of my neighbors immediately threw me on the ground and rolled me around. So I didn't get burned, but it could happen. I mean it's one of those things. So I think we should rethink about having controlled professionally run shows and not having all these fireworks. Indiana allows totally free sale and a lot of people go there and bring them back to the Chicago area and they go off on the third, the fourth, the fifth, the sixth. They're still going off. So not such a good idea.

Barb:

Yeah, July 4th has now become the week before and the week after. But no worries for you, Jill. You're just like having your first cup of coffee by 10:00 PM when the firework are going off.

Jill:

Right.

Barb:

All right. Well we got more fireworks coming up for you in the rest of the show.

Jill:

Hey Joyce, I just got some new Thrive Causemetics and I am so happy with the quality, how long they last and that they contribute back to the community. Have you tried Thrive?

Joyce:

I have tried Thrive. Makeup is just something that comes with the territory for all of us doing TV. And even though I didn't wear very much of it before we started doing this, I'm in the thick of it now. And Thrive is one of the things that makes that fun for me. Thrive Causemetics makes high performance beauty and skincare products made with clean skin loving ingredients. There are no parabens, sulfates, or thalates. And their products are certified 100% vegan and cruelty-free. And 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 and especially good on the four of us, I have to say.

Kim:

I really love their brilliant eye brightener, especially when I want my eyes to pop on camera and I have terrible insomnia. So I have these dark circles that are terrible and when I have to get on camera quickly, it's really a great tool to make me look awake. It's a highlighter stick made to brighten and open your eyes, giving you an instant eye lift. All you have to do is apply it to the inner corner of your eyes to look like you've had plenty of sleep, even if you haven't or if you're like Jill Wine-Banks and you're up all hours of the night. Right, Jill?

Jill:

So actually Barb was up to do a morning show just as I was going to bed at 4:00 AM. Yeah,

Barb:

We were actually, we were texting.

Jill:

We did, we texted at four in the morning. It was really wild. But you're right about this eye brightener. I actually use it on the inner lid, lower lid. I don't know what part of your eye that's called.

Barb:

The waterline.

Jill:

The waterline. And it really whitens and makes my eye look open and bright no matter what I've had for sleep. And it is just one of the best things. You can also use it as an eyeshadow for a perfect daytime glow or use any of the metallic shades for an easy smokey eye. Its foolproof formula makes it extremely easy to apply and blend any of its 13 shades. You'll see why it has more than 10,000 five star reviews as soon as you put it on. Thrive has so many more amazing products, so you need to get over to the Thrive Causemetics website and check them out. We truly 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.

Barb:

Well, I don't know about a perfect daytime glow or an easy smoky eye, but what I do know is that if you can go to Thrive Causemetics, you can see for yourself. And right now you can get an exclusive 20% 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 20% off your order. The link to this deal also looks beautiful in our show notes.

Jill:

Immediately after the Supreme Court struck down affirmative action, lawyers for Civil Rights filed a complaint under Title VI of the Civil Rights Act of 1964 on behalf of a group of people with the Office of Civil Rights at the Department of Education challenging legacy admissions at Harvard. Saying that the practice discriminates against students of color by giving an unfair boost to the mostly white children of alumni. So Joyce, let's start with talking about what the Civil Rights Act of 1964 prohibits and why Harvard is covered by the Civil Rights Act.

Joyce:

So this is such an interesting question. First off, this is a complaint that's filed with the Department of Education. It's not a lawsuit. I think Barb will talk about that more. But in essence, this is asking the Department of Education to take action on behalf of student groups. And the complaint alleges that legacy admissions preferences at Harvard violate federal civil rights law because they overwhelmingly benefit the white applicants. This isn't just a small thing, this is an overwhelming feature of the landscape. Title VI of the Civil Rights Act prohibits recipients of federal financial assistance from discriminating based on race, color, or national origin, both inside of the classroom and outside of the

classroom. There's the admissions aspect and it applies not just to colleges and higher education, it also applies in elementary and secondary education. It applies in all 50 states in the District of Columbia, Puerto Rico and US territories.

So it is an expansive provision and the right way to address these sorts of situations. But you might think that Harvard with its massive endowment doesn't need federal money. And you would be wrong. Harvard does receive federal funding, which is what brings it within the Civil Rights Act. It's really interesting, I took a look at their website and they put it this way. They say, "Harvard must fund nearly two thirds of its operating expenses, \$5.4 billion in fiscal year 2022 from other sources than the endowment such as federal and non-federal research grants." So federal funds flowing into Cambridge, Massachusetts, Harvard has to comply with the Civil Rights Act.

Jill:

And Barb, what is the standard for relief and why was this complaint filed with the Department of Education instead of in federal court?

Barb:

Yeah, this is an interesting legal test because unlike a claim for equal protection under the Constitution where you have to show not only that there was some sort of discriminatory effect, but you have to show a discriminatory purpose. When it comes to a Civil Rights Act violation, all you have to show is that there is a disparate impact on a particular group. That's enough to raise what's called a prima facie case. And here they allege in their complaint that 70% of the students who benefit from this legacy or donor admissions program are white. And they said that ordinarily a person has a 3% chance of getting admitted into Harvard. But if you are legacy or a donor, your likelihood goes up by six to 7%. So you go from about 3% to 21% likelihood of getting admitted. That's a meaningful change. So they have made it appear, if those facts bear out that prima facie case and now the burden shifts to the defendant to show that there is some educational necessity for this educational program, the legacy and donor benefits.

And I think that could be difficult. So again, this will have to be investigated to see whether there is some educational necessity. But even Harvard doesn't say it's an educational necessity. What they say is that the reason they have these programs is one, to build a cohesive community and two, to encourage generous financial support.

Kim:

At least they said it out loud.

Barb:

I know, right? I think they could be in some trouble here. And even if they can show that there's an educational necessity, the burden then shifts back to the plaintiffs to say, yeah, but it can be achieved with something that has a less disparate impact. You know what it reminds me of Jill, is I remember when I was the US attorney, we had a case involving redlining by a bank. Where a bank was rejecting loan customers from particular zip codes, which happened to be in majority minority districts, zip codes. So mostly African Americans living in these zip codes. And when the investigation occurred they said, well, we're not discriminating based on race. We're discriminated based on zip code because our data shows that people who live in those zip codes are worse loan risk. And so we don't lend in those zip codes, we're going to reject people based on zip code alone as opposed to their own credit worthiness.

And the answer, you know what? Too bad because it was under the Fair Lending Act, it had the same structure of disparate impact. And so we were able to look at them and say, it doesn't matter that you're not trying to discriminate against African-American borrowers. You are discriminating against African-American borrowers. You have this disparate impact. And so under that theory, which holds under the Civil Rights Act of 1964 as well, I think they've got some problems.

So you asked why is this a complaint with the Department of Education? That's the way procedurally it's supposed to work under this act. The Department of Education conducts an investigation. They get to go in and ask Harvard all of these questions to try to establish it. Most often when there is a violation that's found, the parties will work out an agreement to resolve it. But if not, then a lawsuit could be filed at the end of it if the Department of Education finds that indeed there has been a violation here. But it looks like they have a decent case to me.

Jill:

I thought as soon as I saw the opinion that it was screaming, okay, you're getting rid of this educational benefit of diversity by eliminating affirmative action. Got to look at the legacy for sure. And Joyce, did you want to say something before I ask Kim the next question?

Joyce:

Well, I was just going to ask Barb. I wonder if you had the same experience that I did with this type of case where every executive branch agency. DOJ has one, but also for the purposes here, other executive branch agencies have something called an Office of Civil Rights, an OCR. And so in this case, the OCR at the Department of Education would actually become the plaintiff. There's this issue about whether or not, well, I think the Supreme Court has actually decided that individual plaintiffs don't have a private right of action here. So it would have to be brought by the Department of Education. But sometimes people love to talk about how horrible federal employees are and government employees don't do good jobs. The folks in the OCR are some of the hardest working people I've ever had the chance to work with.

Barb:

Yeah, very good lawyers at the OCR for Department of Education.

Joyce:

I can't wait to watch this lawsuit happen because I like seeing these guys in action.

Jill:

So let's look at this Kim for why was it filed now and what relief is being requested.

Kim:

So it was filed now obviously because this affirmative action case came down. And that was one thing that a lot of people watching this in including people in Massachusetts where this case was brought, were looking at as what could be the solution in anticipation for what everybody knew the Supreme Court would do. So that's why we're seeing it now. And also before I get to what they're asking for, just to buttress the point that Barb was making. It depends on how the university uses legacy admissions too, that it can actually make an even bigger difference. So the way that admissions go is that it's in sort of groups. All the applicants are considered, then they whittle it down to a certain number and then as

they're going through, they assign certain tip factors that are weighted in deciding who to keep. So with legacy, it actually with each time they whittle down, the group of applicants, legacy continues to be weighted.

So when you look at some applicants, it actually is more than what you say, it's six or seven times. In the data in the complaint it says in some cases where there is normally a 3% admission rate. When you consider both donors and legacy admissions together, for some students it actually boosts the admission rate to up to 42%. You almost have a half shot of getting in. If your family went to Harvard before and they gave money. Which is crazy, you take it from 3% to 43, that's a big difference. And the huge, huge predominance of those students are white. So I think that's really to drive home the difference that it makes between the two. Now when you have other schools that aren't as prestigious as Harvard, it's not quite that high, but it still matters if they're considering legacy and they can't consider race. It can only have the impact of advantaging people who have greater generational wealth, which tend to be white people.

But I digress from that. But what they're asking for the Department of Education, they're asking them to open an investigation into the use of legacy admissions really to get to the bottom of exactly how it's used in that and also to declare that it violates Title VI. And if Harvard wants to keep getting that federal money, they have to stop. And also asking Harvard to change its policy. Not only to stop doing it, but to ensure that applicants have no way to identify if they have a familiar relationship. And I think that's important.

Remember we have this question, I don't think it's real, but this whole idea in the affirmative action case is like, well, you can write that you're black in your essay and then they can consider that. Like how? How do they consider that, right? This is specifically saying even if they say, I've wanted to go to Harvard since my dad and my grandfather went and it's the only place that I want to go that they can't consider that, or they have to not somehow blind that out. So they're asking for a lot and we'll see what happens.

Jill:

Yeah, it seems like a really good list of things that they're requiring because they say that whatever the impact was, it's much more dramatic now that you've taken away the one thing that offset it. Which was being able to consider race and now you can't do that. So you have an even bigger disparate impact. But you've all sort of said, but just let me check in with you all on the likely outcome. You think this is a good shot that the plaintiffs are going to prevail?

Joyce:

OCR will have to do its investigation and make sure that they really can establish disparate impact. But doesn't that seem like a foregone conclusion here? I mean in the Supreme Court case, it essentially comes to light that Harvard is doing this 70% of the time with its white applicants. I think the case is there, there's still I's to be dotted and T's to be crossed.

Barb:

Yeah, I agree with Joyce. Facts matter and right now these are allegations and so the Department of Education will go investigate and see if these facts are true. They may be additional facts that are not presented. There may be inaccurate facts that are in there, but as alleged, it looks like a pretty strong case for me. Of course the defendants get an opportunity to say that this is an educational necessity, but it's hard to imagine that they'll be able to fulfill that. So I think it's a pretty strong case.

Joyce:

And maybe they won't even want to in this climate. Maybe Harvard would view this lawsuit as helpful, not harmful.

Barb:

And you're right. Now that affirmative action has been struck down, maybe that changes their view of this.

Kim:

And especially given there are a number of schools in Massachusetts alone that after this decision came out, announced voluntarily that they would stop considering legacy as part of their admissions program. Even outside of Massachusetts. I think for example, NYU says they're not changing their policy, but that basically they hadn't really considered legacy for some time. So you have schools that are coming out and saying, nope, we're not doing it, or we're going to stop doing it. So I don't know why Harvard can't just... Listen, Harvard has an endowment bigger than some countries in this world. They can stop doing legacy admissions and they'll be fine. They should just do it and moot this case.

Jill:

So one last question. There's another preference, which is the athletic preference, and I'm just wondering why they didn't challenge that at the same time. Anybody have a theory on that?

Barb:

Well, I don't know if it has a racial component.

Joyce:

This one really cuts across the board too. I haven't seen data, but at schools like Michigan and Alabama, that preference helps some young black men get into school. On the other hand, in my East Los Angeles high school, we didn't have the opportunity to do crew and sports like that. And there's some information that says that the athletic preference really reaches out to those sort of upper crusty waspy sort of sports. So I think we will see litigation about this once the data shakes out.

Kim:

I think that's exactly right. I think something like this can be case by case, and it depends on the school. I mean, I think what I think of, taking Joyce's point about how a lot of black students are recruited for things like basketball or football. You have some really elite schools that are recruiting fencing and the stuff like that, that in itself has a huge racial disparity. And remember varsity blues, you had these rich people with their kids Photoshop on crew and stuff. That just shows you how that gives you an advantage. I think case by case it could be challenged, but I think it depends on how it's used.

Barb:

You mean all of those years of polo lessons for junior are going to go to waste?

Kim:

Yeah, it's not like really in the inner city, you see people doing pick up polo.

Jill:

I'm going to look up the name of the film that was made about a philanthropist in Chicago who donated money to a Chicago West side school, all black for crew. And it is an amazing film with an amazing consequences of good value to these students. So maybe they got into Harvard.

Joyce:

But I mean that prove the point, right?

Jill:

It does. Of course it does.

Kim:

You have to have that. These are sports that are not, like you can't pick it up. There's all kinds of equipment. There's all kinds of stuff. I remember when I was in school, I wanted to be in band and I wanted to play the cello and the school's like, we'll get a cello for you. We'll do this, we'll do that. And I went home and handed some papers to my mom and she looked at them and she certainly saw the price. And she's like, no, you-

Barb:

How's the piccolo? How about the piccolo, Kim?

Kim:

We're already paying for your piano lessons. Go see your piano lesson. I mean, that's a real reality people can't be buying all this stuff.

Barb:

Carry your piano in the marching band. [inaudible 00:25:58]

Kim, there you are in that DC haze. How does your skin look so glowy?

Kim:

In summer, I turn even more so to OSEA Malibu products, which I really, really like because they keep your skin feeling good, but they're not too heavy. Like in the summer humidity, sometimes you don't want to use too much. And I think it's just right. That seaweed formula is really great. We all want that summer glow. And OSEA is offering a rare opportunity to try their best-selling body care set at an amazing reduced price. It's one of my personal favorites in the DC summer heat, which is here. And I know my sisters love it too in all the places where they live. It includes their TikTok famous Undaria Algae Body Oil and Undaria Algae Body Butter. Plus their ultrarich Anti-aging Body Balm and Salts of the Earth Body Scrub. I really like that. It smells so good. My dog Snickers like licks me after I used it because it smells so good.

Joyce:

That might be TMI.

Barb:

She wants to eat it. I want to eat it too. It's so good.

Kim:

They all feel so silky and cleansing. They're perfect for summer travel.

Joyce:

You know they really are. I have the little summer travel set that has all of those items in it. And I love the scrub in the shower. It's perfect when you've been traveling and you just need to get refreshed. But golly, the body balm is amazing at this time of year when you feel so dry. And with convenient TSA friendly size packages in a beautiful, reusable, vegan leather bag, you can enjoy silky soft, radiant skin wherever your adventure takes you with OSEA. Make OSEA's best seller's body care set your new glow to for summer and make sure everyone can see you shine.

And in the world of high prices you'll love knowing the set has a value of \$78, but right now you can get it for only \$52 oseamalibu.com. That's an incredible 33% savings and we can all use that when it comes to treating ourselves. Plus as a special treat for our listeners, you'll get an additional 10% off when you use our code Sistersinlaw.

Barb:

Did she say glow too, Jill?

Jill:

She did. But she also talked about a bargain and I love bargains, but I also love that they're vegan. And another thing that's really important to us is that OSEA is a one-stop shop for clean, vegan, cruelty-free, clinically proven and climate neutral certified products for both face and body. Even better, they've been making seaweed infused products in California that are safe for your skin and the planet for over 27 years. Never choose between your values and the best skincare you can trust will work.

Barb:

Don't miss this rare opportunity to try OSEA's bestsellers body care for 33% off and 10% off your first order site-wide with code SistersInLaw at OSEAmalibu.com. You'll get free samples with every order and free shipping on orders over \$60. So head to OSEAmalibu.com and use code SistersInLaw for 10% off. You can also find the link in our show notes.

Kim:

A federal judge reigned on the Biden administration's 4th of July with an order barring certain officials from communication with social media companies about the way they moderate content. Thursday night, the Biden administration fired back appealing that order to a federal appellate court. Joyce, I want to start with you because I want to understand how we got here. The Biden administration has said that it has the right to communicate with social media companies like Twitter and Facebook about the way they moderate dangerous misinformation. We're talking about things like false information about vaccines or election fraud claims that are totally untrue. But GOP State Attorneys General said the administration is acting like big brother and imposing this Orwellian scheme to silence conservative speech. So this is all about the First Amendment right? Is there a clear First Amendment standard for regulating false information? I think that's so interesting. Does misinformation have First Amendment protection?

Joyce:

I'm sorry, but did you say misinformation? Doesn't Barb McQuade have a book coming out early next year on misinformation?

Kim:

Well, I'm going to ask her about the national-

Barb:

I like to be called Miss Information.

Joyce:

Well, it is an interesting question. I'm not even sure that this case really is about the First Amendment. I mean, if you take a step back and think about the context here, this is the government and the person of the executive branch communicating as the government does with a lot of different kinds of business interests and other groups about issues of mutual interest. Here's stuff that's really risky in our society and there's a good parallel. For instance, when it comes to cyber threats, there are these well established lines of communication where government coordinates with folks in different industries; in banking and in business and in sports and stuff like that. So in this case, the Republican Attorneys General who were involved, their complaint is about the government communicating with social media platforms about important topics, public health and national security. And these conversations are essentially about misinformation that gets circulating on social media platforms.

And that communication is two ways. This is how it works for folks who've ever been involved in it. You share what you have, they share what they have. Everybody benefits. But the meat of the Attorney General's claims here is that government threatened their platforms with consequences if they didn't take information that the government didn't approve of off of their websites. I mean, this is sort of Twitter file stuff on steroids, right? You'll recall all of those allegations that conservative voices were being silenced or shadow-banned on Twitter. And it's all just a bunch of made up junk. And somehow it ends up in this form as a lawsuit, which is based completely on a misapprehension of what the government does in these settings. Because the FBI's general counsel is not walking in and telling Twitter, you must take down these posts. What's happening is they're walking in and they're saying, hey, we are seeing these sorts of things circulating on your website.

We'd like to make sure that you're aware of it. And then the bureau leaves it up to, and I'm using Twitter as an example here, it could be any other platform. They leave it up to them to follow their own policies. And in most cases, if you're putting out dangerous misinformation, well Twitter, Facebook, Instagram, what have you. Even rivalry the knitters' version of Facebook. They will take that information off of their website on their own. Government lawyers know that if you threaten someone, if they don't remove speech, that you are treading on First Amendment territory. There's not a clear standard. It's really nebulous. So government general counsels tend to advise people to stay far back from that line. But by and large folks in government are confident that these entities will follow their policies and that they will remove dangerous conduct. And so I think this whole idea that this is a First Amendment lawsuit is a little bit off balance.

It's very overblown. We see that reflected by the way in the judge's order. The judge grants a preliminary injunction here that says, government, you got to quit talking to the social media companies. And it's arguable that there's no standing here. The government has made it clear that that will be one of its basis for appeal. Even if there is standing, the judge's order, which has to say that

there's a substantial chance, a substantial likelihood that the plaintiffs would prevail when the case is heard on the merit, the judge can't even get that far. And so there's this very awkward preliminary injunction order that says like, well, if everything in the plaintiff's complaint is true. And I'm just sort of beating my head into my computer as I'm reading it thinking, well, this is the whole point. You have to find that there's a substantial likelihood of success on the merits and you can't do that here because it's just not a First Amendment claim.

Kim:

So on that vein, Jill, on Joyce's statement that this isn't about the First Amendment at all. In addition to the two GOP State Attorneys General from Missouri and Louisiana who are challenging this policy as dystopian. There's another plaintiff who's a conservative website owner claiming that the administration is just trying to suppress information about things like Hunter Biden's laptop. So do you think this is about politics or do you think this is about the constitution?

Jill:

Well, Joyce is completely correct. This is absolutely a lawsuit without any factual foundation and it is definitely political. And just to go a little further in terms of what kind of allegations are even in the lawsuit, there's a bunch of references to Section 230, the communications law that gives some immunity to social media sites, internet sites from their ability to control and moderate what's on their platforms. And these are just random statements made by a variety of politicians in no particular context and definitely no evidence that they are related to if you don't take down something, we're going to do it. I think Joyce has clearly defined what the role of government is, was and should be. Which is to bring to the attention of any speaker, whether it be through the internet, websites, social media, or any other place saying, just want to call to your attention that I see this as part of your publication.

And here's a list of things that I think are true facts that are contrary to that. That is the role of government. It's the role of many other news media who may also find those things and bring them to the attention of other people. So it isn't really a legal claim based on any facts. I think the evidence will end up never being able to be shown to in any way challenge the First Amendment or substantiate that the government was actually trying to suppress speech. And we all know that false statements and threats are not protected by the First Amendment. So I don't think there's anything to do with the First Amendment in this case.

Kim:

So Barb, the Biden administration is defending its policy not only on First Amendment grounds saying that the order would actually suppress the free speech rights of covered federal employees by basically muzzling them. But we're talking about some of the specific employees that are covered about are people in the DOJ, the FBI, the Department of Homeland Security. And so this is really a national security issue too. So what do you think about the Biden administration's appeal, the argument that they're making there?

Barb:

Yeah, I see this getting reversed on appeal. I know it's a very conservative Fifth Circuit, but I think this decision is so nonsensical and it's so counter to good government and good law enforcement that I see it getting reversed. It's quite ironic that we have a judge who perceives imagined censorship, who then engages in actual censorship, right? By telling the government that it can't talk to social media companies. It's an interesting order in that it goes through all the stuff the government can't do. And

then it says, of course we have all these carve outs. And so the following reactions are not prohibited by this order, including contacting or notifying social media companies of national security threats, extortion or other threats on its platform. But I don't know how that squares with the first part because the first part of it says they can't meet, they can't flag content, they can't encourage the removal of content.

I mean, what's the point of flagging it. Saying, hey, by the way, this post is a national security threat if that is not flagged or encouraged to remove. So I think it gives with one hand and it takes away what the other, and it creates this chilling effect that the government doesn't know what's permitted. And so I think it's either got to be a much more narrow order or just removed altogether because the government does go in and do this. They may become aware of a recruiting video being put out by ISIS that looks all glamorous and they say to Twitter or Facebook or Instagram or Threads or whoever it is, this is an account run by a known recruiter for ISIS. I know it just looks all gauzy and glamorous. There's nothing here that showcases violence, but they're trying to induce people to travel overseas. So just wanted to flag it for you. You of course are free to do whatever you do within your own community standards. My guess is those social media companies don't want anything to do with this.

They say, thank you for letting us know. We're going to take it down. Some of the things that are complained of, even in the judges' language who talks about this as Orwellian and dystopian. One of the posts that got removed, one of the people whose account ultimately got suspended was a guy who posted things that said, COVID vaccines don't work. They only address symptoms, not the cause. He posted video Kim of Detroit, of a truck showing up and dropping off ballots and then saying, and these were fake ballots for Biden that got counted when there was absolutely no evidence for that whatsoever. And so the idea that the government should just sort of sit on its hands and not flag these things for the social media companies say, look at this thing that's up. It might not hit their own, what do you call them? Algorithms, because there's nothing on its face objectionable about seeing this truck pull up.

But when the government recognizes it as something that is false and dangerous and just flags it for them, and that strikes me as good government, what our government should be doing to protect national security and public safety.

Kim:

So Joyce, Jill, what do you think? Barb says, she thinks that this is going to be reversed even though this is all happening down in New Orleans. Now, I'm going to have proud Mary in my head after. (Singing). Sorry.

Jill:

I'm not singing, but I have different songs in my head. I have Fats Domino, walking to New Orleans and House of the Rising Sun by the Animals. That's going through my head.

Kim:

Good ones. So anyway, this judge District Court Judge Dowdy is quite conservative. He's a Trump appointee. But the Fifth Circuit is also about as conservative as they come down there in the Delta. They have reversed do Dowdy before, as I learned on Twitter. But what do you guys think will happen at the Fifth Circuit? And if this goes to the Scotus, Joyce?

Joyce:

I admire Barb's optimism. I wish that I could adopt it. I think she's dead on the money when she says that the Fifth Circuit should reverse this utterly meritless decision from the district judge. But the Fifth Circuit really has become problematic in its tenor and its willingness to go along with results oriented sorts of rulings. What you got to hope here is they'll see how completely unworkable this is. Maybe they'll view it as less the ideological issue about vaccines, which I think is where Judge Dowdy comes from. I mean, it seems to me that he is someone who on paper looks like a good judge. He gets confirmed. 98, nothing in the Senate, former prosecutor, former state court judge, well-liked. And folks say he's a really good smart judge, except he has this weird thing about vaccines. He ruled against the government repeatedly when there was an effort to impose vaccine rules. And perhaps that's what colors his decision here. Let's just hope that the Fifth Circuit won't go along with it.

Jill:

So I'm an optimist by nature, and I really am more in accord with what Barb is saying, that this seems to be a factually and legally poor showing by the petitioners and that it should be reversed. But I also, in my optimism, see some ways around this very vague order, which is first disinformation is not protected by the First Amendment. So you start with that, and then you could certainly have the government saying publicly what it supposedly is saying, and there's no evidence that it is to social media sites. Which is, or the part that I think they are actually saying could be said publicly, which is we are just calling to the attention of all people that the information on X social media site is false. Here's the correct information. So that's one way around this.

They can also post on their own websites or on their own social media sites, the truth as a way of combating it. And as Barbara pointed out, there are exceptions which allow them to contact these social media sites because it is ridiculous to think that they couldn't contact social media sites at all in all circumstances. So I think one, the opinion can be limited just by nature. And two, it should be overturned. And I think even Joyce would agree, it should be overturned.

Joyce:

Not close. Absolutely.

Jill:

Yeah.

I have been using an app named Honey, which is always a funny word to use, but it is one of the most fun things to have. It costs you nothing and it saves you lots of money. And I'm very proud to be introducing it to you. Have you used it, Barb?

Barb:

Yeah. In fact, today's episode is sponsored by PayPal Honey. It's the easy way to save when shopping on your iPhone or a computer. I've used it. I just bought my son a pair of shoes and when I went to check out the honey coupons dropped and I saved \$20. How about you, Joyce? Have you used Honey?

Joyce:

Yeah, Honey is great. I actually just redid some furniture in my husband's home office. And let me tell y'all, Honey was a lifesaver. I don't ever want to be without Honey. It feels great to know you're getting a deal. And it also means you're playing the game at a higher level. That's why we all love Honey. And thanks to Honey manually searching for coupon codes, which I used to always do, it's a thing of the past

because with Honey, you have free coupon codes that show up automatically. It's a free shopping tool. It scours the internet for promo codes and applies the best one it finds to your cart.

Kim:

I recently got a new laptop and the first thing that I did on it before I even installed the VPN was installed the Honey app. Because I rely on it. I forget to look for coupon codes. And it's so good knowing that it's on there and it has your back. You don't have to do anything, it does it for you. So just imagine you're shopping on one of your favorite sites, and when you go to checkout, the Honey button appears and all you have to do is click apply coupons. And then you wait a few sec, not even a few seconds. And Honey searches for coupons it can find for the site. And if it finds a working coupon, you will watch the prices drop.

Barb:

The best part when I saved that \$20 on that pair of shoes was that Honey made it so easy. And in case you weren't sure, Honey doesn't just work on desktops, it also works on your phone too. Just activate it on Safari on your phone and save on the go.

Jill:

So if you don't already have Honey, you are straight up missing out. And by getting it, you'll be doing yourself a solid and supporting this show. Get PayPal Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters. You can also get that Honey by using the link in our show notes.

Joyce:

So on June 29th, a Washington State resident named Taylor Toronto showed up in President Obama's neighborhood and on a live stream, said he was looking for a way in through the sewers. The Secret Service had been tracking Toronto and they arrested him. All of this happened because Donald Trump posted the Obama's address on his Truth social site. It was just hours after that post that Toronto showed up. Jill, let's talk about the background here. I don't think this story has gotten as much attention as it deserves. What was Toronto's connection to January 6th and what had he been doing in the days leading up to his arrest?

Jill:

It's such an interesting case, and you're right, it isn't getting the proper amount of attention for a variety of reasons. But he has four misdemeanor charges in connection with having been at the Capitol on January 6th. He also has a lawsuit by the widow of a police officer who committed suicide after being attacked. It's surprising that he wasn't arrested sooner, given the evidence against him and the charges, these four misdemeanors. In the days before this happened, there's a series of things that happened.

First of all, on the 27th, the Supreme Court decided a case called Counterman. Now, I'm not sure that he knew about that. I'm pretty sure he didn't. But it's just sort of interesting timing because it could play a role in this. But then he also was live-streaming himself. He started living in his van. He moved from the state of Washington to Washington DC where he began living in his van. He live-streamed himself inside of a Maryland school, an elementary school near Jamie Raskin's house, making threats. He also was live-streaming himself just before he was arrested in Obama's Kalorama neighborhood, very near where I lived. Although Obama's on the much richer half of the Kalorama area that I lived in. And he was livestreaming himself saying threats. He was also making threats to Kevin McCarthy as well as Obama

and Raskin. And he also live streamed himself saying that he was going to blow up the National Institute of Standards and Technology.

Joyce:

They have a new nuclear reactor at that facility on campus.

Jill:

They do. On that campus they do. And so why it took so long for Secret Service or any other law enforcement agency to arrest him and find his van. And then they had a foot chase through Rock Creek Park near where I lived and near where Obama lives. It's really remarkable that they didn't have better law enforcement catching him. It's very distressing. So here he was in a van with two big weapons, 400 rounds of ammunition threatening to detonate near a nuclear site and he didn't get caught till after all of that. So it's very distressing to me.

Joyce:

Yeah. So Barb Toronto is facing misdemeanor charges in connection with January 6th. As Jill says, his conduct is outsized for those charges. But I have so many additional questions. Do you think DOJ will be successful in the current proceeding that's going on to try to detain him pending trial? Do you think that there will be additional charges based on the incident involving the Obama residence or anything else here? And what do you think charges might look like if they happen?

Barb:

Yeah, first I can't get over the fact that President Obama lives in Jill's old house in Kalorama. That's my takeaway. Wow, I knew she had some interesting jobs, but no, now she's at homes too.

Joyce:

You learned something new about Jill Wine-Banks every episode.

Jill:

I wish that were true. Oh, man.

Barb:

Yeah, but Joyce, to answer your question, I think they're in trouble. I think they're trying to double dip here a little bit because as you point out, he's currently charged with a misdemeanor. And to get somebody detained in federal court, you have to really follow the rigor of the Bail Reform Act. And it says that you can detain people for one of two reasons. Either a risk of flight and that can be applied to any offense or if the government can show by clear and convincing evidence that the person is a danger to the community. Now this guy sounds like a danger to the community, but that part of the statute only kicks in when somebody is charged with a particular kind of crime and all of them are felonies. Now, there is one where a felony is committed with a dangerous weapon. So I think if they could find a felony to charge him with, they could argue for his detention.

But on these misdemeanor charges relating to January 6th, I think it is not detention eligible. So I think he cannot be detained on that basis. They're trying to kind of shoehorn that in where it doesn't fit. What I think I would be advising them to do instead is to look for a new charge based on this new conduct that makes them concerned that he is a danger to the community. But as you know, and Jill, as you

mentioned with this Counterman case, this new threats case, proving these kinds of cases or even finding a statute that fits conduct can be really tricky sometimes. I can tell you in the work I did at the US Attorney's Office in National Security, sometimes you would find out about somebody who was doing something that sounded really scary. Like driving in a van near a prominent person's home with a lot of guns and ammunition in it.

Nothing illegal about that. That is perfectly legal to do, creepy but legal. And so you'd have to find an offense. Now, there may be a threat here, but under this new Counterman case, you would have to be able to show not the old standard. Which is that a reasonable person would hear it and think of it as being a threat. The new standard is whether the person themselves had a subjective intent to threaten, and it has to be at least reckless. And sometimes if you find somebody who is mentally unbalanced, you might not be able to prove that. But I think if I were in that US Attorney's office, my goal would be to find an offense for which we can charge him that is detention eligible and get him in front of the judge. And maybe you can even have a competency exam where you can determine that the person is not competent to participate in their own defense.

Maybe yes, maybe no. And get them help, because that sometimes it may be what the person needs. And sometimes I've been involved in cases where you've charged someone for doing something that seemed very scary. It is because they had some mental health issue, they were experiencing a crisis, they were not taking appropriate medication. And when they went through this competency process, they got the medication they needed and were just as horrified as anyone else about what they had done and agreed to get help perhaps enter into a guilty plea and try to work towards some solution.

Joyce:

It's an interesting situation because Toronto is a veteran. He's got PTSD, but at the same time he had two nine millimeter handguns, hundreds of rounds of ammunition and a machete. That detail sort of sticks out with me in his vehicle when he was arrested. And he has 20 firearms that are registered in his name, the other 18 aren't accounted for. So there really is this important balancing that goes on here.

And Kim, as Barb points out the First Amendment issues here, they make it a little bit of a dicey proposition. You've got someone who's saying, I don't believe that the federal constitution or the state constitution applies, for instance, that's First Amendment speech. You do, however, have the former President of the United States who has pushed out President Obama's address very publicly. Do you think that Trump can be held accountable here? And if so, how does that accountability happen?

Kim:

Yeah, so like many things. We have never had a case exactly like this because we've never had a former president out there revealing personal information. Essentially doxing, right? Doxing somebody on their social media, although we have with Trump. Here's one problem, we have with Trump. He's, he's tried this trick on the campaign trail before. Remember when he gave everybody Lindsey Graham's phone number and like nothing happened to him? Lindsey Graham kind of laughed it off and it was sort of like he got away with it, right? This is a problem. He keeps getting away with things. So he keeps doing things that are more and more dangerous. And he's on the stump right now, and he thinks that it's cute to do something like this. So you are right. It is tricky with the First Amendment, particularly with political speech in the conduct of a political campaign.

So that enjoys some of the most robust First Amendment protection on the theory that we want to encourage robust political debate. And since the beginning of our nation, political debate can sometimes get nasty and dirty. And that's what people who are in the political sphere sign up for.

Differences here, a few differences. One, president Obama isn't running for anything right now. He's a private citizen. He's not a candidate for anything. Two, as I said, this is something that I think could fall in one of a number of different categories that would be an exception to that broad First amendment protection. One, as I mentioned, is doxing. Which would fall, the legal standard for whether doxing is a carve out from the First Amendment is the very same standard we were talking about with respect to Counterman, that true threat standard. And you would have to prove that what former President Trump did was reckless, which I think that you probably could. Listen, this was stopped because President Obama has Secret Service protection.

If he did this to somebody else who doesn't, it could have been a very different circumstance. I think there's also, depending on what the underlying charges are for this individual who went to Kalorama incitement. Incitement is not covered by the First Amendment. Now that's something that I believe the DOJ, I hope the DOJ is looking very closely with respect to January 6th. That's different because there's a clear statute there that prevents people, that protects the administration of, I forget the exact name of it, I probably should have looked it up for this podcast. But Congress was doing their job, and there is a statute that says you cannot interrupt Congress when they're in the course of doing the course of their work. It's a clear statute there. Here you would have to have a clear underlying statute that is a felony, and perhaps you can find that Trump incited that action on their part. So there are ways that maybe you can get at him criminally.

Will that happen? Probably not. But I don't think that there is a broad First Amendment protection for what Donald Trump did. But standard just isn't crystal clear again, because there is no [inaudible 00:58:37] president again, because there's never been a Trump.

Joyce:

A little bit of deja vu there from some of the earlier discussion about the First Amendment. I remember how outraged people were when peaceful protestors held vigils outside of Justice Kavanaugh's House and other Supreme Court justices. Just that act of sort of peaceful prayer was threatening.

Kim:

And I want to say, listen, and other things happened to Kavanaugh, right? Somebody did show up at Kavanaugh's house with weapons. And they were [inaudible 00:59:03].

Joyce:

That's right, yeah.

Kim:

But you did not have a single person that gave out Kavanaugh's address. That's a different, people are trying to compare those things as equal, and they're not.

Joyce:

I think it's often really helpful to sort of put the shoe on the other foot. Barack Obama tweets, Brett Kavanaugh's address, and people show up at his house. And I mean, people would be outraged. There has not been as much outrage here as I think this sort of merits. But Jill, we've touched a little bit on this late Supreme Court term case, Counterman versus Colorado, that the Supreme Court decided at the end of the last term. How do you think it implicates the result, not just in this case, but in other situations where people are engaging in sort of quasi first amendment protected conduct? I mean, I hate to say

that about Trump, but maybe it is. Maybe it's not clear. What do you do? Can the government take action without violating the First Amendment under the Counterman standard?

Jill:

I know we're all big believers in the First Amendment and free speech. It's really important to democracy and it must be protected. But as we've said numerous times today, false information is not and threatening information is not to a certain degree. And Counterman was a seven to two decision that said that in order to charge someone with basically threatening or communicating or doxing, it has to be something that's more than just information communicated that a reasonable person would assume was a threat and was scary and caused them emotional distress. Here it has to be more of an reckless intent that the person communicating the threat recklessly disregarded that anybody would assume that this would cause emotional distress. And I think that in the case of, for example, Trump giving out a address of Obama based on what we know happened on January 6th, he says, go March to the Capitol and fight like hell.

And people did. Based on what happened at an FBI office where someone went in with a gun because he had said it or went to a pizza parlor in Washington because they believed the conspiracy theories about Hillary running a child abuse ring in that particular pizza parlor. That it is reckless to say certain things when you know what past similar comments have resulted in. And so that I think it was a predictable consequence of Trump, for example, putting the address of Obama on the internet, that someone would then take action to hurt the former president. And so I think even under Counterman, the standard would be met. And Counterman could still get convicted. I mean, his case was sent back to the lower court to have a hearing on whether or not the new standard is met. It wasn't thrown out.

So I don't want people thinking that there's no way of convicting people under the Counterman standard. I don't know enough about what the evidence will show when they try to meet that standard in that case. But I would predict in the case here, that Trump might be held accountable for having caused this threat to Obama. Fortunately, it was stopped because he has Secret Service protection. So thank you Secret Service.

Joyce:

Mean, but let's be real. People bend over so far backwards when Trump is involved. Nobody wants to look like they're being political. I think we almost go too far with that in Trump's case. Because at this point, the man knows that if he posts Obama's address on the internet, like a call to all of his people, go get him. That's how we ended up with January 6th. Or there was Cesar Sayoc, the guy who sent bombs that fortunately didn't work to people in the media and political people because Trump had targeted them. I mean, he's done this so many time. He has to know, and it annoys me no end that he's not subject to at least condemnation in the public square, even if he's not going to be prosecuted.

And it's even worse than that, Barb, I think because Trump supporters now have been calling out by name federal agents, federal prosecutors involved in some of the Trump investigations. To me that feels very dangerous, especially in light of how we know Trump supporters react to his suggestions. So your research on misinformation, I'm wondering if it helps you provide us with any advice for how situations like this can be diffused. How should we handle these sorts of situations where we see people identifying specific government and public servants? What do we do about the misinformation problem?

Barb:

Yeah. Well, in some ways this is a combination of too much information, sharing private information. But also disinformation designed to kind of gin up this hatred and this anger. It's definitely a strategy of Donald Trump. If you listen carefully to some of the things he's been saying lately at his rallies and elsewhere, you hear this phrase again and again and you goes something like this. They're not after me, they're after you and I'm just standing in the way. They're trying to stop our movement because they're out to get you. And that is a well-worn trope that authoritarians have used throughout history to use fear. They're coming after you, and all of this made up stuff is just designed to go after me because they know that when I'm in power, I'm going to take care of you. And so you should denounce them the way I do.

And it's so dangerous. It's dangerous to the individuals involved. My gosh, federal prosecutors and FBI agents by name are being harassed and threatened. Think about that. These are just ordinary lawyers who do these jobs as career professionals, and now they're being singled out and targeted. That's challenging, but it also is such an attack on the rule of law. So what can we do about it? Well, one, I think we should not take the bait. You have to be principled in these things and you can't just be my side, your side. It has to be about process and caring about the rule of law so that we don't get sucked into these kinds of things. I think that sometimes we pile on and enjoy some of the fun of poking fun at somebody we perceive to be our political rival, to get back at them or to one up them.

And I think that just feeds the machine of this anger politics, the pitting one tribe against another. So I think that's something that we need to refrain from doing. I suppose to the extent you see these kinds of things like addresses being published online and those kinds of things, you can report to responsible social media platforms that this is an episode of doxing that should be prohibited.

Joyce:

But wait, Barb, you can only do that as long as you're not a government agency worried about a [inaudible 01:06:43].

Barb:

Exactly right. Civilians only. Civilians only. And beyond that, there is a federal anti-stalking statute and a federal anti-doxing statute. So there is some relief for these things, and I imagine we may be seeing more use of those as time goes on, but there's not a law for everything. There isn't a way to prevent people from doing bad things under the law. And so I think sometimes we have to call upon people's better angels to do the right thing, to stand tall and to resist this. And I hope we can do that through education and conversation, kind of like what we're doing here.

Joyce:

Yeah, I mean, I think that's no small thing to remind people that as citizens, we have certain obligations and not everything is criminal, nor should it be. Although in Trump's case, it seems like a little bit of a slap is long overdue. So I appreciate y'all taking so much time with this topic. I have one last question for you, Kim. I think you can tell that this topic has really gotten under my skin because of the threat that it involves not just to the President, but to innocent people who could have been at his house, right? Employees, his mother-in-law, his kids, their friends.

So here's my last question. This situation has not received a lot of attention when I've posted about it on social media or Substack. A lot of people have responded with Surprise because they hadn't heard about it. Kim, do you think it's just because people are so used to Trump's bad behavior that it's easy to walk past this and not notice it? Is the media handling this the right way? What do you make of all of this?

Kim:

I think yes, I think all of the above. I mean, listen, once you incite an insurrection, like everything else that you do as horrible as it is, can pale in comparison. It's a really messed up way that Donald Trump thinks about himself as Teflon Don, right? But in a way, it's turned out to be true because he does so many horrible things and has done so many horrible things that this is just so, it's Trump being Trump. I think there is an aspect of that to it, and it's unfortunate. I don't know if there's anything more to say. It's terrible.

You know Barb, it's hot out. And they usually say, if you can't stand the heat, get out of the kitchen. But I kind of want to be in the kitchen when I'm using HelloFresh. Barb, do you use HelloFresh?

Barb:

I do, Kim. And even in the summer, they have a lot of seasonal dishes. They've got even some great salads, but lots of choices. With HelloFresh, you get farm fresh, pre-portioned ingredients and seasonal recipes delivered right to your doorstep. So you can skip trips to the grocery store and count on HelloFresh to make home cooking easy, fun, and affordable. That's why it's America's number one meal kit.

Jill:

Like us, HelloFresh wants you to have it all, free time and fresh, tasty food. That's why they take care of the meal planning and deliver the ingredients. So everything you need to whip up a delicious meal arrives right to your door. You can make your home the hangout place this summer with crowd pleasing eats. Because from a backyard horse bar to tangy key lime pie and that pie is delicious, HelloFresh Market makes Summer entertaining a cinch.

Joyce:

HelloFresh even works with your schedule. Their plans are flexible and you can change your meal preferences, update your delivery day and change your address with just a few taps on the HelloFresh app. Imagine getting fresh quality produce from the farm to your door in less than a week. It allows you to enjoy all the flavors of the season right from home. And you know as I get ready to send my youngest back off to college, his first time living with four other young men in a house that they're renting. I feel a lot more comfortable sending him back knowing that he will have HelloFresh delivered to his door and he will be cooking good healthy meals for all of his friends several nights a week.

Kim:

Go to hellofresh.com/sisters50 and use the codes Sisters50 for 50% off plus free shipping. Again, go to hellofresh.com/sisters50 and use the code Sisters50 for 50% off and free shipping. Everyone can also look for the link to HelloFresh, America's number one meal kit in our show notes.

Barb:

All right, ladies and gentlemen, now is the part of the show that is our absolute favorite where we get to read and answer your questions. If you have a question for us, please email us at sisterspoliticon.com or tweet using #sistersinlaw. We are also now on Threads at #sistersinlaw, and in fact, we got some of our questions this week on Threads. If we don't get to your question during the show, please keep an eye on our Twitter and Thread feeds throughout the week where we'll answer as many of your questions as we can.

So our first question comes to us from Maria. I'm sorry, I don't know which is the correct pronunciation of your name, but you have a great question, which is why does the Supreme Court often save its most momentous opinions for the end of the term? Isn't this just unnecessary drama politics? Surely those cases are decided and their opinions are completed well ahead of time, question mark. Jill, what do you think?

Jill:

Well, I think they do it to make us crazy so that we have a horrible week of podcasts like we did last week. No, seriously, it is a very good question. And actually the answer is less interesting, which is I think it just takes them longer to reach a decision on the hard cases. And that they're working on trying to change the minds of some of the other justices, and they're trying to get the wording right on their opinions on the really tough ones, and that's why they come out at the very end.

Barb:

Yeah, I think that's right.

Kim:

And the longer the opinion and the more concurrences and dissents, which the big cases have, the more times they have... Every time there's an opinion written, they have to circulate that among all the nine of them. And that takes a lot of time.

Barb:

And they still do it old school, like they type it out on paper. They don't do it by email or anything.

Kim:

Well, especially after the [inaudible 01:13:19] now.

Barb:

Whoops.

Kim:

It's like one copy being like walked around.

Barb:

Yeah, you know it, right?

Kim:

I guess that

Barb:

Means you means can't take it

Jill:

On your fishing vacation

Barb:

With you

Jill:

On the private jet.

Barb:

Our next question does come to us on Threads, and I think we're all there. This comes from S. Derosia. I'm having a hard time pronouncing names today. Sorry about that. But it's a great question. And she asks about a New York Times piece today regarding lawsuits about abortion bans being contested on religious grounds. I've long wondered why this argument hasn't gained more traction if the, she says Christian wrong can win with religious freedom argument. Why can't we? She says. Please discuss. Joyce, do you know what she's talking about there? This New York Times piece about religious grounds for an abortion ban. What's your take on that? We've talked about this a little bit before.

Joyce:

I think this is just a stupendous question, and it begs this issue. Do religious rights only matter to the Supreme Court if you're an evangelical Christian, or does everyone have the same benefit of their religious views? The reason that comes to a head on the abortion question is because at least two of the Abrahamic religious traditions actually have a very different view about abortion. In Judaism, there is actually a commandment to a pregnant woman that if continuing the pregnancy puts her life at risk, then she is supposed to terminate the pregnancy to preserve her own life. It's a little bit more complicated in the Muslim tradition where there's this concept, as I understand it, and my understanding is very limited. But of in [inaudible 01:15:10] installment that roughly corresponds with the end of the first trimester. In both of those religions, then there is no prohibition.

And in the case of Judaism, there's an affirmative commandment to obtain this sort of medical treatment. And what about all of the people, the 10% or so of estimated people in the country who don't have a religious belief? Who are atheists, there's no religious commandment there that should prevent them from getting an abortion. So the question is, what's going on here? And there actually is some litigation in Florida. I don't know how far those cases will go there before the Florida Supreme Court at this point. The real art here is getting a case with the right facts in the right jurisdiction. And because this is now a matter that's left up to states, it would be in reality, a matter of convincing states on a state by state basis that they have to respect the rights of their Jewish, Muslim, atheist citizens. It's very complicated, but I think it should be fruitful if and only if and only if the courts are willing to be intellectually honest on this religious freedom issue.

Barb:

All right. And our final question comes to us from Elizabeth in Melbourne, Australia who says, I have not seen or heard much commentary on the fact that the recent Supreme Court decision in Moore versus Harper was not unanimous. Is it not a matter of concern that there are three justices who did not reject the independent state legislature theory? Kim, what do you think about that? Is that monster still lurking in our midst?

Kim:

So I think it's a great question. First, I would have to say I know this only because I have good friends who live in that city. The pronunciation is Melbourne. So the O, the R and E are all silent. It's Melbourne.

Barb:

It's not Melbourne?

Kim:

It's not Melbourne.

Barb:

Midwestern way of saying Melbourne.

Kim:

And I appreciate getting a question from the other side of the world, the other hemisphere. So thank you for that. So I was concerned. So first of all, just to be clear, when it comes to the independent state legislature theory, there were actually two justices that did not reject it, and that was Clarence Thomas and Neil Gorsuch. This was a theory. Yes, listeners, this was the theory that was even too crazy for Samuel Alito. So just to be clear. I was concerned about what that could mean, I really was. And I didn't know exactly what it was, but something put me at ease. Which was I moderated a discussion about the term with Professor Lawrence Tribe from Harvard Law School and Judge Michael Luttig, the retired judge, former judge of the Fourth Circuit, with whom Mike Pence famously consulted before January 6th to ensure that he absolutely, positively could not change the results of the election.

Which Judge Luttig, who is a conservatives conservative. One of the most conservative thinkers that we have, but who also believes in democracy and the Constitution and the proper reading of it. And both of them said that this was a nail, a stake in the heart of that theory. That is done, that it is toast, and that it would be very difficult to resurrect it. And that actually made me feel better. So I'm transferring that knowledge to you. The event was held, it was hosted by an organization called The Common Good, which I just saw on my phone that they have released the video. So if you go to their website, it'll also be shown on C-SPAN at some point soon. But you can go to their YouTube site or their website and you can see their explanation for that yourself, and you can be put at ease the same way that I was.

Barb:

Thank you for listening to #SistersInLaw with Jill Wine Banks, Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade. Remember, you can send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. You can also send them to us on Threads at #SistersInLaw. Please support this week's sponsors; Thrive Causemetics, OSEA Malibu, Honey and HelloFresh. You can find their links in the show notes. Please support them as they really help make this show happen. Go to politicon.com/merch to buy our shirts, totes, and other goodies to keep up with us every week follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five star review. It really helps others to find the show. See you next week with another episode, #SistersInLaw.

Kim:

Oh, but one thing I did see, I thought it was a cat the other day. Oh my God.

Joyce:

Oh, was it a ferret?

Kim:

It was a raccoon. Snickers sees it first and it was like 11 o'clock at night on our night walk. And so I feel her pull, and that's when I see, and I see this fat thing, which I think is a cat with a... I'm like, who has their cat outside this late at night? I guess that's really weird. And then it rounded the corner of a house and I could see its face, and it was a huge raccoon. And Snickers, being a coonhound was like, let me add it. And I was just like, oh my God, no. It was running away. What raccoon lives in the city, that's crazy. It's like, wow.

Jill:

We have coyotes all over, and we had a coyote in a equivalent of a 7-Eleven a block from the federal building. This is maybe 10 years ago. It walked into the store, it jumped up on a ice cream refrigerator thing that opens from the top.

Kim:

And it was like, give me a pack of Newports.

Jill:

Sat there and didn't go away, and people were backing out of the store until the animal control came, and took him back to the wild. Right in, I mean, if you've ever been to the federal building, it's you know in the heart of downtown, .

Joyce:

No more Newport for you.

Jill:

I think he wanted the ice cream inside of the refrigerator, or maybe just the cool of the refrigerator. I don't know.

Kim:

That's great.

Joyce:

We actually have a little twosome that's been doing robberies here where they go to a 7-Eleven, they unload the ice cream cooler, and then they leave the store. All that they do is steal the ice cream. It looks like a sorority prank to me. But I mean, it's serious. They're going in and they're stealing hundreds of dollars worth of ice cream.

Barb:

Sounds like the perfect crime.

Joyce:

That's really weird.

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Kim:

That is.

Joyce:

If I was going to be a criminal, that would be my crime. Right? Stealing cute dogs.

Kim:

I mean, I know a lot of convenience stores, they'll steal goods and to resell, but ice cream.

Barb:

I got to sell this in seven minutes.

Kim:

Oh, that's so funny.