

Dahlia:

Hi, I'm Dahlia Lithwick, legal correspondent, author and host of Slate's Amicus Podcast, the show about the rule of law, the law, and the Supreme Court justices who interpret it for the rest of us. I've been watching the high court for over two decades, and I bring all that experience and knowledge to examining the U.S. Justice system and democracy. Each episode, I am joined by guests with deep knowledge of the law and policy who helped me and you navigate our constitutional landscape. Slate's Amicus podcast, subscribe now. Wherever you listen.

Joyce:

This summer, HelloFresh can help you be well and eat well with recipes like the barramundi, which I learned from my sister Jill is one of their best meals. We enjoy it in my house too. I know the sisters have all been loving some of the other options too. So get 50% off plus free shipping with code Sisters50 at hellofresh.com/sisters50. You can also find the link in our show notes.

Kim:

Welcome back to #SistersInLaw with Barb McQuade, Jill Wine-Banks, Joyce Vance, and me Kimberly Atkins Stohr. This week we will be talking about the latest in Jack Smith's investigation of Donald Trump, more Supreme Court ethics concerns, and abortion access, or the lack thereof, both for lowans and members of the military. And as always, we look forward to answering your questions at the end of the show. Remember, you can go to politicon.com/merch to buy our shirts, totes, and other goodies just in time for summer. I've been wearing the SistersInLaw t-shirt out as the temperatures have gone up. So you want to make sure that you have yours. And we'd love to see you wearing yours out and about. And I should have said with regard to the questions, you can always send them to us by using the hashtag on Twitter, but you can also tag any one of us on Threads.

We are all on Threads too, the newest social medium. So you can do it there too. We have some questions from there that have been coming in this week. But first, before we get to all the nitty gritty, last week I mentioned the song Proud Mary by Tina Turner and how I didn't know exactly what word she was saying. The consensus is tane, T-A-N-E. She pumped a lot of tane down in New Orleans, or I guess the Fogerty... It was originally CCR song, so John Fogerty wrote it. But it got us to thinking. We got to talking about misunderstood song lyrics. And I thought I would want to ask you guys what is your favorite misunderstood song lyric? I think the quintessential one is from Elton John, hold me closer, Tony Danza.

Barb:

That's so funny. Oh my gosh, that's so funny. Did you really have that mistake, Kim?

Kim:

I did not. I did not. I think that's the stereotypical. But for me, so mine for most of my adult life, I'm sorry to say, the hit song by Divo called Whip It. I always thought the first line was caress that whip. I don't know why the whip needed to be caressed, but that's what I thought was happening. What about you guys? Barb, what lyric did you misunderstand?

Barb:

Oh, tons. One that in particular I did was... AC/DC Was big in my high school years. I thought it was dirty deeds and the thunder chief. I didn't know that they were done dirt cheap. But I posted this on Twitter

last week about your tane misunderstanding, and I got the best responses. In fact, did you know there's a word for this, to misunderstand song lyrics? It's called a mondegreen. And somebody tweeted about this, it comes from... There's a writer named Sylvia Wright in 1954 came up with this term mondegreen because she misunderstood or she was describing the misunderstanding of a Scottish ballad where the phrase is laid him on the green, which she or someone misunderstood as Lady Mondegreen. So Mondegreen, M-O-N-D-E-G-R-E-E-N is now the word for misunderstanding song lyrics.

Kim:

That sounds like a character from Bridgerton, Lady Mondegreen.

Barb:

Yeah, it does.

Jill:

Monde Green. Yes.

Kim:

What about you, Jill?

Jill:

So I have a confession to make. I don't sing. I am embarrassed by my voice and I mouth the words to Happy Birthday at parties. I mouth the words to the Star-Spangled Banner. And so misunderstanding words is not something that happens to me because first of all, when I was even thinking about singing, it was in the days of folk songs and they had really easy to understand words. And so I don't think I misunderstood them. And I knew the first line to everything because I would definitely mouth the words. So I can't really give you one. I laughed so hard at the answers that Barb got to her question about what words have you misunderstood. And I recognized them all as things that I can see how you'd make the mistake. Bad moon rising as there's a bathroom on the right. That one came up more than I think any other in answer to Barb question.

Barb:

That's good.

Jill:

And I really loved it. There were many others. The Flashdance song, take your pants up and make it happen. That was a pretty good one too.

Kim:

What about you, Joyce?

Joyce:

So I grew up in California in the seventies and I listened to a lot of Steely Dan. And I didn't realize until I was driving on a college debate trip, because I was that nerdy person in college who debated, and I'm singing to Steely Dan out loud on the radio. I did not realize that the line in Kid Charlamagne was not,

"Did you realize that you were Italian in their eyes?" What I had always heard. I learned it was, "Did you realize that you were a champion in their eyes?" Much to my mortification.

Barb:

Oh, that's great. That's a lost art. These young kids, they can look this stuff up on the inter web.

Kim:

Right. It comes up on...

Barb:

We had sort of guess what the line was.

Kim:

It comes up on streaming service. When the song plays, it plays the lyrics right on the app. So yeah, they don't have this fun.

Joyce:

The Alexa in our kitchen does that. It gives you the lyrics. And my kids hate it. I sing Taylor Swift while I'm cooking dinner. And I have one of the worst voices in America. Jill, I promise you mine is worse. My poor kids, they hate it. So do the dogs.

Jill:

Mary Traver once said to me... My grade school teacher told me to mouth the words to the graduation song so I wouldn't throw everyone off key." And she said, "That is the meanest thing anybody could do. I promised I could teach you how to sing," but she never did. And so I still mouth words. It's really pathetic.

Kim:

Jill, you look so well rested. I know you love helix mattresses. Is that the reason why you've been getting good sleep?

Jill:

It is definitely helping. If I could lay in it for a little bit more hours than I do, I would be really in good shape. But it is a wonderful thing. And it's easy to find your perfect mattress. All you have to do is take Helix two minute sleep quiz and match. And I know Barb probably does it faster because she's a really fast read. But if you watch, the customized mattress will appear before your eyes. It will be perfect for your body type and preferences for the best sleep of your life. When I took the Helix quiz, I matched with the Helix Midnight Mattress, and it was exactly what I needed. I've had great sleep ever since I got it last year. With Helix, you can buy a mattress tailored just for the way you sleep. It's been the best sleep of our lives.

Barb:

Helix knows there's no better way to try out a new mattress than by sleeping on it in your own home. So test yours out for a 100 night risk-free trial and see how amazing your rest is. If you don't love it, and we

know you will, they'll pick it up for you and give you a full refund. Plus, Helix mattresses are American made and come with a 10 or 15 year warranty.

Joyce:

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

Kim:

Helix has been awarded the number one mattress by GQ and Wired magazines, leading chiropractors and doctors of sleep medicine use Helix as a go-to solution for improved sleep. And now, Helix is offering 20% off all mattress orders, and two free pillows. For our listeners. Go to helixsleep.com/sisters. This is their best offer yet, so you really don't want to miss it. And it won't last long, so hurry. With Helix, better sleep starts now. That's helixsleep.com/sisters, or you can find the link in our show notes.

Joyce:

Well, yesterday was a big day if you're keeping track of special counsel Jack Smith's investigations and prosecutions of the former president. And that's exactly what we're doing here at #SistersInLaw. Barb, in the Mar-a-Lago case, it's reached the point really where it's hard to keep everything separate, so I have to say in the Mar-a-Lago case or in the January 6th case. But in Mar-a-Lago, Trump and his co-defendant, Walt Nada's lawyers have told the judge she shouldn't set a trial date. The government has asked for a trial in December of this year. Jack Smith replied yesterday. Tell us about the arguments and who's right here.

Barb:

Yeah. So originally Jack Smith proposed a trial date in December. So that'd be six months from now, which is maybe a little fast in light of some of the security clearance issues and classified information procedures act issues, but reasonable, set it out there and get things going. And then Trump's lawyers came back and said it should be adjourned without date until past the 2024 election. And they have a number of reasons. We don't have our clearances yet, the discovery is complicated, we're going to file motions challenging the constitutionality, my dog ate it, every argument you can think of. But the one that really struck me as being quite bold was the one that says you can't put Donald Trump on trial before the 2024 election because it will influence the outcome of the election, and it will be difficult to seat a jury that is impartial. So you should not set any date at all.

The response to that, which is absolutely right, is this, the right to a speedy trial belongs not just to the defendant but also to the public. And so Jack Smith, on behalf of the United States, argues that there's an obligation to try this case promptly. And some of the reasons for that is the longer there is a delay, witnesses' memories can fade, evidence can go stale, you can lose access to things that you need, and an accused offender is still out there at large. And so there is this public reason for speedy trial. They also note that the Speedy Trial Act, which is the statute that governs the setting of these dates, says that

the judge shall set a date certain. So I think even if they say the judge ultimately decides December is too quick, I think she needs to pick a date and say the date will be this.

And then if things happen that caused further delay, she can move the trial down the road. In fact, it's something that you might see as sort of nickel and dimming the government to death where she sets it six months out, and then another six months, and another six months until she gets past the election date. But I think at the outset at least, she needs to set a trial date at a reasonable time so that things can move quickly. And then the other thing I'll note is while they're complaining about how fast this December trial date is, it's been a month, and the lawyers still have not completed the forms they need to do to get their security clearances. So they are clearly dragging their feet here.

Joyce:

I think just in the last little bit, there have been certifications from some of the Trump lawyers that they are all but complete. I think someone still had to get fingerprinting done and the last time I checked that was not something that takes a month to do, right? So this looks to me like a little bit of a delay game. I think you're absolutely right about what's going on here, Barb.

Barb:

And of course, Joyce, ultimately, if you can delay it past the election, if Donald Trump's elected, he can appoint an attorney general who dismisses the case altogether.

Kim:

Or if another Republican is elected, he can press him for a pardon.

Joyce:

Well, and not to be unduly gloomy, and I think about this a lot, but the case will still be on appeal, right? There might be a jury verdict. The case will be on appeal. He just tells his new Attorney General to drop the appeal and to concede that there was error and that the conviction should be set aside. I think the value of getting the case tried ahead of the election is that at least the evidence has been heard and the verdict is a public verdict. But this is not an easy path forward, and I don't think we can pretend it is.

Jill:

I think Jack Smith's response was really on target and used appropriately harsh words. But going back to one of our other chitchats, he could have used the word risible. I think that would've been a very good word for him to have put in there, particularly in reference to the defense of the Presidential Records Act. That is risible.

Joyce:

Yeah. As soon as I saw that, I thought to myself, man, that's risible. I have a piece that I've written about that for MSNBC daily that's not up yet, Jill, is it okay if I go back and slide the word risible into it?

Jill:

Absolutely.

Joyce:

So Jill, let me stick with you because the New York Times is reporting that Jack Smith has had a few witnesses in front of the January 6th grand jury. They're testifying about whether Trump really believed he'd won the election, and that includes Jared Kushner, who I note testified with no fanfare. That means Kushner did not fight the subpoena to testify. What do you think is the significance of this new testimony that Smith is taking?

Jill:

I really am less excited about it because I think the evidence is already so clear that it would be impossible for any reasonable jury to conclude anything other than that Donald Trump knew what he was saying was a lie, that he intended to do what he intended to do. And also because I don't think it's in most of the charges that are likely, it's not an essential element. But it is essential in terms of a jury. Juries like to have motive. And when you can get people like Jared Kushner to say, "Yes, he knew," I think that is important, and that not only he knew, but he believed he had lost. He knew he had lost, he knew there was no fraud. I think it is helpful to the jury to hear that evidence, and it is I think one of the final pieces of the case before another indictment falls.

Joyce:

Well, Kim, there does seem to be that vibe, that their indictment's coming soon. I'm curious about your sense with sort of, if you don't mind putting your reporter hat on for a minute, what do you think is going on here? And do you think it's the case that Jack Smith is animated by this desire to leap frog over Fani Willis and be the first one among the two of them to indict?

Kim:

That's an interesting thought. Well, to the first part of the question, I definitely think that we could expect an indictment very soon based on a number of things, including the swiftness with which the classified documents indictments came. It seems that Jack Smith is working methodically. Look, we've talked a lot about Merrick Garland, about working methodically. Jack Smith seems to have figured out how to work methodically and fast at the same time, and that seems to be his style. And for the very reasons that Jill was pointing out, I think we are getting to a point where is very reasonable to think that indictments may be imminent. We don't know, Jack Smith has not indicated any sort of timeline. But with respect to wanting to get ahead of Fani Willis, I don't know.

It seems to me, based on what we know and what we've seen about the way he operates, I would think that as a special counsel, he would want to make it abundantly clear that he's working on his own timeline of following the evidence and the facts and taking it where the law leads him, and figuring out these indictments and that he doesn't have to worry about what any state or local district attorney is doing. I understand there's overlap there, and I would love to hear from the prosecutors about how when you are handling a federal case at the same time as a simultaneous state investigation, how you handled that, or to what extent, if any, you worked together, but I just don't think that that would be a motivator. I don't know if you guys think differently.

Joyce:

What do you think, Barb?

Barb:

Yeah. No, I don't think so. I think you put your case forward and you get it ready. There might be some coordination just because they're probably using some of the same kind of evidence, but I don't think you say, "Who goes first? You go first. I'll go first." I think you work until the case is done, and then you file your indictment. So I think the race is on, but I doubt they're really paying much attention to which one is going to go first. I don't know. I haven't been involved in anything nearly as high profile as this where the stakes are so high, but I imagine they're communicating a bit, but I don't think anyone is going to take second backseat to anyone else.

Jill:

I agree with Barb because I think each of them wants to get their case done as quickly as possible to see that justice is done, and that the people have a right to the trial. There will have to be, if they both indict even within months of each other, the same witnesses are going to be involved and they can't be testifying and two places at the same time, so there'll have to be some coordination of trial date. But other than that, I can't think of any reason why they can't both proceed.

Joyce:

I might have a slightly different view. I'm not sure I need to think more about this, but I have been reflecting on a lot of the police violence cases that we did in my district when I was US attorney where there was always a parallel state case, a parallel state investigation, and we would always coordinate really closely with the state. We would consider issues like who can get a better sentence, where do we like the looks of the jury better, those sorts of considerations. And often, we might have an agreement, for instance, that the state would go ahead and make an arrest so we could get someone who is dangerous in custody and off the streets, but at the same time that they would ask the judge to let their case sort of stay on hold while the feds went forward, in many cases because we were positioned to be able to try the case more quickly because the federal courts move more quickly down here, but also because you do want to make sure that you don't have witnesses testifying in multiple forums, which can get very messy.

And even people who are testifying truthfully might use different language in two different settings to describe the same incident. So I think that there might be more coordination going on than meets the eye here. I guess we'll have to wait and see when the case happens. But this notion that Trump will try to remove his case into federal court, at a bare minimum on that sort of thinking, there might be some coordination between Fannie Willis and the US attorney in Atlanta just to be prepared for that sort of a scenario. Barb, I want to bounce back to Mar-a-Lago just one quick time. You and I spoke this morning about this report that Jack Smith has reached out to at least one Trump organization employee with a target letter about obstructing the Mar-a-Lago investigation. We knew that the grand jury in Florida was continuing to work after the indictment was handed down, so that has to mean something is going on there. Could this be what that's about?

Barb:

Yes, it could be. It's impossible to know because grand juries conduct their work in secret. But one of the things that has always been intriguing in the past few weeks is that, despite the fact that the indictment has already been returned in the Mar-a-Lago case. The grand jury continues to work. And a grand jury can only continue after indictment if prosecutors are investigating either additional charges against the same defendants or additional defendants in the case. And so I've kind of been waiting for that second shoe to drop. What is it? And so this could be it, that there is someone they talked to who lied to them, and they're pursuing some sort of obstruction of justice, false statements kind of a charge. But it could

be interesting because that could be the kind of person that they could flip to be a witness for the prosecution ultimately as well. And I don't know if that's the only thing they're looking at. So I thought that was very intriguing. And we could see another indictment coming out of the grand jury in southern Florida.

Joyce:

Yeah, this is really fascinating. I love that there's when reporters reached out to the person who supposedly received the target letter, that he told them to mine their own business. So it didn't really sound like a cooperation agreement was in the works, at least not yet. But the gold star here frankly, would be finding a witness who would be willing to say, "Yes, the former president told me to make sure that videotape that incriminated him wasn't revealed." Trump seems to always get lucky though when it comes to preventing people from cooperating against him, but maybe that luck is about to run out. As Kim has said, it smells like there's a new indictment in the air. And a group of legal scholars writing at Just Security, one of the really wonderful online venues for legal analysis where both Barb and I sit on the board that reviews those sort of things, they've published a draft prosecution memo for the January 6th case.

It's a lengthy document. It's really detailed. It goes through the facts. It explains the law. What are your top level takeaways? I'm just curious what each of you found the most interesting in that report, Barb?

Barb:

Yeah, I found this interesting. They have three broad charges that they suggest, and then they provide evidence. They do this in the form of a prosecution memo, which is what a prosecutor prepares once they've come close to completing their investigation, to share it with supervisors and say, "Here's what I'm thinking about charging. Here are the elements of each crime. And here's the evidence we have for each of those elements. Here are the potential defenses." And two of these crimes make perfect sense to me. One is conspiracy to defraud the United States, and that's this lying about a stolen election and gathering up fake electors. That makes sense to me. The second is obstruction of an official proceeding, and that is trying to persuade Mike Pence to abuse his power and overturn the election results during the joint session of Congress on January 6th. That makes sense to me.

And the third one makes sense to me, but it's an aggressive theory, and that is inciting insurrection. This is the one that I have sort of thought might be a bridge too far, but they make a pretty compelling case. And they build this not on Donald Trump's speech at the ellipse on January 6th where he talks about fighting like hell and marching down Pennsylvania Avenue, but also says peacefully a couple of times. Instead, they focus on two other facts, which is the 187 minutes of inaction while he's at the White House watching all of this violence unfold at the capitol and doesn't do anything about it. And as a president, he has an affirmative duty to take care that the laws be faithfully executed. Does nothing. And then the other is sending off that tweet at 2:24 PM about Mike Pence didn't have the courage to do what he needed to do, and that just puts fuel on the fire. So that is an interesting one to me. I think prosecutors strike me, in my experience as being kind of risk averse and kind of conservative.

I don't know if that one will actually get filed, but I think they make a pretty compelling argument that it could be charged.

Kim:

That was my top takeaway because it's sort of like it brings to light that missing that period of silence, and it reminds me of Nixon, the missing 18 minutes. It makes it so clear there is no doubt about what

was going on during that time. And it was the fact that Donald Trump, who had the power to speak and say something to stop it, probably the only person on earth who had the ability to stop it, was waiting clearly to see if it was going to work. And I think that that... I'm not a prosecutor, but I would think that that would rise to that level. So I'm glad that that theory is at least being offered.

Jill:

So you're certainly right that he had the power, because as soon as he did say something, they left. That proves that he could have stopped it much sooner before as much damage was done. And Joyce, I have sort of three different perspectives on this. First, as a citizen, I want every possible charge brought against the president. And I say that, again, with my Watergate background, where I feel we failed in not indicting the President when he was sitting or after he resigned because we could have created a precedent that would've eliminated a lot of the delay and anguish that we're facing now. So there's that part of me that says, yeah, they should do all of this and more, because they really are focusing only on him. And I think there's many, many more people. And in bringing a conspiracy case, it helps to have the names of all these other participants in the conspiracy.

As an author, I learned that it's as important what you leave out as what you put in. And so that made me reevaluate, okay, so maybe they're right to keep it narrower than broader. And as a prosecutor, of course, we see the same thing, that if you get too broad, the jury gets confused, the evidence becomes overwhelming. So I certainly think everything that they said, that Barbara has very well laid out is very compelling. And every one of them makes sense, and that you could indict for all of the crimes and theories that they have identified. And so the only question I would have is how many people should be named in that indictment. And we know that you can name 10 people and have a significantly sane trial. And so I would just say he shouldn't be the only defendant.

Barb:

And one thing to add about that insurrection charge is a conviction of that charge and only that charge of the ones we're talking about would preclude him from serving as president again.

Joyce:

Yes; but would it really, right? That would beg that whole constitutional question of whether Congress can set additional requirements for the presidency beyond the constitution, more endless litigation. And Barb, I think he made a smart point, which is that prosecutors really are risk adverse. When you're getting ready to indict a case, you don't say, "Oh, look, here's this new untested statute. There's no case law about what it means. Let's go indict that and figure it out." And you definitely don't do that in high profile or in difficult cases. I think that they're going to want to stay within the heartland of what they believe that they can prove, but also the heartland of what they believe they can get affirmed on appeal.

Hey Kim, it has been sort of a hectic news cycle. And I know that you, like me, like to use mindfulness practices to help in difficult times. What you been doing lately.

Kim:

I have tweeted and threaded recently about how my anxiety can get the best of me sometimes. And one thing that I really find helpful is meditating, certainly before sleep. That really helps calm me down. And speaking of calm, I like to use the Calm app for my meditation. It's so easy. I don't have to think about it. It's right there. I just reached for it and put on a meditation, and it's super, super helpful. In today's fast paced world, taking care of your mental health is more important than ever. If you're looking to reduce

stress, increase mindfulness, and improve your overall wellbeing, you need Calm. Calm helps you stress less, sleep more, and live a happier, healthier life. Calm recognizes that everyone faces unique challenges in their daily lives, that mental health needs differ from person to person, and that time for meditation may vary.

Joyce:

And since self practices are so deeply personal, Calm strives to provide content that caters to everyone's preferences and needs. Their meditations range from focuses on anxiety to stress, self-care to inner peace. They have sleep stories, relaxing music tracks, and daily movement sessions, all designed to give you the tools to improve the way that you feel. Artists like Harlan Silverman bring in their talents to enhance the experience with the healing power of music. It's truly an immersive experience.

Jill:

My husband is a Buddhist. And he tried to teach me meditation, and it's wasn't a very good learning experience, but I have found through Calm, that you can really learn to relax and meditate. They have expert led talks on topics such as tips for overcoming stress and anxiety. And who doesn't have stress these days? They have topics like handling grief, improving self-esteem, caring for relationships, and many, many more. Everything you need to prioritize your mental health and wellness is in Calm. If you go to calm.com/sisters, you'll get a special offer of 40% off a Calm premium subscription. And new content is added every week. So relax, calm has got everything you need for a happier and healthier you.

Barb:

I think I've told you guys, I used Calm before I went on a kayaking trip with my husband. He's sort of one of these adventurers and we went on a river that has these little waterfalls on it, which terrify me. But you know what? With Calm, I got in the right headspace and I was able to conquer it. We only tipped over once and I survived. So for listeners of the show, Calm is offering an exclusive offer of 40% off a calm premium subscription at calm.com/sisters. Go to C-A-L-M.com/sisters for 40% off unlimited access to calms entire library. That's calm.com/sisters, or find your inner calm in our show notes.

Well, this week brought more ethics drama from the Supreme Court, one involving Justice Clarence Thomas, and the other with Justice Sonya Sotomayor. Joyce, can you tell us about these two new alleged incidents,

Joyce:

Right? It's sort of like we've reached the point where you wake up every morning and you wonder to yourself, well, what else will I learn about the Supreme Court today? Because these stories seem to continue coming. And the latest is this Associated Press report that details what essentially is a series of maybe fundraising trips and book junkets for the justices. I might refer to them as Boondoggles, where the justices get to go to fun and interesting places for free. And so the reality is that this reporting involves virtually every justice from both sides of the political spectrum for the last decade. There is, for instance, a story about Sonja Sotomayor speaking at a public university where her books were then sold. There's a story about Justice Thomas speaking at a small college where it's essentially a fundraiser for that school. And look, this is not the same as accepting expensive vacations or maybe payments for your mom's house, but it does amount to indirect fundraising for the schools, and it certainly amounts to book sales for the justices.

And the bottom line is it's a bad look for the court. At this point, with the court's sort of bottomed out reputation with the public, it's the kind of thing where people read about this and say, "See, this court really isn't behaving ethically." So I think this, in combination with another line of reporting, which is essentially this, that Justice Thomas held a holiday party, and that after the holiday party, his law clerks chipped in, they sent funding to somebody on his staff to cover the costs of the party. That, I don't think is particularly shocking. I think that that's pretty standard for law clerks to have a party with their judge and for everybody to chip in. It looks terrible. And there may well be more to the story. We don't know yet. We've just seen this sort of bare bones reporting. But these law clerks are now lawyers who have cases that end up in front of the court.

So yet again, there's this appearance that the court is not behaving ethically. All of this really points to the need for the court to adopt some rules. And in fact, this morning, a sitting senior court district judge in Massachusetts wrote an op-ed, and it says... I can't quote it precisely, but it says something like, the stench coming from the court is terrible. And that's the problem. What's a real ethical abuse? What looks bad, but might have a decent explanation behind it? At this point, the court cannot rely on the public to give it any benefit of the doubt. It needs to adopt some rules.

Barb:

Now, Kim, you wrote about this in your Boston Globe column this week. What do you make of these new allegations?

Kim:

Yeah, I think that Joyce is exactly on the money. And the whole point is, yes. So the Thomas thing, for example, Venmo Gate, that could have just been some clerks getting together to have a little reunion party. And then at the end they use Splitwise, and then they are just settling up at the end. That could be innocuous, but the problem is we don't know. And we shouldn't have to wait to rely on the Associated Press or some other news organization or some other nonprofit to do some FOIA requests backed deep dive investigation for us to know that. We need transparency. Just disclosure rules alone would have made all of this a lot less scandalous, right? And I think that Joyce is absolutely right. There is a huge gap between the severity of a lot of these actions, right? None of them quite rise to the level of a concerted years long right wing conservative legal operation to get conservative justices, not just on the SCOTUS, but throughout the judiciary, and to keep them happy and winded and dined and in close contact with the justices.

That was just crazy, right? But when the court already has a black eye, every single justice should want to ensure that the public can trust that the decisions that they make and what they're doing is on the up and up. And there's no better way to do that than disclosure. And at the very least, that should be what the justices themselves want to do, and what Congress insists that the justices do. Members of Congress cannot fundraise from their congressional offices. They know that. So at the very least, Congress should hold the SCOTUS to the same standards that they themselves are held to. Look, I understand lifetime appointment used to be the fact that they are appointed for life, they answer to no one. The purpose of that was supposed to be to insulate them from influence, right? But in modern day, people have figured out all kinds of ways to get around that and to influence them. And so it's the reverse now.

The lifetime appointment keeps them wholly unaccountable. And something needs to change. We can start with transparency. I personally think a perfect solution to this is term limits. You're on the court for a certain period of time, 15, 18 years. While you're there, the only money you make is from your salary, which is a good one.

Barb:

It's like 285 or something, right?

Kim:

Yes. More than quarter of million dollars a year. Live on that while you're on the court and enjoy the status. And once you retire, once you step off, write as many books as you want, go on as many yachts as you want, do whatever you want to do. But while you're on the court, don't make us guess about where your money's coming from, right? I think that these are common sense solutions. They're hard to implement. Term limits is hard, but it's a common sense solution.

Joyce:

I just was going to say most judges do this, right?

Kim:

Yes.

Joyce:

Most judges who aren't justices do that. My father-in-law walked away from a very lucrative plaintiff's private practice when he went onto the court of appeals. Their income cut made my mother-in-law cry. But he understood that he had become a judge and that they had to live within the salary, which was not as much as Supreme Court Justice has made. And he committed to do that, and they made the sacrifices that they need to. I think that that's what the overwhelming majority of federal judges in this country do. We are entitled to expect the same from the justices.

Barb:

Yeah, I agree with that. Joyce, Jill, Senator Sheldon Whitehouse has proposed an ethics bill for the Supreme Court. First, you think it'll pass? And second, do you think it would be effective if it did pass?

Jill:

So I don't think it'll pass because the Republicans have already indicated that it won't. McConnell made it clear that he thought it was unnecessary, despite all the good arguments that we're making here as to why it is necessary. Whether it would be effective, what it would do is require disclosure, which is what Kim is talking about. We need transparency. It would require recusal, which they are not currently required to do. It would allow an independent branch to investigate complaints about them, and it would possibly make some of the things that they do now illegal, that they could not accept yacht trips and private plane trips. So I think it would go a long way toward restoring the credibility of the court. And I think it would work. It just isn't going to happen. And it'll not happen because of the Republicans. So again, I hope it becomes a voting issue that voters take seriously, the people who are standing in the way of having ethics reform for the court. And we need it.

Barb:

Let me play devil's advocate for a second. I heard what Kim had to say, which is take your salary and that's all you get. There is this tradition of Supreme Court justices, during the summer, traveling and giving lectures and teaching at law schools, which I think the argument is good for the public to be able to hear from these learned scholars about the law. Do you think that that is a problem, that that should

be eliminated? Because it does create these incentives of taking a trip to Italy and giving a talk there where you give, you talk for an hour and you get this all expenses paid trip to the nicest hotels and a beautiful place. Do you think that should be eliminated, or would that be okay as long as there is transparency in it and there's an educational purpose? Or is that just a loophole waiting to be abused?

Kim:

I think if there is disclosure, I don't have a problem with that because it would also encourage... Then if it's extra lavish and extra extravagant, that should be such a bad look that it would discourage people from doing that. They should try to keep the cost down. Don't fly them on a private plane, let them fly business class like everybody else. And then they should... Look, these are Supreme Court justices they should want to speak. They should want to teach, right? It shouldn't be about the money that they make. And all those things, my understanding is that it's not like they take a salary. It's not like a profit that they're making. The expenses are paid. I have more of a problem with... And generally speaking, I didn't even have a problem with Supreme Court justices writing books and getting money with that. But the problem is you can't limit that, right?

If Amy Coney Barrett who is writing a book, she got a \$2 million advance, if the Federalist Society decides, "Oh, at our conference we're going to give the book to each of our attendees," and that which is what they add up to...

Barb:

They buy like 500 of them

Kim:

Right. And it pushes her to the bestseller list. And that, in turn, lines her pockets. That's basically a roundabout pocket lining based on an interest group. So yeah, theoretically writing a book in itself isn't bad. It's where the interest can be exploited. So just don't do it. Just don't do it for that. There are only nine of these positions. While you have one of them, give up something. Give up lining your pockets. And as soon as you leave... And you don't have to stay for the limit of your term. But once you leave, you can go make as much money as you want.

Joyce:

Stop cycling through endless trending skincare products, claiming the smooth wrinkles firm skin and give you a youthful glow, but that still don't deliver results at the end of the bottle. We have a better idea and that's why we're excited that support for today's episode comes from One Skin. One Skin was founded by a team of four female PhD level longevity scientists with years of experience studying aging. They use the Peptide OS 1, which is scientifically proven to target aged or sense cells. They're the main source of skin aging. The flagship product for One Skin OSI face is clinically validated to improve firmness, fine lines, and overall tone and appearance.

Kim:

And unlike most skincare products on the market, One Skin works deeper than surface level, and is designed to promote healthier skin from the inside out. It's a must, even if you're someone who is just getting started in finding a skincare regimen. When you have healthier skin, you have better looking skin. So ask, is your routine clinically proven to reverse the appearance of the age of your skin, give one skin a try to experience the difference.

Jill:

And for a limited time, our listeners can get 15% off One Skin with our Code sisters@oneskin.co. Personally, I love the way their products absorb by my face and neck, and that's where you can feel like it's making a difference every time you apply it. Their scientists spent five years and tested almost a thousand peptides before they landed on OS 1.

Barb:

It's time for you to experience a new skin health routine at this discounted rate today. Get 15% off with the code Sisters at oneskin.co. That's 15% off oneskin.co with code Sisters. We only have one body, one skin, and only you can choose to make it better. Age healthy with One Skin. Everyone can find the link in our show notes.

Jill:

Once again, abortion is in the news. And Kim, I'm going to start with you, as you're a journalist, as well as a lawyer. And I want to start by asking about some of the new developments this week. Everyone listening likely knows the first two Ws of journalism, the what and the where of two of the new developments, the six week ban that was passed in Iowa, and that last night, the US House voted to overturn a Pentagon policy guaranteeing abortion access to service members who happen to be stationed in jurisdictions that [inaudible 00:46:48] access. So given the polls and all the protests which show an overwhelming support for abortion access, what can explain these two actions from a political point of view?

Kim:

Yeah, so it's politics. It's the fact that we are coming up on an election year, not just any election year, but a presidential election year. And Republicans have decided that these culture war issues are beneficial to them. And in a place like Iowa, which is more conservative than most places in this country, this plays really well. Remember that Iowa is the first primary state for the GOP in the presidential race. Iowa caucus goers are far more conservative when it comes to their views on abortion. They are far more agreeable to being moved by these culture war issues that involve anti LGBTQ policies, for example. And that is what is being played to. There was a time that, particularly when it came to military stuff, the lawmaking here in Washington DC, yet that was really separate from the political messaging stuff. You always had your messaging bills, right? You always had your [inaudible 00:48:09], but you kept that out of the Pentagon. Now, it's every bill. Every bill is a messaging bill leading up to an election year, and that's what you're seeing playing out here. And it's really is really gobsmacking.

Jill:

It is. And it doesn't make sense to me politically, because even in Iowa, the support is there for abortion access. But they've made the decision to do it, and it is astounding,

Kim:

But they got to get through a primary. That's the thing with the Republicans. They're thinking about the primary before they can even think about the general. And when it comes to the primary, they're trying to run as far to the right as possible.

Jill:

Okay. So Joyce, let's look at the legal likelihood of the Iowa ban surviving a court challenge.

Joyce:

Well, look, I think it's probably not very good, right? This bill was passed with exclusively Republican support in a rare one day legislative burst. You don't see that very often. The argument in the lawsuit that was brought barely 12 hours after the law passed will ultimately turn on whether the law violates Iowa's constitution. Of course, we all know that Roe versus Wade is gone that can no longer be used to justify any sort of challenge to this law. And so what the plaintiffs in the lawsuit that was filed so quickly are arguing is that the ban poses an undue burden by banning abortion before many women even know that they're pregnant and have time to seek an abortion. And it violates the inalienable rights provision in the Iowa Constitution that provides protection for equality, life, liberty, safety, and happiness, all of those fundamental rights. So that's the gravamen of their effort to reverse this new law.

But all seven of the Iowa Justices were appointed by a Republican governor. And when they considered a 2018 law, which they struck down on procedural grounds recently, they seem to be saying that if a new law came in front of them, the outcome would be different. So we will get an early test of where they're headed because the plaintiffs have now asked for a preliminary injunction to keep the Iowa law from going into effect. If there's any possible vitality to this challenge, we will see that preliminary injunction granted. If that preliminary injunction is not granted, then that will be all but a death no for the challengers and confirmation that this law remains in place.

Jill:

Well, that's depressing. Let's look at...

Joyce:

I'm sorry. I have not been bright and cheery today, and I apologize for that.

Jill:

Well, we're honest here. We believe in that. And I want to turn to the Pentagon policy. And having seen it as general counsel of the Army and what this could mean in terms of recruiting, let's look at the context. First of all, Joyce, your senator, Tommy Tuberville, has been blocking confirmation of generals.

Joyce:

My senator was Doug Jones. Tommy Tuberville might be my senator, but I didn't vote for him.

Jill:

Okay. Well, the senator from your state has been blocking confirmation of generals because he objected to the policy that the Pentagon had adopted that gave certain rights to service members who happened to be stationed where they would not have access to healthcare. And now they have tried to bar this policy, which also bars transgender health services and limits diversity training for all military personnel. So I want to ask you, Barb, as our national security expert, will this hurt recruitment and retention? And is it inconsistent with SCOTUS exemption of the military from its affirmative action ruling?

Barb:

Oh, that's really interesting about the affirmative action ruling. Let me get to the first one first about retention. Yes, I think it's got to have an impact on that. Right now, they have a number of senior

officials leading various branches of our military service, who are facing retirement and due to be replaced. And Tuberville is saying, "I'm going to block all of these nominations from leading it." And that has a cascading effect on all of the leadership. If those people don't get to move up, they stay in their old jobs, the next rung of leadership doesn't get to move up. And what's really difficult about this is the families of these military leaders, it means moving. And if you've got a spouse and if you've got children, this is a big deal. They're at a stage in their career where they could retire from the military service, go make far more money in the private sector and keep their families put where they want to be.

Instead, he's jerking them around. And I think there is a risk that we lose them. But if nothing else, we've got vacancies in these really important leadership positions in our military that are going unfilled by what the president has deemed the most qualified person to serve. And so it absolutely has an adverse effect on our national security, and I think we could absolutely risk losing some of these high qualified people, or attracting them in the first place. When you know you're going to be jerked around by politics, I think it makes public service far less attractive than it otherwise would be. In terms of your question about affirmative action, I think that's super interesting. In the recent case involving Harvard and the University of North Carolina, of course, chief Justice Roberts, in really gutting the affirmative action programs at those schools said, "We're going to leave an exception for the service academies because their leadership's really important and they say they need diversity. So who are we to overrule them?"

I'm usually reluctant to have special rules in the case of national security because I think it's kind of a weak way out. If the argument doesn't fly in other contexts, it probably shouldn't fly in the national security context either. But here, I think the idea that one member of the Senate who happens to be on the Armed Services Committee can stall the confirmation of non-controversial leaders that everybody believes is qualified for the job is really... What's the phrase? Cutting off your nose to save your face. Is that the phrase? Cut off your nose...

Jill:

To spite your face.

Barb:

... to spite your face. Cut off your nose despite your face. So, oh, there you go, Tommy Tuberville, you've taken this stand against diversity and reproductive rights. Meanwhile, you have left our military rudderless. Good for you. Congratulations. You've won the culture war battle at the moment, and you've left our nation less safe. So congratulations. Thank you for your service, Senator.

Jill:

So I want to ask you to refine part of what I was asking. I probably didn't ask it clearly enough, was I was actually thinking of the abolition of the abortion access as hurting recruitment and retention, and whether you think that that action, by saying if you get pregnant and you're in whatever state, Iowa, you can't get any care. And the policy that was in existence would've allowed for travel to another state to get the care you needed, and whether you think that will hurt recruitment and retention.

Barb:

Absolutely. The people they're recruiting to join the military are young people. If you are a young woman of childbearing age, there is a risk of pregnancy. There's a risk of needing to terminate a pregnancy. There's always a risk of sexual assault. Jill, you probably saw plenty of that during your time

with the army. And if the idea is no, you can't leave and we're in a state where you can't get an abortion, you're just stuck, and you can't move, you can't leave without going awol, who wants to be a prisoner to that? I think it absolutely will have an impact on the ability to recruit new members of the services.

Jill:

Thanks. And so there's another new development this week, which was the FDA approved over the counter birth control pills. And so far, there hasn't been a challenge filed by the anti-abortion right wing. What do you make of that? And is it just a matter of time, or is it not going to get challenged? Is that a step too far, even for the far right?

Barb:

Oh, it's coming.

Jill:

I guess it's early.

Kim:

All the challenges are coming.

Barb:

Oh, Jill, please.

Kim:

The challenge to the military's consideration of race, the challenge to over the counter birth control, the challenge to DEI policies, the challenge to reparation, anything that can stem for what the Supreme Court has done in the last year is coming

Barb:

Somewhere out there right now, someone is working on a complaint that they're going to file. And they're researching some district where there's only one super conservative far extreme right wing [inaudible 00:57:03]

Kim:

The delay is just the forum shopping.

Barb:

Yes.

Kim:

That's all that's happening.

Jill:

They're looking for Justice Thomas, who already indicated that he was looking for a case to get rid of birth control. And as our listeners know, I have supported the Equal Rights Amendment since 1976, and I

support the effort to remove or extend the deadline. And especially after Dobbs, it became more obvious we need the ERA? And Senator Gillibrand and Bush have now proposed that the archivist be ordered to sign it into law, and that President Biden start enforcing it. So I want to ask both legally and politically what you all think about whether this is going to fly. Will it pass? And will it get challenged if it does?

Barb:

I think so. There's a process.

Kim:

You think it'll pass, or it'll get challenged?

Barb:

I think if they were to just simply start enforcing, it would get challenged. Because there is a process for amending the constitution. We have not yet achieved success with that process. And so I know that the articles that talk about this say that 80% of Americans support the ERA. May very well be true, but you still have to go through the process of having the requisite number of states approve it. And I think that what we've got, 35 have ratified. And so what's the correct number you need?

Jill:

I think the issue about the right number of states have ratified and the states that have attempted to withdraw their ratification cannot do that. I think that second part of what I'm saying is so clear, that you cannot undo a ratification, and that the time deadline that was set was not in what the states voted on. It was in a preamble. And so it cannot bind the states. And so the states that voted after the limit knew what they were doing and should have their ratifications count. So I think that there's a lot of legal reasons why it can be enforced and should be enforced. And as has been pointed out, 80% of Americans agree that it should be enforced. But the important thing here is constitutionally, I think that the rules for amendment have been satisfied.

Kim:

So even if everything that Jill says is true, and ultimately that's the better constitutional interpretation of it, I just think given both the legal and political realities, this is more or less a messaging bill. And we've seen similar ones before that attempted to sort of try to get around the uncertainty through legislation. They didn't pass. This one's not going to pass. We have a Republican controlled house. It's a messaging bill. And listen, I think that messaging bills are important. I have no disrespect to Senator Gillibrand or anybody else, but the fact that there is... Despite Jill's best argument, there is constitutional uncertainty here, given that you did have that expiration of time, even though 80% of Americans back it. I think more than that many Americans back abortion access at six weeks, but that doesn't make it constitutional, as we learned. I just think the political realities make this more of an ideal and a wish than a possibility.

Joyce:

Yeah, I totally agree with Kim on this. It is a political messaging bill. And my hope is that what this will do is that it will restart the process, and that particularly in light of the losses of rights that women have suffered at the hands of the Supreme Court in recent terms, there will be a move in this country to

underscore the rights of women. We, after all, make up a majority of the population. And if we don't get this done, it's on us.

Kim:

You know what, Jill? It is summer. It is hot as blazes here in Washington DC. And what I really used to miss... We brew our coffee at home. And I really miss when I lived in a different neighborhood and there was a coffee shop right across the street. Because when it was hot, I wouldn't brew my own coffee. I would dash over and get iced coffee. But now, I make such good iced coffee at home in 60 seconds because I got a Bruvi. Have you heard of Bruvi?

Jill:

I have. And it is an amazing machine. First of all, it looks really good on your countertop. It's got the bamboo top on it, and it really looks good. But what's amazing is when you start to use it, the panel opens up. And I feel like I'm in an airplane with all of the many choices that I have to do. And I actually don't really like coffee. It's a habit with me. But since using Bruvi and having the ability to do things like I can make it low acid, which improves the flavor enormously, I can brew iced coffee, I can brew just hot water, it's fabulous, what it does. We love our morning coffee now. And when you're busy, you rarely have time to fuss over it. That's why we're so happy in our household to discover Bruvi. It's revolutionized our coffee routine and keeps us powered up to take on the day. If you've not heard of Bruvi, it's a new single serve coffee system that brew remarkably tastier coffee, makes seven different beverages, and offers an innovative, more responsible pod disposal option.

And it's all with the convenience of a single cup brewing system. It's also a beautiful brewer that looks great in every kitchen.

Joyce:

So I'm going to make a confession here. I sometimes pick my brand of coffee or the kind of pods that I use the same way that I do bottles of wine in the big wine store down the street from us. I look at the name and the label design. And if it appeals to me visually, I grab it. And so when I first got my Bruvi... And I agree, it is gorgeous on the counter. It's down here with me in my studio. And I drink a lot of coffee, so it gets a lot of use. And I saw this great looking coffee. It's Wonderland Coffee's euphoria espresso. I like the name. The packaging is visually very pretty, and so I grabbed them. It's great. And I have sampled eight or nine different coffees now. I like all of them. The euphoria espresso really is my favorite one so far.

There are a lot of reasons to love Bruvi because Bruvi Coffee is amazing. It's hotter, it's stronger, it's smoother, and it has noticeably less bitterness. The Bruvi machine expertly makes all your coffee favorites. It makes brewed coffee, it makes true high pressure espresso, it makes great Americanos, it makes cold brew, and it does even more. You can also customize your coffee by selecting your cup size. That comes in really handy if like me, you have a big collection of coffee mugs that you're very attached to. And you just have a lot of control over the coffee, you end up drinking. I'm sold. Bruvi will forever be a member of our family.

Kim:

Yeah. My favorite, and I'm not just saying this because I am married to someone from St. Louis, is Route 66. I can hear Nat King Cole singing as I'm sipping my coffee in the morning. With Bruvi, you choose from a variety of sustainably sourced 100% Arabica craft coffees, enjoy super premium coffee without paying

fancy coffee house prices. I'm really glad I'm not going to the coffee house every day because that did add up. Plus, you can sign up for auto delivery and save 20% on every order of B-pods and never run out of your favorites because recycling used coffee pods just isn't that effective. Bruvi created a guilt-free toss be pods. They are uniquely designed to degrade faster through an organic process without leaving microplastics behind.

Barb:

Man, you guys are making me want to have some coffee. We're recording this Friday afternoon. I usually stop... I drink coffee in the morning and I love it, but I usually stop by noon or so, but I think I might have to sneak away for a cup. Bruvi is exceptional coffee made easy. We love Bruvi. It is the best name in coffee, I must say, and we know you will too. Just for our listeners, you can save \$100 off the Bruvi bundle. It includes the Bruvi brewer, a variety pack of 20 B-pods, a water filter kit, reusable canvas bag, and free shipping. Just go to bruvi.com, that's B-R-U-V-I.com and enter the code Sisters at checkout. That's B-R-U-V-I.com and use code Sisters. You can also find your way to your brew in our show notes.

Kim:

Well, we have reached our favorite part of the show, and it really is. It's taking questions from our listeners. If you have a question for us, please email us at sistersinlaw@politicon.com, or thread or tweet using #SistersInLaw. If you're threading, make sure you tag at least one of us because the hashtag doesn't work quite the same way on Threads, but we want to make sure that we see it. So if you tag any one of us or if you tag the podcast, we'll definitely see it. And if we don't get to your question during the show, keep an eye out on your threads and feeds throughout the week where we'll answer as many of your questions as we can. And our first question comes from Tina who asks, "What standard of conduct is the special counsel and his team looking to when deciding whether to charge the former President Trump for violating the law under such crimes involving inciting a riot, seeking to disrupt official proceedings or even worse?" Jill, can you answer that one?

Jill:

I can, and it's a great question because, of course, there's been much discussion about that the president or former president, you have to have more evidence than you would for anybody else. But I think that Jack Smith has announced, and Merrick Garland has said that the standard is basically the same as for any other criminal defendant. Is there sufficient admissible evidence to obtain and sustain a conviction, meaning all the elements of the crime for that conviction? And I think that is true. I do think that I would say, while that is the standard that in evaluating whether you have enough to obtain a conviction, you would take into account the break that a former president might get, and that you would make sure that you had sufficient evidence to meet the burden of convicting a former president. But it would really be the same standard as anybody else.

Kim:

All right. Our next question comes from Pamela in Columbus, Ohio who asks, "Could you please explain how Tommy Tuberville is able, apparently single-handedly, to hold up military promotions? I don't understand the rules or mechanisms that exist in the Senate to make this obstruction possible." Joyce, this is the senator from your state. Do you have an answer?

Joyce:

Yeah, so this is a great question. I had the same question too when it first started. And I had to go back and take a look at some congressional procedure to make sure that I understood this. There's a great service called CRS, the Congressional Research Service, that provides authoritative information about procedures in Congress. And if you ever have a conversation or a question like this, they are a great resource to go to figure out what Congress, whether it's the senator or the house side, is doing. In this case, Tuberville is utilizing what's called a senatorial hold. That's an informal practice where a senator can tell the leadership they don't want a particular measure or an nomination to reach the floor for consideration. And that's how he's preventing about 250 military promotions or nominations from coming to a vote right now. The holds in the Senate, that first came about as a method senators could use to convey scheduling or policy preferences to leadership.

It wasn't supposed to be about substance. But over time, it's essentially evolved into giving each senator a silent filibuster that they can use. This process only works if you're looking at something where unanimous consent is required for something like a nomination to go forward. But since nominations do use this process, that's what gives Tuberville the authority to do this. I think finally, Pamela, it's worth noting that this hold can't completely block a nomination, but what it does is it forces majority leader Schumer to follow the normal processes on the Senate floor. Instead of just letting it go ahead and come to a vote, he has to use this process that moves a lot more slowly than a decision that's made by unanimous consent. And because of the current holdups, many of the routine processes now take months to complete because of this backlog, this bottleneck of block nominations. So in fact, one senator as a practical matter is holding it all up and having just this dramatic impact on the military that we discussed earlier.

Barb:

And can I just second Joyce's recommendation of the Congressional Research Service? It's excellent. It's nonpartisan because members of Congress from both sides refer to it. And it isn't just process, it's also on substantive bills about what the landscape of the law is. I read it all the time when I want to learn about a particular area. In fact, I've put a link in our show notes to their website if people are curious.

Kim:

Yes, I second that. And so our final question for this week comes from Phyllis in Las Cruces, New Mexico who asks, "Please address the differences between misinformation and disinformation, and whether or how this impacts right-wing efforts to prohibit the government from communicating with social media about such miss or disinformation." Our expert in this is one Barb McQuade who is writing a book about it. Barb, what do you say?

Barb:

Yes. Phyllis, you should read my book. Discussed this in 85,000 words. I'll try to use fewer now. So quickly, I think the way I use those two terms and the way I've seen them most commonly used is disinformation is the deliberate use of false information to mislead people, usually using what's called reflexive control, which is to get a rise out of people to say things, to push their buttons emotionally. That's disinformation. And it causes people to repeat it because they're so outraged by what was said. And so misinformation is when people hear about those false claims, and then they repeat it because they believe it to be true. And in that way, they become a force multiplier for these false claims. At the highest levels of government, the Justice Department, the FBI, the State Department, the Department of Homeland Security, there are efforts to try to remove some of the disinformation that gets put out there

on social media, much of it from our hostile foreign adversaries, Russians putting out things that will harm us as Americans.

And there has been some communication. It sometimes gets referred to as the Twitter files by the far right, as if there's something nefarious about all of this. But the government does say, "Hey, Twitter heads up," or, "Hey, Facebook just thought you might want to know that this information about home remedies for COVID are actually not only ineffective, but really dangerous and harmful to people." And so the recent court order where a judge said that this was censorship struck me as wrong. I think that what the judge is doing in ordering the government to stop talking to social media companies, is actually censoring what he perceives as censorship. I suppose there could come a time when the government crosses a line between alerting and asking social media companies to consider how claims on social media should be considered under their own community standards, which is what the government was doing.

And on the other side of that line would be something that is seen as so heavy handed as to amount to forcing them to remove a message. Based on the information cited. In the recent legal decision, it seemed that they were complaining about something as simple as Anthony Fauci going on Good Morning America and talking about best practices for avoiding COVID. But I think this idea that this is somehow censorship to ask social media companies to remove disinformation is really damaging because there's so much false information out there that people don't know what to believe. And I think the government has an obligation to protect the public, to take care that the laws be faithfully executed, to work with those companies, not to tell them what they can and can't publish, but to alert them when they become aware that something out there is false.

Jill:

And Barb, you might want to add to this. Because while you were talking, I just got an alert. A judicial panel has issued a pause on the ruling limiting Biden communicating with social media firms.

Barb:

Well, that's good news, because every day that goes by that they're not able to communicate, I think puts our national security in some jeopardy. So thank you for that update, Jill Wine-Banks.

Kim:

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Joyce Vance, Barb McQuade, and me Kimberly Atkins Stohr. Remember, you can send your questions by email at sistersinlaw@politicon.com, or you can tweet them using #SistersInLaw. Or you can also submit them on Threads. Just make sure you reply to one of us or tag one or all of us we can see it. And please support this week's sponsors HelloFresh, Helix, Calm, One Skin, and Bruvi. You can find their links in the show notes. Please support them because they really help us make this show happen. And go to politicon.com/merch for your t-shirts and all your other hot summer accoutrements with our logo on them. And keep us with us every week by following us on Apple Podcasts or wherever you listen. Don't forget the hashtag. I had somebody on Thread saying they couldn't find us on Spotify. Use the hashtag, you'll find us. And give us a five star review. It really helps others to find the show. See you next week with another episode. #SistersInLaw.

Joyce:

Hey, wait, before we start, Barb McQuade, bad news, I got a haircut earlier this week.

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Barb:

See, do you look different from me?

Joyce:

I look exactly like you.

Barb:

Congratulations.

Kim:

You literally have have the same hairdo.

Barb:

Congratulations.

Joyce:

I had coffee this morning...

Barb:

Looking good, sister. Looking good.

Joyce:

... with some of the guys in my old office. And their comment was, "Wow, you look even more like Barb McQuade now."

Kim:

You do. Oh my God.

Joyce:

So I'm just going to say I'm answering...

Barb:

I approve.

Joyce:

... to your name. If anybody says Barb, I will answer during the show.

Barb:

All right, sounds good.

Kim:

It's even parted on the same side.

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Jill:

It is. I think this deserves a posting of a picture because you two exactly alike. Poor Joyce.