

Barb:

Welcome back to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance, and me, Barb McQuade. We're excited to say that it's the season to get your #SistersInLaw merch. We have hoodies, t-shirts, and our brand new mug. Just click the link in the show notes or go to politicon.com/merch today. Now let's get onto the show, where this week we'll be discussing the latest in the Trump cases voting rights, and the Supreme Court's hearing on SEC proceedings. But first I wanted to say, did you folks see that Sandra Day O'Connor has passed away?

Kim:

Yeah, it was really terrible, sad news. She was 93, and of course she had been retired from the court for quite some time, due to health reasons. Not her own initially, but to care for her husband who had Alzheimer's. But I remember I was just a teenager, I was in high school. The first time I ever came to Washington, D.C., it was actually the first time I ever flew on a plane. And I was able to go to the Supreme Court, and she was kind enough to speak to the group of students that I was with, and she was funny and warm and brilliant. The only request that was made by the court, before we talked to her is that we'd not take photographs, because she was also battling cancer. But she was on the job, she was working, and it just really underscored my decision.

I knew I was pretty sure I wanted to go to law school, but that solidified it. To having a woman like that break the barriers that she had to break, in order to get to that spot, and clear the way for people like me. I may not have always agreed with her opinions, but I certainly respected her jurisprudence. Including the fact that she upheld abortion rights, even though she was a lifelong Republican. She was an elected official in Arizona, she was in the state legislature. But I always respected her skills and her intelligence, so it really is a loss.

Joyce:

Something I've been thinking about so much today, is how different the court would look if she had not stepped down when she did, to care for her husband. I think it's very likely that we wouldn't have, for instance, the Citizens United decision. Because although she was a Republican, she had a rational... I just want to say a pragmatic approach to the law, where she believed that the court's job was to make the country productive, to make the country work for all of its citizens. I don't think she had what we think of these days as a political agenda. I think she was a good jurist. She called the balls and the strikes. So like you say, Kim, whether you lined up with her on everything, she was a Supreme Court justice that you respected, and I have a tiny little personal memory about her.

She was very lovely, and always very engaged in the lives of her law clerks. And I briefly dated one of her law clerks while I was in Washington, before I started dating my husband. And she really wanted to know what was going on in their lives, so I had to make the mandatory appearance one evening. And she couldn't have been any more charming in a pink fluffy sweater, just a really nice woman, who was smart and bright and have this very important job. But the impression that I was left with, was that she cared deeply about individuals, and about the people who were in her orbit. And that's something that I think is a good example for all of us.

Jill:

So that brings to mind several things for me. One is how powerful she was, because she was a true swing vote, and she often was the deciding vote. But for me, like for you... I mean, her being the first woman and showing what that could mean. I was already well into my practice of law when she got

appointed to the court, but it never failed to astound me that when she graduated first in her class, she couldn't get a job.

Joyce:

Crazy.

Jill:

She ended up being a receptionist at a law firm, because even though she was first in her law school class, she couldn't be hired. And I met her for the first time... I belonged at the time, to the International Women's Forum, through the Chicago network. And she and Justice Berger hosted a reception for us, and she was so lovely and charming. And then I actually got to argue before her, in the only case I've argued in the U.S Supreme Court, and-

Barb:

Wait a minute-

Jill:

... it's this really-

Barb:

... do we know-

Jill:

... amazing feeling.

Barb:

... that you had argued in the Supreme Court? I don't remember hearing-

Jill:

I don't know.

Barb:

... that you'd argued in the Supreme Court?

Jill:

I don't know, but it's-

Barb:

Wait a minute-

Jill:

I'd like to keep you guessing about-

Barb:

... it's always a new surprise.

Jill:

... all the things I've done.

Barb:

Holy smokes.

Jill:

It is. Hey, and you know what one of the big issues was? It was at the time that Jewel LaFontant was getting attention for... She was the Solicitor general. What would she wear? Because back in those days-

Barb:

A morning coat?

Jill:

... the people for the Solicitor General wore morning coats. And so what was Jewel LaFontant going to wear? And I wore a pinstripe suit with a very long skirt, just to ease your minds. No miniskirts. Because they were out of style, thank God, of any other reason. But if you've never argued in the Supreme Court, standing there, the bench seems like it's a 100 feet high, and you're really looking up. And what a joy it was to see a face that looked like mine, it was really lovely. So thank you Sandra Day O'Connor for all you've done for America and for women, for the practice of law, and for keeping the court in a moderate position.

Barb:

I think for younger women who have never known anything different, the idea that there was a time when there were no women on the court, no people of color on the court, is really jarring to see some of those old photos. You know how the court does a class photo to start every term? I mean, most of the photos in history are all faces of white men. I mean, it's so stark in its failure to represent half of the population. And so it really was a milestone. And when you're the first, everybody's looking at you, you've heard the Ginger Rogers doing everything Fred Astaire does, but backwards in high heels. And so she did it with class with grace, and I had a lot of admiration for her. I read her memoir, I don't know if you've ever read this, it's called the Lazy B, or something like this. It's about growing up on a ranch.

Jill:

It's about her ranch.

Barb:

She grew up like hard scrabble ranchers, farming animals, and it was fascinating. And I think, I'm sure some of that rugged lifestyle helped to prepare her for the battles to come later in life. So we'll dedicate this episode to you Sandra Day O'Connor, thanks for all you've done for womanhood and our country.

Jill:

I want to add two things that she said just very briefly. One was her advice to Ruth Bader Ginsburg, who she mentored when Justice Ginsburg joined the court. And was assigned her first opinion, and she went to her saying, "Oh, I don't know how I can do this. How do I do it?" And apparently Justice O'Connor just said, "Just do it." And I thought that was great advice. But she also talked about-

Barb:

You mean she created the-

Jill:

... the burden.

Barb:

... slogan for Nike too? There's so many accomplishments, this woman.

Kim:

Did she get residuals?

Barb:

And that is a Jill Wine-Banks moment, only Jill has [inaudible 00:07:59].

Jill:

No, but her best line, which is one that I have always believed, is that she said at some point, "It's not enough to be the first. You have to do a good job, so you're not the last."

Barb:

Amen.

Jill:

And of course, she wasn't the last. She did a good job, and I think that's the best thing for all women to think about. Don't be just the first, make sure you're not the last.

Barb:

That's really good, Jill. Thank you.

Kim:

Jill, it is holiday shopping season. What's a good idea for a unique gift?

Jill:

I am in love with Aura Frames, and I have been giving those as gifts. The holidays are a time for special traditions, and my favorite holiday tradition is taking lots of pictures to capture every year. And the way you can see all of these, and you can even do them, you can arrange them any way you want on the Aura, which is a digital viewing platform for your photographs. And you can do it like... Here's the family today, and here's the family a year ago, two years ago, three years ago. It's really a fun gift, and it looks really attractive.

Joyce:

One tradition that I love is getting the whole family together for a holiday photo. We've been doing that for years, and the happy memories from those photos really last forever. Every time those pictures show up in my Aura Frames, I stop what I'm doing, mine is in the kitchen. And it's just really fun to see them there. This year, our kids are all over the place, so it may just be Bob and me, and the dogs and the cats, and the chickens in our holiday photo. But I'm going to put those on Aura Frames for the kids, and send them to everybody for Christmas.

Kim:

My phone is full of photos, and I usually don't do anything with them. But this is a great way to do that, because the app is so easy to use, and then you're sharing these photos in a way that I normally don't. So I think that it's a great, great gift. And the best part is the pictures you take can go up in anyone's home, so you can all experience the memories together, your whole family. And that's what makes an Aura digital picture frame the perfect gift to share legendary photos of your traditions with the people you love. And you can preload the years and years of memories, before you give it to someone, so it's already, ready to go. I know, I think I have at least one person that I know this would make a great gift for. And ours is, I have to say, full of a lot of pictures over the years.

Barb:

I'm not sure, if I were receiving this gift, that I would want it preloaded with your pictures of Snickers. No offense, Snickers is adorable. But I can imagine getting this from my sister preloaded with pictures of her dog. Her dog is adorable, but I might want to put my own pictures on it. Actually, I have one of these and I've been putting photos of the season, going back from the present to the beginning of time with our kids. And that's been really fun. I did a whole October thing, and then I did a November thing. So it's Thanksgiving pictures with the family together in various years.

And it's really fun, because it's sitting out in a very prominent place between the living room and the kitchen. And every time you walk by it, you see a different picture up and it just gives you a chuckle. So I really enjoy it. What's great about it is, it's so easy to upload. This is not the digital picture frame you may remember from way back in the early 2000s. There are no USB cables, or SD cards, and all that sort of hassle. With Aura Frames you can celebrate and commemorate all your best holiday memories. And we mean all of them, because Aura Frames have unlimited storage. One of the many reasons it's the best digital picture frame according to Wirecutter, The Strategist and Wired.

Jill:

And I'll bet you also have Halloween pictures of your neighbor's skeletons, because those are so adorable. So you too can give the perfect gift this holiday season by visiting auraframes.com. And if you do it today, you get \$30 off their best-selling frames with the code, Sisters. These frames sell out quickly, so get yours before they're gone. That's A-U-R-A frames.com with a promotion code, Sisters. Terms and conditions apply, and you can also find the link, you know where, in our show notes.

Joyce:

Well, lots going on in Trump world this week. I thought it might be a somewhat quieter week coming out of the holiday. Absolutely not the case. Barb, let's start on Friday in Fulton County, with hearings in the courtroom there to consider Trump's motions to dismiss, and other matters. What's the upshot from that hearing? And what do you think it means for the timeline in the case?

Barb:

Friday's hearing covered a lot of motions from the defense. I mean, one of their arguments is that the fake electors scheme fails as a matter of law. Because none of the electors was formally certified on the date they certified, because there was a pending lawsuit. That strikes me as a losing argument. They've argued that Donald Trump's First Amendment rights are violated by this prosecution. That's another one that... People love to play that First Amendment card that, as long as I'm speaking I can do anything I want. And of course that's not true. So I think that one is likely to fail. One of the more interesting issues that they are debating, is the trial date. Of course, with a pretty loaded calendar with all of the other cases, Fannie Willis has proposed August, she's also said she sees it going into 2025.

So Trump's lawyers said a couple of things. One is, if he is elected and is a sitting president, legally he cannot stand trial. That's not been resolved by courts. But it sounds right to me in light of the argument that the Office of Legal Counsel and Robert Muller relied on. That a sitting president cannot be charged, because he's just too busy running the country, and can't handle the distraction of a criminal case. That probably makes sense. My response to that would be, as Fannie Willis, "Well, great. Let's have it in 2024 then, before the election." And then they came back with the, "And and we prefer it not be done while he's campaigning, because that's really important too."

So we'll see. I imagine the judge will take these motions under advisement, but it's an important step to get through these motions. This is the part in all criminal cases where defendants challenge the charges on legal grounds, that there's some defense that the case can't go forward. So it's an important step of an important milestone, we'll get past it, and then see where we go from there. But I don't see any of these motions resulting in a dismissal of the case.

Jill:

And I just want to say Barb, that I do not think that the Office of Legal Counsel opinion is correct. I think it needs to be revised. It seems absurd to me to think that a president could, or a past president could commit crimes that are clearly crimes, and not be tried for those. It just doesn't seem right to me. The criminal justice system allows some way of holding people accountable and stopping criminal behavior.

Barb:

One of the unanswered questions, I think the response would be... First you have to impeach him, and then once he's out of office, then you can charge him and try him. But it's unresolved legal questions, so it's open for interpretation for sure.

Joyce:

It really is. And I don't think anyone ever thought that they were important questions until we got into the Trump era, and suddenly they're pressing questions. And it's a little bit difficult to change the rules when you're in the middle of a situation that always smacks of politics. But I think Jill raises a fair point, and something that'll have to be considered down the road. Barb, I agree. For what it's worth with your assessment, by the way, that these motions in Fulton County aren't going anyplace. Many moons ago I litigated some Dixie Mafia cases, some drug trafficking cases against Steve Sadow, who's now Trump's lawyer. And he's a very canny advocate in court. And so I was particularly struck by the way... He didn't really distance himself, because he was very much his client's advocate, but he used these really awkward phrasings like, "Well, we would prefer that the case not occur," you know, while he's running for election. I mean, it was really just interesting. I think we heard a lot today for those who were able to follow along with this hearing, about where Trump is going.

It's very clear that they will argue he cannot be tried while he's running as a candidate, and he cannot be tried while he's in the White House. That a trial would have to be deferred until he leaves. That should be a big red flag for Judge Scott McAfee, that he needs to chop-chop, get on with it.

So leaving Fulton County, Kim, there are two other cases with gag orders, the New York Civil Fraud case, and the criminal case in D.C. The D.C. gag order is still on appeal, but earlier this week, the New York order was restored, and the judge said he intended to enforce it vigorously. Can you talk about that ruling and what it restored? And then I'm always interested in your speculation. Do you think based on Trump's recent social media posts, is he going to be able to live without violating the gag order again?

Kim:

Well, I'll answer that second part first. Absolutely not, absolutely not. And so recall, that this is the gag order that was put in place in the New York Civil trial, that prevented him from discussing court personnel during the trial. And Trump just can't help himself, and repeatedly talked about the... Particularly Judge Engoran's clerk, whose job it is to be his clerk. And so she is visible in the courtroom, spewing all kinds of nonsense about her being a co-judge, or being a political... All kinds of nonsense. She has endured a plethora of threats as a result of this. And so the court held him for, cited him for violating this order. Trump's attorneys appealed, claiming it violated his First Amendment free speech right. A panel of the New York Appeals Court, State Appeals Court shot that down, they didn't even give it the dignity of an opinion.

They just rejected it outright, because it plainly does not. Because as the court had argued, Engoran's court had argued, not only does his comments put people potentially in danger from his followers who attacked them... But it also goes against the administration of justice in the court. It's disruptive, it's wrong. And he's already been warned that he shouldn't do it. So as an idea as to whether he'll do it again... After, right after this ruling, what did Trump do? He started attacking Judge Engoran's wife, by claiming that she posted things on social media that she didn't even... He cannot help himself, he has no impulse control. And I can only imagine that he will keep getting cited, keep getting fined, because he just can't bring himself to not violate this order.

Joyce:

You would think the attack on Paul Pelosi would've been enough. It would've been a wake up call for any sane person. And the problem with this is, nobody takes it seriously, until somebody almost gets killed. And even following that, Republicans have just refused to discipline the leader of their party, who I think is placing the judge's wife and his law clerk at serious risk. And it is appalling, and it is inexplicable to me, that these are real people whose lives Trump continues to put at risk.

Jill:

And we should point out that Judge Engoran's wife does not have a social media account-

Joyce:

It's all lies.

Jill:

... it was a total faith-

Joyce:

It's all lies.

Jill:

... and so whoever created that account was just an excuse for Donald Trump to attack her.

Joyce:

Well, they say she deleted her account, Jill. It was there, it was there, I saw it. But then she deleted her account, that's what this far right blogger says.

Jill:

Oh, my God.

Joyce:

Saying it doesn't make it so.

Jill:

Oh, my God.

Joyce:

But I mean to the theme of disinformation in Barb's area, the expertise, right? That's exactly how it happens and how people get harmed. Well, Jill, that takes us, I think to the D.C. case, right? Judge Chutkan denied Trump's request for subpoenas, so he could get discovery related to January 6th. Trump said the government was withholding information from him. The government said he was on a fishing expedition. Who do you think got it right?

Jill:

I'm for the fishing expedition answer, it's really quite clear that he did not have a detailed enough explanation of what he was looking for, how it would be relevant, how it would be admissible. And that there was really any there, there, to what he was requesting. And I am sure that Judge Chutkan took into account, that this is one of those cases where you want to give the defendant everything that you possibly can. But there has to be a limit, and you can't let him just make stuff up, and say he can have it. So I think that the court was quite correct in saying, "No, you don't get this material. There's nothing there that's admissible. There's nothing there that you have identified clearly, and detailed enough, to meet the standards for such a subpoena for a pretrial request."

Joyce:

So we are taping Friday, mid-afternoon. And Friday morning with really no warning, the D.C. Circuit dropped an opinion in an appellate case, that was a little bit of a bombshell. It's a case you probably haven't heard much about lately. This was an extremely important development. What you may recall is that Capitol police officers and members of Congress, Eric Swalwell, is one of them. Sued Trump over January 6th, saying that he had caused it to happen. And Trump argued that he had presidential immunity, and couldn't be sued because of it. And after waiting almost a year, the Court of Appeals has finally ruled. They held that the case against Trump can go forward at this point, and that not everything that candidate Trump did, was covered by presidential immunity. So we are still digesting a rather

complicated opinion, but I thought we could just flag some of the contours for y'all. Barb, what's the basic ruling in the case? And how do you think it will impact this civil case that it was handed down in?

Barb:

I don't think this is a big surprise. This is the same way the trial judge had ruled. And so the D.C. Circuit Court of Appeals is now affirmed that ruling. But essentially what they say is, that a sitting president who's in his first term and seeking re-election has two roles. One is, their role as president, and anything that the president does within the outside perimeter of his duties, is protected by presidential immunity. But that same person also wears a different hat as a candidate for re-election for president.

And things that he does solely in that capacity, are not protected by that immunity. And so they say the activities that are alleged in this complaint, in particular, the speech he gave on the Ellipse that day... That was all about his role as a candidate. He doesn't have any duties as president to work with the states in the administration of their elections. And so therefore, what he's alleged to have done in that complaint, is not protected by immunity, and the case can go forward.

Joyce:

So Kim, I mean, it seems obvious, right, that Trump appeals this decision. Do you think that that'll happen and how do you expect that appeal to progress?

Kim:

They will absolutely appeal this, because this is a crucial point as we pointed out, not just in the civil case, but also in the criminal one as well. So certainly he will appeal it. Look, I can never predict what the Supreme Court will do as a general matter. But I just can't imagine that the Supreme Court would issue an opinion that says a president is immune to do basically whatever he or she wants, at any time. Clearly, it seemed there is a solid basis for saying he was acting in a political capacity and not an official one. And I think that there's plenty on the record to support that, and I would expect the Supreme Court to uphold that. But you never know.

Joyce:

I think that's a good analysis though. I mean, it's sort of a sweeping opinion, but to Barb's point, it confirms this notion that we have talked about on the podcast repeatedly. This idea that there is a President Trump and a candidate Trump, and that candidate Trump isn't entitled to the same protections and immunities that President Trump is entitled to. Which is very interesting Jill, because that same argument has surfaced in Georgia, and in other of the criminal prosecutions. I mean, this is a ruling in a civil case. Do you think it has any application to the criminal cases? And if so, how do you think that plays out?

Jill:

Of course, civil and criminal are quite different, but the logic of it certainly applies. And so I think that it could be a predictor. And we've had other cases, including if we could go back to U.S. v. Nixon. Where the court said that the president doesn't have certain immunity, because the criminal justice system has certain requirements, and he has to cooperate with it. And you have other cases where in terms of Trump, the courts have said he's different when he's a civilian, than when he's a criminal defendant. And so I think it will end up being influential in the criminal case and that they would end up reaching the same decision. It's not directly applicable, but it is influential.

Joyce:

I'm persuaded it actually has some force. I mean, it is really the same issue? Whether he's entitled to immunity? And I wonder if this doesn't make the rulings, at least in Judge Chutkan's case, a little bit easier? Because this is now the law in the circuit in the District of Columbia, at least until the court en banc, or the Supreme Court says otherwise. Which I agree with Kim, won't happen. Barb, Kim, what are your closing thoughts? Do you think that this helps the criminal cases in any way?

Barb:

I think this bodes well for the criminal case, although Judge Chutkan and any Circuit Court of Appeal panel that reviews this, we'll be looking at slightly different facts. The legal issues are really the same, whether it's a civil or a criminal case. In the criminal case, you've got Trump's alleged call to Brad Raffensperger asking for 11,780 votes. And you've got the fake electors part of the scheme, which were different from what the court considered in this case. But again, those kinds of activities all strike me as falling within Trump's role as a candidate, as opposed to his role as president. So I don't see it coming out any differently in the criminal case, than it came out in the civil case.

Joyce:

So, you know, y'all, I think that there's just a good aura to our podcast. I mean-

Kim:

Indeed.

Joyce:

... we're lots of fun, but we also have not only Aura Picture Frames, but we have another advertiser named Aura. And this Aura does something that's really important to me, during the holidays. Because I worry as I shop online incessantly, to be truthful, that some of my personal information, or my family's personal information is at risk. Your personal info is out there for anybody to find, there are data brokers who scrape public tax records, and sell that information legally, which makes it accessible to anyone. And we all need to fight back. What do y'all think?

Jill:

I think you're absolutely right, and I know you are an incessant shopper. You make me pale-

Joyce:

Don't tell my husband-

Jill:

... in comparison-

Joyce:

... don't tell husband.

Jill:

... at least Scott was a good shopper. That's what separate accounts are for. But, I was really reluctant in the early days, of being able to shop online about putting in credit cards. And I went and I got a separate account for Venmo and stuff, so that it would not have a lot of money in it, and I could just refill it. And then you discover something else. You discover that Aura can help eliminate all that. Isn't that true for everybody?

Joyce:

I mean, it really is. When privacy is paramount, that's when you need Aura, and we're thrilled to partner with them. Because Aura is an all-in-one online safety solution that helps protect you and your family from identity theft, financial fraud, and online threats before they happen.

Barb:

We just had a massive data breach at work, and so that's something that I'm worried about. But with Aura, you can rest easy, knowing that you're being looked out for. The app scans, the dark web to look for your email addresses, passwords, social security numbers, and other sensitive information bad actors might have. If anything's found, you get alerted in real time. And, if you're the victim of an identity theft, they're experienced, white glove fraud resolution team, helps you navigate credit bureaus, initiate credit freezes or locks, and it works with you around the clock to resolve it.

Jill:

The security you get is such a great feeling, and Aura offers a suite of tools to protect you and your loved ones. Including real-time alerts, as Barbara said, on suspicious credit activity, computer virus managers and parental controls. A VPN and a password manager, it's a comprehensive safety solution that provides almost every tool you'll ever need, all in one place. Aura also helps reduce annoying robocalls, telemarketers and junk mail, by sending takedown requests for you regularly. That's one of the best features. It is something they really do, to benefit you.

Kim:

And for a limited time, Aura is offering our listeners a 14-Day trial, plus a check of your data, to see if your personal information has been leaked online. All for free when you visit aura.com/sisters. That's A-U-R-A dot com/sisters, to sign up for a 14-day free trial and start protecting you and your loved ones. Again, A-U-R-A dot com/sisters. Certain terms apply, so be sure to check the site for details. And of course, by now you all know where you can find the link, it's in our show notes.

Well, as folks were tucking into their turkeys and pies over the holiday weekend, a couple of federal appeals courts were carving up the Voting Rights Act. So Jill-

Joyce:

Oh, I see what you did there. That was nice.

Barb:

Yes. That's nice.

Kim:

So Jill, in the first case, the Eighth Circuit, a panel of the Eighth Circuit, held that individuals have no private right of action under Section II of the Voting Rights Act. But of course, voters and groups like the

NAACP have been suing under a proposed private right of action, under Section II for... Oh, I don't know, 50 years or more? So how did the court come to this seemingly, inexplicable conclusion?

Jill:

Well, it is not just seemingly inexplicable, it is inexplicable. Because you're right, almost all the cases have been brought by private litigants, the court has always accepted that as a fact. And now all of a sudden this panel is saying, "Oh no, only the U.S. Attorney General can bring these suits." Because in other statutes it gives a private right of action specifically. And it isn't specifically included in the language of Section II. And therefore they said, "No, you can't bring it."

Now I don't know what they will do with the dozens of cases that have been brought by private litigants, and upheld by the Supreme Court. That's something they didn't deal with, and I think it's wrong. And I'm hopeful that the Supreme Court will recognize that there are reasons why private citizens who are voters, should be able to bring these suits. And that it shouldn't require the U.S. Attorney General... Especially when the U.S. Attorney General may be someone appointed by someone who wants to bring down democracy, and to stifle the vote. We can't have that be the only thing. And by someone who might be president who says, "I want to abolish the Constitution"-

Kim:

No, they can't.

Jill:

... "and I want to abolish all this." So I think we have to be very careful, and hope that the Supreme Court does not accept this novel approach.

Kim:

How about that Barb, the Supreme Court? Even our current very conservative, supermajority, Supreme Court has upheld private Section II actions, as recently as earlier this year, with the Alabama gerrymandering case? Remember in Milligan? So why do you think the Eleventh Circuit is all of a sudden saying, "Hey, let's revisit this individual right to sue," particularly in racial discrimination claims, now?

Barb:

This is endemic of this post-precedent Supreme Court-

Kim:

[inaudible 00:34:53].

Barb:

... the idea that we review old cases, we don't follow them, we decide whether we think they were right the first time around. One of the judges in deciding this case, is a former law clerk for Justice, Clarence Thomas. And Justice Thomas and Justice Gorsuch, in recent rulings in the past couple of years, have issued dissenting opinions. Saying that they question whether there is this private cause of action in Section II. Even though it's been used that way for decades, they say, "If the legislature had meant to say so, they could have explicitly included that in the statute, and they didn't, so I don't know."

And so what this clerk, now a circuit court judge, but former clerk for Justice Thomas said, is that, "Much of the last half century courts have assumed that Section II is privately enforceable." But a deeper look has revealed that this assumption rests on flimsy footing. I mean, doesn't that remind you of what Justice Alito said in Dobbs, about Roe versus Wade? It was egregiously wrong when it was decided. You don't get to go back in time and pick your precedence. So there are some very narrow parameters where prior court decisions should be overturned, when other law has developed around it in an inconsistent way. When we have new understandings of the fact and law, when people have not relied on it in the conduct of their lives. None of that stuff is true here, just as it wasn't in Dobbs. And so it really opens the door for the court, just because the identities of the justices have changed, that whole body of law will change, and that's not the way it's supposed to work.

Kim:

Well, Joyce, there was another opinion too. It took a more subtle approach to eroding this Section II right, when it comes to voting rights claims and racial discrimination. But it's still pretty troubling. But talk about that? It's a case involving statewide offices, and why is that concerning?

Joyce:

I just want to bask in the rosy glow of Barb's comments for a little bit longer. Because I think her assessment of the Supreme Court is dead on the money. This notion that they can just overturn cases instead of following them. And I also think your comment is dead on the money, when you say that influences the Courts of Appeals. Because that's what you see happening in this Eleventh Circuit case. Usually when we talk about Section II cases, Voting Rights Act, Section II, we're talking about gerrymandering. But not always, and this one is a little bit different. Here's the issue. Georgia elects the five members of its Public Service Commission statewide. Everybody votes for all five of them on the statewide ballot. And Black voters sued, saying that the PSC should be elected by district. Because the statewide elections dilute Black voting power so much, that Black voters are functionally unable to elect any candidates of their choice.

A lower court judge agreed with them, found that there is discrimination and violation of the Voting Rights Act. And said that the PSC members had to be elected from districts. They actually serve five different districts, which is an interesting facet of this case. They don't serve statewide, they serve a district, but they're elected statewide. So last week, the Eleventh Circuit, which has had this case for a while, looks at the district court's ruling and they say, "Not so fast, we're going to permit these statewide elections to go ahead like they always have."

And that's a big deal in Georgia. Public Service Commissions, they regulate telecommunications, transportation, utilities like Georgia Power and Natural Gas. They set the rates that people pay. These statewide elections, let big business interests dominate PSC. So that's a big deal for the state. But the ruling has impact beyond Georgia, on this entire issue of whether you can have statewide elections. And that may not seem important, or sexy with everything going on with voting rights. But let me tell you, I went through this exercise of looking up pictures of all of the State Supreme Courts in the South.

Alabama elected statewide, no Black Supreme Court justices. Mississippi one, Tennessee none, Georgia two. And so you can understand how statewide elections can dilute the power of minorities, who would otherwise vote as a block if they could elect from inside of districts. It is, I think, deeply problematic in that way. The case will head towards the Supreme Court, we don't know yet if they'll take it up. But Barb to your point about who the judges on the panel were, Judge Branch and Judge Grant are both Trump appointees. Judge Schlesinger is from the middle district of Florida, he's a George H.W. Bush appointee. I

think that they took up the invitation that at least two Supreme Court justices gave them in dissents, and I think the court will find a way to make it the law.

Kim:

Oh, my goodness. So in writing about this, and I'll link my story in the show notes. I spoke to an attorney at the NAACP and she talked me off the ledge, right? That she was just like, "There's no way, there's just no way the Supreme Court will uphold this." And so then I start thinking it's like, "Okay, so we have two." We have Thomas and Gorsuch... Alito, I mean, we know what he's going to do. Chief Justice John Roberts, who has said he doesn't believe that racial discrimination exists anymore in voting. So we have him. So that means that we would have to trust Amy Coney Barrett, and Brett Kavanaugh to save the Voting Rights Act. I'm still on the ledge, talk me off.

Joyce:

Oh, I wish I could, but I think John Roberts probably regrets his vote in Shelby County, to gut Section Five, of the Voting Rights Act. If for no other reason than because those comments that racial discrimination was over, make him look very foolish in hindsight. But I mean, I think it comes down to Kavanaugh as the swing vote. If they pick up Roberts they still have to pick up Kavanaugh. And who knows, in the Alabama case in Milligan, he voted with Roberts to uphold... Or rather to insist that Alabama draw new maps that would better protect the rights of Black voters. But he was very clear that his vote was not for all time, and I worry that his vote would not be for this time.

Barb:

I don't know about those two. They have not been reflexively MAGA agenda on every issue. So I mean, they certainly have their pet issues. They were certainly ready to go along with Dobbs, but I don't know. I don't know if I can talk to you off the ledge, but maybe I can give you a treat while you're sitting out there.

Joyce:

Don't you worry that this is not the MAGA agenda, that this is the long... I mean, this agenda existed-

Kim:

This is-

Joyce:

... before Donald Trump was in power, right? I watched this in Alabama-

Kim:

The federal system is-

Joyce:

... in the deep south.

Kim:

Yes. That's why Roberts-

Joyce:

It's a long-term-

Kim:

... has been the general-

Joyce:

... agenda.

Kim:

... long on board on this. This is beyond... I agree with that.

Jill:

And I'm with Joyce that I would like to talk you off, but I'm not putting my money on any of the six. And it scares me a lot that... And remember, the Voting Rights Act is my generation. It passed while I was just... Well, I guess I was just still in law school, and was-

Joyce:

I was four.

Jill:

... seen as.. Oh, quiet, come on. Oh, make me feel old. Anyway, it was a very big deal in my era. We were all big on civil rights and my law school graduating class didn't want to go to Wall Street. We all wanted to work for the government and do good. And to see it just being eviscerated is really sad and awful. And to see it in the context where whatever John Roberts says, discrimination is not over, we still need the Voting Rights Act. And the only thing when they eviscerated having the preclearance, I mean, did you want Bill Barr making decisions on preclearance-

Kim:

Oh, good God.

Jill:

... what good does that do? Now, okay, it'd be fine with Merrick Garland, but I don't know. There must be a better way to do this, than that. And certainly not allowing individual voters to bring the suit, is a really bad thing. And this would be a bad one too. So I'm hoping that something wakes up the court, and they realize that they're in such trouble with the public opinion, that they will protect voting rights.

Barb:

Kim, sounds like we're not going to be able to talk you off the ledge. Would you like a sweater while you're out there? Just make yourself comfortable out there.

Joyce:

I'm knitting one for you. I'll send it to you.

Kim:

Thank you. It is a cold place, but one thing that comes to mind is that voters matter. This means that voting rights is on the ballot, because not only do presidents pick federal judges, and these were all Trump appointees doing this nonsense in the Eighth and Eleventh Circuit. So that's important. But the Senate can either... It's their job to advise and consent, or block... Dependent on what they do, judges from federal courts and the Supreme Court. And the Voting Rights Act needs bolstering, it used to be reauthorized by just broad bipartisan support. Now we need people to bolster it and bring it back to its former glory. So that can't happen unless all of you vote knowing that democracy is on the ballot. So it's up to y'all to get me off the ledge. So help me, save me.

Joyce:

So we have all become big fans of Kitsch since they started advertising on the podcast. Kitsch has been called game-changing, and we think their products are amazing. They started in 2010 by selling hair ties door-to-door, it was just hustle and a dream. And now Kitsch, a company founded by women, is carried in over 20,000 retail locations.

Kim:

I am very particular about taking good care of my hair, and that includes the night routine. And I really just adore Kitsch's little very cute turban, which is satin-lined, but you can buy it in these pretty colors on the outside. It works while you're sleeping, it works now that it's getting colder. If I just want to throw on and use it as a beanie when I'm out walking Snickers and I know that my hair is very well protected. And whatever your budget, your skin type, your hair type, Kitsch believes you deserve little indulgences at affordable prices, morning, noon, and even like me, when you're sleeping. Maybe you've seen Kitsch's satin pillowcases, they're caps and their eye masks, which are also great. They're great for your skin and your hair while you sleep. They also have heatless satin curling rollers, so you can say bye-bye to heat damage. Kitsch makes for amazing holiday gifts for your loved ones, or even when you just want to treat yourself.

Jill:

I love the heatless curlers, they really do work. They look pretty and they feel comfortable. And I love the name Kitsch. I always thought it was a Yiddish word. I don't know, Joyce, is it?

Joyce:

I don't know. I think of it as being like kitschy. It does sound Yiddish, doesn't it?

Jill:

It does. I don't know, but anyway, I have to tell you about the latest Kitsch viral craze. Rice water shampoo bars that can improve your overall hair growth and density. Reviewers say they'll never use bottle shampoo again, and then you save plastic as well. And that their hair feels and looks 1000% better between washes, and yours will too. Plus, right now, for a limited time, you can live the Barbie dream life with the Barbie by Kitsch Collection, featuring Kitsch's best-selling satin pillowcases in iconic Barbie pink.

Barb:

Right now, Kitsch is offering you 30% off your entire order at mykitsch.com/sisters. That's right. 30% off anything and everything at mykitsch.com/sisters. K-I-T-S-C-H dot com/sisters. One more time. That's mykitsch.com/sisters for 30% off your order. You can also take your beauty to the next level by finding the link in our show notes.

Jill:

This week, the Supreme Court heard arguments about the Securities and Exchange Commission's ability to use its in-House administrative law judges, in cases where the SEC is seeking civil penalties. There were actually three issues raised, but the court focused almost entirely on whether such defendants have a Seventh Amendment Constitutional right, to a trial by a federal jury. So Kim, let's start by letting our audience... This is one of those that in the holidays, got swallowed up. But is really important for a lot of reasons that make it something that people should pay attention to. Could you summarize the plaintiffs and the government's arguments, and whether the case may impact other agencies besides the SEC?

Kim:

Sure, and I'm a total... I've mentioned before, I'm a total admin nerd. And so I can get easily in the weeds of stuff, so I will try to say it in layman's terms. But essentially, the plaintiffs in this case are suing, challenging the constitutional authority of a panel within the SEC. A panel of administrative law judges that adjudicate certain things, including civil penalties... By saying that it violates their constitutional rights under the Seventh Amendment to have a federal jury trial, in cases, where a jury penalty, which can include monetary damages, are at stake.

The government says... Come on, since we've been in existence, we have, by the authority granted to us by Congress, have had within our administrative authority, the ability to make administrative law judges... To empower administrative law judges, to adjudicate these kinds of things. And there's a reason for this, dear listeners. It's because if every single action brought by the SEC went to federal court... The federal courts would not be able to do anything else but adjudicate SEC actions.

And it would also really reduce the ability of the government to hold people accountable for violating securities laws. Because this is a great way to resolve cases, to get settlements, to get things resolved, and move forward. It's a wonderful enforcement procedure, but that's precisely what the people challenging them don't like about it. They don't want the SEC to be robustly enforced. So this is one of many attacks that have been waged against it.

And of course, it can have application beyond the SEC. Any of the agencies, many of which do have administrative law judges, who adjudicate things within that agency when it comes to regulation. So this is a bare-faced attack on the administrative state. But this current Supreme Court likes attacks on the administrative state. So again, I'm on the ledge on this too.

Jill:

And rightly so I think. So Joyce, I want to follow up on what Kim said, because she's suggesting that it would make it impossible for the SEC to settle enforcement actions. It would impact court dockets? There are administrative law judges over 2,000 of them, plus there are some 650 immigration judges as well. But there are only 900 article III judges. So if you take away the administrative expertise in the area of law, that administrative law judges have. If you impose a jury requirement on these cases, what's going to happen?

Joyce:

I mean, it would really be a mess. And I think it is a double whammy. The SEC loses its ability to settle cases, because any litigant who's in that position anyhow, can afford to take their case into federal court and try to get a second bite at the apple with a jury, rather than agreeing to settle. And that really means the federal courts grind down to a halt. We talk a lot in the Trump context about how long it takes a federal case to go to trial. Well, if this happens, those deadlines are going to be extended. It will be years before any cases can go to trial. Because right now, ALJ's, administrative law judges, as you point out, handle a tremendous number of these cases, and they have specialized expertise. For instance, there are ALJs who handle just immigration, or just SEC matters. They're subject matter experts.

And it's very clear, and Justice Jackson pointed this out in oral argument, the law does not extend a jury right, in cases like this. The risk is that if six conservative justices on the Supreme Court want to extend that sort of a right, then we end up with this quagmire in the federal courts. So I think that is a real risk. This decision has the potential to really upend how the courts function.

Jill:

So Barb, let's follow up on that, with the comments and the questions during the argument of this case. Do you think it indicates a bias against the power of administrative agencies and a desire by this conservative course, to cut back on regulatory parts of the agency?

Barb:

That is a leading and loaded question, and the answer is, yes. I do think so. Chief Justice Roberts in particular, as Kim and Joyce have already discussed, are really determined to chip away at what people refer to as the administrative state and administrative agencies. And there's a case on this... Again, the idea that the court just sort of picks and chooses which precedents it likes, and which it doesn't. Justice Ketanji Brown Jackson cited, she said, "Isn't there precedent on this case? In 1979, Atlas Roofing, versus OSHA? Have we already decided this question?"

And that said that when there is cases arising out of statute, then those are not cases that arise at common law. And so there's not necessarily a right to an Article III trial in those kinds of cases. But the conservative justices said, "Well," one of the things Chief Justice Roberts said is, "You know that case is almost 50 years old now?" Don't you love it that when a case is old, it's either too old to be relevant, or bedrock foundational to our country. It's 50 years old.

Joyce:

I guess we're learning-

Barb:

Since that-

Joyce:

... that they have a shelf life on those cases, right? There's an expiration date?

Barb:

I guess that's right. Well, he says, "The agencies have grown a lot by then, so we ought to reconsider." Same with Justice Gorsuch, who... Here's one that's really rich. He's talking about how the right to a jury trial is a very important foundational freedom. But in the very first opinion that Supreme Court Justice Neil Gorsuch ever wrote, he took away the right to a jury trial. Case called Epic Systems versus Lewis, in 2018, his very first opinion. And he said, "Oh, jury trial, shmury trial." In an arbitration setting, employers can force employees to write away in a contract, and sign away their rights to a jury trial. So that's no big deal.

So here, I think that there are several justices who have a hostility to this idea that administrative agencies have this power, versus Article III courts. And I think they would like to see all of these trials go to Article III courts, and give the power to courts as opposed to administrative agencies. But of course, the counterargument to that is, administrative agencies have the subject matter expertise and the capacity. I mean, maybe that means we need hundreds more Article III judges, but this is... In light of what we've seen in recent years about chipping away administrative agencies powers, this one does not bode well for the SEC. Or for people who invest in securities.

Kim:

I'm going to die on this ledge.

Jill:

That's a very good point, Barb, very good point, because you're right. How else are these protections that have become so necessary in our society, going to be upheld if we don't have these cases tried in front of administrative law judges, and quickly. But aside from this right to a jury trial, and whether it applies only to common law cases, or whether it can apply when there's a public right being informed. There were also two other arguments, one of which was a non-delegation issue, which in my mind... I'm glad it didn't get much attention during the argument, because it could totally curtail the regulatory scheme that has been developed over all these years. Joyce, can you talk about what the non-delegation issue is?

Joyce:

I mean, I think this is part of the core notion of at least three cases that the court will take up this term, where they're trying to think about how they can limit what they call the administrative nanny state. This is about who has power. Federal courts or the executive branch? And so this notion that some duties are non-delegable... It is I think, something that could be very dangerous to the ability of executive branch agencies, to continue to use their special expertise to conduct the nation's business. I mean, these are day-to-day decisions, not decisions that should get kicked over into the federal courts.

And so this is very much this notion that Justice Gorsuch has, where the first major opinion that he wrote, was an opinion that strips employees of their right to a jury trial. And now he and other conservative justices show up in this case saying, "But jury rights are fundamental." It's like they use this sort of pretzel logic, where they bootstrap themselves into these positions that they want to end up at, and damn the ideological consequences of getting there. So I think you're right, Jill. There are some dangerous booby traps in this case. Let's hope the court avoids them.

Barb:

Pretzel logic, I love that idea. So I pretend I'm actually going through some methodical analysis, but I know exactly where I'm going to end up. I've always used reverse engineering, but I like the pretzel analogy.

Joyce:

Well, you sort of have to be in a-

Barb:

Did you make that up, or is that out there?

Joyce:

That's a Steely Dan album cover, girl. Pretzel Logic, one of the greatest albums of all time.

Barb:

Pretzel Logic. All right.

Kim:

I love it.

Barb:

I need to improve my musical repertoire, apparently.

Jill:

So Kim, let's follow up, because on this subject of what's actually going on here and what is the danger of this... The full implications of this case, require that we describe some recent Supreme Court decisions, and arguments, where the new conservative majority has restricted, or is considering restricting the powers of administrative agencies like the EPA? Whether the funding system for the consumer fraud protection Bureau is legitimate? It's one of your favorite topics, I know, is the major question stack. Could you just explain how this could really escalate to being a requirement that all administrative agencies stop work?

Kim:

So in addition to the non-delegation doctrine, which I won't say is made up, but it was kind of made up. There's something else called The Major Questions doctrine, that I don't want to say is made up, but it was kind of made up. It says that... Well, I call it a theory, but no, it's a doctrine now, because the Supreme Court has totally adopted it. So it is a doctrine, that's made up. It's a doctrine that essentially states that anything, any issue of major political or economic significance, is assumed not to have been delegated by Congress to administrative agencies. So administrative agencies are free to regulate anything, except anything of major political or economic significance. Which means nothing, almost nothing. So it's totally made up, but in the last three years alone... What has the Supreme Court used? Yes, The Major Questions doctrine, to rule on? Let's just say they have rolled back federal housing regulations. They have thwarted employers ability to mandate Covid vaccinations. They have stripped the EPA of a great deal of its power to fight climate change, through the Clean Water Act. They have blocked the Department of Education's ability to modify or forgive student loans. That's just in the last

three years alone. And two things that are on the docket this term, there are two more administrative law cases on the docket this term, including that CFPB case. That could also be decided under this made up doctrine. So it's problem, the Supreme Court has clear disdain for the administrative state. And it seems that this is one of the areas that they are really willing, the conservative supermajority, is really willing to use any, and whatever theory that they can.

A long time ago, I think we've talked about it in the past. We talked about Chevron deference, and Auer deference, and this is the level of deference that courts were able to give agencies to interpret their own rules. And I thought that was going to be a thing, and that if they overrule Chevron, oh my God. Then agencies won't even be able to argue that they understand what their own rules are. That's not even a thing anymore. There is a case, Loper Brite, on the docket this term that could overturn Chevron. Who cares about Chevron anymore? They've already used the non-delegation doctrine and The Major Questions doctrine-

Barb:

Where they've swallowed the doctrine.

Kim:

... to destroy the administrative state. So Chevron, schmevtron, it's already a done deal.

Jill:

So that's pretty depressing, isn't it?

Kim:

I'm still on the ledge.

Joyce:

We're going to join you out there.

Kim:

I'm falling off. [inaudible 01:02:44]. I'm holding on by one hand [inaudible 01:02:45].

Joyce:

Move over. [inaudible 01:02:46]

Jill:

I think we're all calling Greg and telling him he has to hold on to you this weekend, for sure. So Barb, can you predict the likely outcome based on the arguments this week? And were there any clues from Kavanaugh especially?

Barb:

Well, there are a couple moments that I think were very telling. The first one was when Justice Kavanaugh said that he thought it was problematic that the government can deprive you of your property, your money, substantial sums in a tribunal, that is at least perceived, as not being impartial. Who says it's not impartial? And so the idea is, because this is part of the executive branch, these judges

can't be impartial. I mean, we've had decades of immigration judges, SEC judges, social security judges. And their decisions are accepted.

So that has no basis in any fact whatsoever, but I think it does not bode well. But I think the argument that actually really summed it up about... I mean, it's definitely... They got six votes, they've got the votes. But was when Justice Kagan said that, "You know, the only reason that this has not been decided before is? No one's brought it up before." And Justice Kagan said, "Well, that's because nobody's had the chutzpah, to quote my people, to bring it up since 1977." It's really discouraging to see the court just shaping its own agenda the way it wants to, but I think we can see which way this is coming out.

Jill:

Of course, that was one of the best lines of the entire day of argument, for sure. And the one thing I want to do point out is, that actually the truth is that Article III judges are political appointments, although they get life tenure. Whereas administrative law judges are picked for their expertise, so it isn't political. So the argument seems to fall apart right away, for me.

Barb:

Jill, my skin feels like sandpaper. What can I do about it?

Jill:

Well, luckily it doesn't look like sandpaper, but I do have a solution for you. Because when you want to look fresh-faced and glowing for anything in the holiday season, or on television, OSEA Superglow Body Set is your go-to gift for yourself. And for the people you care about, any anytime at all. I can't believe how close we are to the end of the year already, so you need to know that the limited edition Superglow Body Set is the perfect way to try three of OSEA's best-selling products at an incredible value. Meaning that you're saving while you're looking, and feeling your best.

Kim:

You'll get a full-size Undaria, Algae Body Oil, Undaria Cleansing Body Polish, and a travel-size Undaria Algae Body Butter. So you will be ready for the upcoming travel season. We love the beautiful box it comes in, it's ready to gift just as it is. And it's definitely worthy of an unboxing video. And right now you can save 30% on the set at oseamalibu.com, plus we'll share a discount code for an additional 10% off.

Joyce:

Well, maybe I'll do my first unboxing video, Kim, because I have ordered OSEA for Christmas presents for so many of my friends. I'm not sure how to do it, but maybe you'll help me. OSEA's products give you both exfoliation and hydration, and don't we all need that to make our skin feel silkier, with the heat blasting for Winter right now. You can also take OSEA products into the shower for a next-level experience. OSEA has been making seaweed-infused products that are safe for your skin in the planet, for over 27 years. Everything they make is clean, vegan, cruelty-free, and climate-neutral certified. With OSEA, you never have to choose between your values and your skin.

Kim:

Give the gift of Glow this holiday season with clean, vegan skin care from OSEA. And right now we have a special discount just for our listeners. Get 10% off your first order site-wide, with code SIL, at

oseamalibu.com. Just head to O-S-E-A malibu.com, and use code SIL, for 10% off. And remember, you can also find the link to your perfect glow in the show notes.

Well now comes our favorite part of the show, the part where we answer listener questions. If you have a question for us, please email us at sistersinlaw@politicon.com, or tag us @sistersInLaw.podcast on Threads. Or tweet using hashtag SistersInLaw. If we don't get to your question during the show, keep an eye on our Threads feeds throughout the week where we'll answer as many of your questions as we can. Our first question comes from Jane. And Jane asks, "When George Santos is expelled from the house, will the Democratic Governor of New York appoint a replacement, or does it go to an election?" Now that, that's happened Joyce, what's the process for replacing him?

Joyce:

So bless his heart, he may have been the first man on the moon, and the starting center for the New York Knicks, but I'm afraid that George Santos time as a Jew-ish member of the Congress is now at an end. Happy George Santos Expulsion Day to all who celebrate. And now it will be up to New York, Governor Kathy Hochul to set new elections. His district will have the chance to elect temporary successor. I just wanted to read this, it's not a tweet, it's on Threads from Minnesota Senator, Amy Klobuchar, because I think she gets the last word on George Santos. She wrote "'George Santos has been expelled, if, they can do this to a college volleyball star, world-famous Brazilian journalist, successful New York City financier," am I saying that wrong? Financier, "And noted producer of the Spider-Man musical, what Hope is there for we mere mortals."

Jill:

Oh, that's great.

Kim:

Excellent.

Barb:

All right, very good. Well, our next question comes to us from Kelly, who says, "I hear many Republicans say that we are not a democracy, but are a constitutional republic. Can, you please explain what each means?" Kim, what do you got on that for us?

Kim:

I can explain that. So that is correct. We are a constitutional republic, not a democracy. So a pure democracy, and it's worth noting that there aren't very many of them, many nations anyway that operate under a pure democracy. Some municipalities do. Like in Massachusetts, when I covered local news. There are some towns that all of the local ordinances are done by town meeting, which means all the people in the town come to a gym auditorium, and they vote on everything. Everything is by majority of the people in the town who come to vote. That's an example of pure democracy. But nations don't run that way, most of them do not. They are republics. Ours is a constitutional republic, which means there is a bill of rights, that is full of things that are not up to a vote. Our right to vote is not up to a vote.

The right to free speech is not up to a vote. That's not something that the people can, in an election, revoke. The Constitution also sets up things like the two houses of Congress. In one the Senate, every state gets two representatives. In the other, the house. There is more representative governments,

where there are districts that more closely resemble the republic. We have things like the Electoral College. Presidents are not elected by a pure majority of the electorate, they're elected by the Electoral College. So there are different things. And the purpose is to ensure that the views of the minority are not completely ignored, that they're still represented in a way... Because if we had a pure democracy, then the views of the majority would never win. It would only be pure majority rule, which isn't the best way to have a government according to [inaudible 01:11:30].

Joyce:

Hey Kim, can I add an example that I always use when I explain-

Kim:

Sure.

Joyce:

... this to my democratic institutions class? I love-

Kim:

Please.

Joyce:

... this example. If we were a pure democracy, and if one person more than half of the country voted that everybody had to wear a pink dress on Thursday, then we would all have to wear a pink dress on Thursday. And so we have these constitutional principles that ground us, and as you say, protect the minority. Sometimes I think we talk about, "Well gee, why aren't we a pure democracy?" And that's the reason. It's necessary to protect all of our rights against abuse.

Kim:

I know sometimes we don't like it when we see a popular vote and an electoral... But there are reasons that some of these rules exist, and you really want some of them to exist. Doesn't mean it's not room for reform, but a pure democracy may not be as great as you think it is.

Jill:

I think I wouldn't underestimate the need for reform of things like the Electoral College. That may have served purpose in the-

Joyce:

Absolutely.

Jill:

... time past, but it doesn't anymore.

Kim:

Absolutely. But I think we need to, whatever that reform is, also needs to keep in mind protecting the views of the minority.

Barb:

Knee-jerk reactions. I was going to say, one of the things that I read into Kelly's question where she says, "I hear many Republicans say that we're not a democracy, but a constitutional republic." You are hearing this more and more. And I think there is an effort to groom the public, to push us toward this idea that some of us are not capable of deciding questions. And we should allow smarter people to decide this. Mike Johnson, the new speaker has said, "You know what democracy is, don't you? Democracy is two lions and a lamb deciding what's for dinner." And really suggesting that pure democracy is bad.

And as you say, of course we have these protections in the system, because all of us don't have the time or expertise to focus on the minutiae of it. And sometimes there's sensitive government information that we don't have access to, and other kinds of things. But I do think... Mike Lee was tweeting about this... The point isn't to have a democracy, the point is to advance humanity and sometimes democracy gets in the way. I worry about the tone of that. There's some suggestion that certain people are entitled to more power than others, and I think there's a little creeping authoritarianism that's part of that rhetoric.

Kim:

I think that's absolutely right, and I thank you for making that point. And of course our current Speaker of the House says that he believes that there are other things that are above the Constitution in terms of how he governs. So I think that is something that should concern us all.

Barb:

Our final question comes to us from @maryc612, who asks, "What is the impact if Trump is removed from a ballot? Can people still write his name in, to vote for him?" Jill, what do you think about that? That's an interesting twist?

Jill:

I think that was a fascinating question. And the answer is that of course people are free to write in his name, but if, and there are several ifs here. If he has been removed from the ballot, if he has been found guilty of insurrection and therefore not eligible... The constitutional amendment says, "Eligible to serve." He may not serve as an officer, so therefore you could write in his name, but he cannot be allowed to be inaugurated. And therefore you would be throwing away your vote. So I would say don't vote for anyone who is removed from a ballot under the amendment that says you cannot serve in an office, if you are guilty of having previously taken an oath, and then violating that oath by doing an insurrection.

Kim:

But you guys, you know can always write in, Jill Wine-Banks.

Barb:

The only job she hasn't had yet [inaudible 01:15:18].

Kim:

That's right, that's right, there you go.

Barb:

Let's start it right now.

Jill:

In my dreams.

Barb:

Draft Jill Wine-Banks, write in candidate for 2024. I love it.

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance, and me Barb McQuade. Remember, you can send in your questions for next week by email to sistersinlaw@politicon.com, or tweet them for next week's show, using #SistersInLaw. And show some love to this week's sponsors, Aura Frames, Aura, Kitsch and OSEA Malibu. You can find their links in the show notes. Please support them, because they support this podcast, and it's why we can bring it to you each week.

And if you're listening, I know you've already done this, but if not, what are you waiting for? 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.

Hey you guys, before we start, I want to ask you a question. I'm going in to record the narration for my book this week, and I can tend to get toward the raspy, after talking for too long. Do you guys have any good advice for sounding good? Keeping your voice sounding good after fatigue?

Kim:

At this moment I am sipping a Throat Coat tea, and that is actually a tip that I got from Greta Brawner at C-SPAN, when I used to guest host over there. And it's really magical stuff, no matter what kind of cold I had or anything, my voice always sounded good on air, so I would very-

Barb:

That's a tea?

Kim:

... very highly recommend that. It's a tea, you can get it at most grocery stores.

Barb:

Your voice always sounds quite melodious, so I will.

Kim:

Well, thank you.

Barb:

Throat Coat sounds pretty good. What about you, Joyce? You got any ideas for me?

Joyce:

I love your voice, Barb, you're going to be good and you should just relax and have fun doing it. But like Kim, I'm a big fan of Throat Coat, and also of just sort like sucking on little lozenges to keep your mouth

from drying out. I mean, it might be a little bit difficult, it's like reading your kids a long bedtime story. I remember when we at one point, decided to read our kids, all of the Lord of the Rings, and I just remember there were-

Jill:

Oh, [inaudible 01:17:41].

Joyce:

When our boys were little, probably way too little for Lord of the Rings. And it was fun, but a lot of the time at the end, my throat was really dry. So you're smart to think in advance.

Barb:

When my kids were very young, if I got tired, even if I was on page 12 of a 20 page book, I would say, "Oh, and they all went to bed in the end." And then they started getting older and they're like, "Wait a minute, you skipped a part." How about you Jill? What's your advice for keeping my voice sound good.

Jill:

Well, I was denied the opportunity to read my whole book. They hired a narrator, and let me read the prologue and the epilogue. And I was shocked at how hard it is to do, just that amount, and to pronounce names properly, to get it clearly enunciated. And I know Joyce has used a Navage, which I don't use because I'm too cheap to buy it. I use a neti pot-

Barb:

What's a neti pot? I'm afraid to ask.

Jill:

... which is... It looks like Aladdin's lamp, with a long little spout, and you actually clear your sinuses by putting salted water, special salt that they sell, through your nasal passages. And it really clears them out, and it makes you less dry. Obviously drinking water is really good, hot water with lemon and honey definitely helps your throat, but it's probably not as good as Kim's suggestion for the Throat Coat.

Joyce:

I love how delicate Jill is about this. I use my Navage every morning, I have terrible sinuses. And so I go in there and I just stand in front of the mirror and it's really gross. I sort of shove this thing in front of my nose, but it clears everything up.

Jill:

Not in front of your nose, Joyce.

Joyce:

You know what I'm saying? You're wide awake and you walk into the bathroom and it's sort of gross, but you feel so much better after you do it.

Barb:

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I think I'd rather be stuffed.

Joyce:

The look on your face [inaudible 01:19:37].

Barb:

You had me with tea and throat lozenges, but I think I draw the line at the neti pot.

Joyce:

Trust me on this one [inaudible 01:19:45].

Barb:

I don't know. Well, if I sound raspy, you'll know that I said no to the neti pot.

Automated recording:

(singing)