

Barb:

Welcome back to #SistersInLaw with Jill Wine-Banks, Joyce Vance and me, Barb McQuade. Kimberly Atkins Stohr is away, but we look forward to seeing her again next week. We are excited to say that it's the season to get your #SistersInLaw Merch. We have hoodies perfect for the weather, T-shirts for warmer climates and our new mug. Just click the link in the show notes or go to politicon.com/merch today.

And now, onto the show. Where today, we'll be discussing the Colorado Supreme Court decision to disqualify Donald Trump under the 14th Amendment. Another delay in the Trump trial from the US Supreme Court and Rudy Giuliani's bankruptcy.

But first, I wanted to chat with you all about holiday gifts. I was so delighted to see that I'd received a gift from Joyce that I opened this morning and I thought, oh, my friend Joyce sent me a holiday gift. That's so nice. And I opened it up and inside was a whole bunch of Alabama Rose Bowl football memorabilia, which turned out to be not the happiest of gift that of course, the two teams are playing each other in the Rose Bowl, so the rivalry is on. Game on sister. I got something coming your way too. So just look out in your holiday.

Joyce:

Oh, come on. Tell the truth. You loved it. You loved the T-shirt. You loved the bracelets. You love the smells like a tide victory candle.

Barb:

Yeah, that was pretty funny. A candle that they put the scent on it, evergreen or vanilla fantasy or whatever it usually is. And this one smells like a tide victory. I posted a picture of it online and someone on Twitter responded by saying, "Is that an unscented candle?" Oh, bird. Love it.

Joyce:

We'll see on New Year's Day girl, you are going to be burning that candle all day long.

Barb:

All right. See you then.

Joyce:

And it's going to smell victory for the tide.

Barb:

See you with the Rose Bowl. Well, I think the loser has to wear the winner's Rose Bowl shirt.

Joyce:

Absolutely. And make a video of themselves wearing it.

Jill:

Loser or the winner should be wearing an FSU hat because they should be in this game.

Barb:

Oh. So losers are so bitter sometimes, don't they? Now you have a good point, Jill. Many people in Big 10 country have said, "Florida State should have been in there, not Alabama." Because we say, "Oh, Alabama might beat us. We'd rather play Florida State."

Joyce:

Smelling that tide victory.

Barb:

But seriously, I do have a question for each of you. The holidays are upon us and we're now getting to that point where there's not a lot of time left for holiday gifts. So what do you do when you need a last minute holiday gift for anybody? You're going to a party or somebody's coming to your home that you had perhaps not anticipated or you just haven't gotten around to it. What's a good last minute gift that's meaningful, valuable, thoughtful? You have any thoughts? Any ideas?

Jill:

So I do. First of all, I am a planner and so I just don't let myself get into having to do an unplanned gift all year long.

Barb:

Now you got planned.

Jill:

I find cute little things and I store them in a special place so that when I need a hostess gift or something unexpected, I have that. Plus, I am also a canner. And so I always have things that I have made homemade preserves, jellies, spice peaches.

Barb:

What are you? Laura Ingalls Wilder. You're growing bamboo and you're canning your own produce. Oh, my gosh.

Jill:

I know it's ridiculous. Certainly not anything that anyone would've expected from me, but I love doing it and to me, that's one of the best gifts you can ever give is something that you spent the time making yourself. So I'm pretty much always prepared for the unexpected. What about you, Joyce?

Joyce:

I'm with you on that, Jill. But first, can I just ask if I come up to Chicago, would you teach me how to can because I don't know how to do it and I'd love to be able to do it with all of our summer produce?

Jill:

Absolutely.

Joyce:

Can we have a date to do that?

Jill:

Sure. That would be so fun. But of course you couldn't take it home with you because how are you going to get it back unless you drive?

Joyce:

I mean, even better, right? Give the man a fish, but you can teach me to fish for myself and I can do all the canning.

Barb:

I can use up all those train tickets and just go back that way that you bought so irresponsible on your credit cards.

Joyce:

So I knit, I do a lot of knitting throughout the year and then I do that as presence for people that I know who love and appreciate knitting. But I'm like you, Jill. I have what my kids call the presents closet where everything gets stashed throughout the year. I always have a list and I plan along the way. And for me that's really fun. My daughter who is not coming home for Christmas, she's in grad school and she's staying in Boston. She was saying how bad she felt that she'd only gotten a few gifts and put them in a box to us. And I was thinking really, at least at this point in my life, I am so much more interested in finding the perfect present for other people than getting anything for myself. And I guess maybe that's a sign of old age, but here we are.

Barb:

Oh, you really are a pioneer farm girl. I don't want any gifts myself.

Jill:

And what's your trick, Barb?

Barb:

So you know what I think is a great last minute gift, and I don't know if I'll have an opportunity to give any, but I don't mind receiving gifts unlike Joyce, is subscriptions to all these great publications. You know how Everything Good is behind a paywall these days except SistersInLaw, which remains cost free for our listeners. Just a little something we do for all of you. Happy holidays. But a subscription to the Atlantic or the New York Times or the New Yorker or anything, I suppose a subscription to a movie content or there's so many good things now, but so many good subscriptions are behind paywalls and I think young people often say, "Oh, well I didn't read it because it was buying a paywall and I can't afford to pay for all these types of subscriptions." So I think that could be a good one. All those publications are putting out special holiday deals right now where you can get a year subscription for \$29 or something like that. I think that might be a good last minute gift and you could get it at the last minute.

Joyce:

That's a great idea. I actually love that one, Barb. I'm just going to do that for our kids. I'm going to give them each a subscription to something that they should read but that they don't.

Jill:

Well, I think a subscription to Joyce's Substack is definitely the thing that should be on everybody's list.

Barb:

There's a great idea. Yeah. In fact, Joyce-

Joyce:

You are so sweet.

Barb:

... I can tell you how often I hear people tell me that they do subscribe and how much they enjoy it. They find it incredibly relevant, informative, credible, and after-

Joyce:

Just the right length.

Barb:

And just the right length. Some things are deep dives and I don't really have time to digest all of this, but I'm going to read Joyce's Substack and it's going to get me up to speed on what I need to know.

Joyce:

Well, thank you all. Now, I'm blushing.

Barb:

That'd be a great holiday gift for anyone who wants to learn more about what's going on in the news.

Jill:

I am so concerned about the environment and I started growing bamboo. Yes, even in the Chicago area, bamboo will survive and thrive and it spreads like crazy. So I was very excited to learn about bamboo being used to make toilet paper because that's a perfect material that will not hurt the environment. It's amazing how soft and strong the bamboo is. And because the plant regenerates like grass, we're not killing trees just to make something that we use once and flush down the drain. That's why using Reel doesn't feel like you're sacrificing something to help the earth. It feels like an upgrade.

Joyce:

Jill, we're big fans of bamboo too. We grow a big hedge of it in our backyard and the chickens eat it. I'm convinced that that's why our girls are such good layers because of the protein content. So that makes me really acutely aware of what a great renewable resource is. It grows fast, faster than even my voracious chickens can get at it, which makes so much more sense than cutting down trees and using the paper for toilet paper. Reel paper ships for free to your door in plastic free packaging and you can schedule it on a subscription so that it comes exactly when you need it. That means no more last minute runs to the store. It's environmentally friendly and soft and Reel is partnered with One Tree Planted. That means that with every box of Reel that you buy, they help to fund reforestation across the country. Reel is planting trees not cutting them down.

Barb:

Boy, you two are quite the urban farmers growing your own bamboo.

Joyce:

You know it girl.

Barb:

I can't grow anything except, I don't know, weeds in my garden. But Reel paper is available in easy hassle-free subscriptions or for one-time purchases on their website. All orders are conveniently delivered to your door with free shipping in 100% recyclable plastic-free packaging. Head to reelpaper.com/sil and sign up for a subscription. Using our code SIL at checkout. You'll automatically get 30% off your first order and free shipping. That's [R-E-E-L-P-A-P-E-R.com/sil](https://reelpaper.com/sil) or enter promo code SIL to get 30% off your first order plus free shipping. Let's make a change for good next year and switch to real paper. Reel is paper for the planet. You can also find the link to the deal in our show notes.

Jill:

So we go from that conversation about last minute gifts to the biggest bombshell this week, which was Colorado Supreme Court's conclusion that former President Trump engaged in insurrection within the meaning of the 14th Amendment Section Three, and that as a result, he is disqualified from being on the Colorado primary ballot by the clear language of that section. It is an historic decision that I'm excited to talk to my sisters about because I really want to get their views and get going on a deep dive on this. I want to start by saying Section Three of the 14th Amendment was enacted after the Civil War to prevent Confederate officers and supporters from holding office in the union government and was used very recently to borrow a candidate for local office. So it's not just that it was used around the time of the Civil War. Let's start with the language of the 14th Amendment Section Three and the arguments made by Trump as to why the words of that section did not apply to him or bar him from the ballot.

I'm going to read the relevant language that is at issue in this case. And then Barb and Joyce, I have some questions for you about that language. The section reads: No person shall hold any office, civil or military under the United States who having previously taken an oath as an officer of the United States to support the Constitution of the United States shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof.

So Barb, let's talk about some of the contested words, which is whether the presidency is an office under the United States and whether the oath of the president is to support the Constitution even though it reads to protect and defend instead of using the word support.

Barb:

Yeah. So there's this argument, and in fact, this was the argument that the trial judge used to find that Donald Trump was not disqualified under the 14th Amendment. And that is that although the amendment talks about federal officers, officers under the United States, it excludes the office of the presidency. Now, it strikes me as a rather odd argument that when the 14th Amendment was passed and the goal was to prevent former Confederate members, people who had betrayed the United States as traitors and the Confederate army, they wanted to keep them out of powerful positions in government, that they would include every position except for the most powerful President of the United States. But the law sometimes comes down to the language. And so what they look at here is the

language of the 14th Amendment, which says, no person shall hold any office under the United States having previously taken an oath to support the Constitution of the United States.

And if you look at the oath that most federal US officials take, it says that, I will support and defend the Constitution of the United States. So there's the oath, the presidential oath on the other hand doesn't say support the constitution. It says, I will preserve, protect and defend the Constitution of the United States. So by using those words, did the framers of this amendment intend to exclude the president as an officer of the United States, or was that just careless wordsmithing? But that's one of the arguments that it doesn't include. But as I said, it strikes me as rather odd that you would exclude the most powerful position in the country when your goal is to prevent traitors from controlling the government.

Jill:

And Joyce, the Colorado Supreme Court said that engaged in insurrection or rebellion against the same was something that Donald Trump had done, even though they did reach the legal conclusion that the section didn't apply to him, they said factually he had committed the act that is at issue here. So can you talk about that?

Joyce:

Yeah, I mean this is really interesting because for me in advance, this was what I thought would be the breakpoint. They wouldn't sign on to the finding that Trump had committed insurrection. Insurrection requires a certain amount of intent to use force. And I thought that might be where the court would say the petition failed, but they didn't. And it's interesting to me that in the Colorado Supreme Court, even the dissenters seemed to sign on to the idea that Trump engaged in insurrection. They were satisfied with the trial judge's factual findings in that regard. And I think that's what's at the heart of this decision.

We've talked about this before on appeal. Appellate courts show a lot of deference to a trial judge's findings. Here there's five days of testimony. The trial judge makes the insurrection finding. And appellate judges are only supposed to reverse a finding like that if they believe that it was clearly wrong. And here, they really can't. And especially the court points to evidence that Trump, while the riot was ongoing, did nothing to stop it when he could have and in fact, continued to solicit senators to help hold up the certification of the electoral college vote. And so there it is, a finding that he committed insurrection.

Jill:

So it is interesting. And you mentioned the five-day trial, which I think is not getting the proper attention because he's claiming, "Well, I didn't get to do anything." He presented evidence. His lawyers were very active in this five day hearing. There was never a cutoff. So Barb, can you talk about the trial and whether it afforded Donald Trump due process?

Barb:

Yes. Due process is a phrase that gets thrown around a lot by people who are not lawyers who don't know what it means, but they kind of have a vague recollection from high school government class like, "Oh yeah, due process, that's a thing. You get it. That's a constitutional right." And it is, but I think what they're conflating is the due process rights that a person gets in a criminal case when you are at risk of losing your liberty and you have the right to be there physically present to confront your accusers, to cross examine witnesses, to have a public trial, to have a jury trial, to have a presumption of innocence, to have a right to remain silent and a right to testify. All of those rights are what are group together and

called due process in a criminal case. But this is a civil case where he was excluded from the ballot and he did get due process.

The process in this case is different from what he would get in a criminal case, but that does not mean it was not due process. There was a trial. There were witnesses who came in over a course of five days and testified about all of the things that happened. They talked about... There're police officers who testified about the attack. Congressman Eric Swalwell testified about what it was like to be inside the courtroom. They had some experts testify about their interpretation of the 14th Amendment and the judge made findings that he engaged in insurrection. And so, this idea that he didn't get due process, I think is a very misleading argument designed to once again generate outrage and portray Donald Trump as the victim.

Jill:

Exactly. And we've already talked a little bit about this, but Joyce, the Supreme Court of Colorado did not accept the legal conclusion of the trial judge. They accepted the factual finding but not the legal conclusion. And what was their analysis that led them to reject the legal conclusion that he wasn't covered by the 14th Amendment Section Three?

Joyce:

Right. So we've talked about this before and this was this ruling that had always seemed crazy to all four of us coming out of the trial court here, that a president is not an officer of the United States. Here, the Colorado Supreme Court rejected the trial court's legal conclusion, and again, to be nerdy and go back to the standard of review on appeal. They're entitled to do that because they review legal decisions made by the district court de novo. That means afresh, thinking that they're in as good of a place as a district judge to make legal decisions. The reason they defer on the factual decisions is because the trial judge gets to hear from the witnesses and see all of it, whereas as they look at it as much more restricted.

So here they just said, "Look, we disagree with you trial judge." And something that was important to them in making this decision was the text of the Constitution, which talks about officers of the United States as including presidents so that by the time the 14th Amendment is adopted in 1868, it's logical to conclude that when Congress adopted it and used this language, they understood what they were doing. It's nonsensical to believe that they would include any other position in government as being a position that you couldn't hold after engaging in insurrection and create an exception only for the President of the United States. They found that to be fanciful and reversed in that regard.

Jill:

They also did a very interesting analysis of at one point the amendment did say the word president and then it was taken away. So that was one of the arguments that, well, they didn't mean to include him, the president, but they went through the analysis and said no, because they changed it to any office, civil or military, which is broad enough that it clearly includes that. I mean, he's the commander in chief of all of our forces. How could he not be an officer? And they rejected the argument. He wasn't under the United States because he was the United States was his argument, which is of course absurd.

Joyce:

There's great legislative history on that that Alex Wagner read on her show earlier this week with two of the senators going back and forth. But there's an important technical point here, which is that when the language of the statute is plain, you don't have to look beyond the face of the statute to decide what it

means. You don't have to go to legislative history. And here, Jill, I think you're dead on the money. Right? The language is plain. Officer of the United States includes the President.

Jill:

Exactly. And of course, the Colorado Supreme Court made that same point in saying even though the language is plain, we don't have to look at legislative history, but we're going to just do belt and suspenders. So we're going to talk about it because it clearly supports our conclusion, but they didn't have to. You are absolutely right. But the decision wasn't unanimous, it was four three and the three dissenters each wrote their own dissent. And so Barbara, I want to ask you about what the crux of the dissents and whether they were strong, and I'm going to include in the show notes, George Conway wrote in the Atlantic that the dissents were so weak that they actually made him believe the majority was correct. So talk about the dissents and whether they swayed you in any way at all.

Barb:

Yeah, this is a really interesting point that he makes about the dissents. I think that sometimes dissents are overlooked because they aren't the outcome. That's just what somebody else thought about it. But four-three, that's a pretty close case. What George Conway points out too is they don't really quibble with the big issues. They don't talk about federal officer, they don't talk about whether there was insurrection. They don't talk about whether there was appropriate fact finding. They actually look at state law issues and say that there are state law issues that should protect him, and they're not particularly persuasive because this is about the US Constitution. And I also think that those issues will be irrelevant for other states that might take up this issue and want to disqualify Donald Trump because anything in Colorado law isn't going to matter. And I think the repercussions beyond Colorado is what's so important about this case.

Colorado has gone blue in most recent presidential elections, and so it's probably likely that Donald Trump wouldn't win there anyway. And so his removal from the ballot maybe is less consequential, but other states are watching this, and I think that if this stands, you will quickly see many other states, including swing states, take similar action and remove him from the ballot. So the Colorado State law really is not relevant to the big picture here, which is I think the point that George Conway was making that, not that they weren't well presented, just that they were weak in terms of changing the outcome of this case.

Jill:

So let me turn to our appellate expert, Joyce, and ask, do you think SCOTUS is going to take the case and what are the possible grounds for them to refuse to take the case?

Joyce:

Yeah, so first Trump passed to file a notice of appeal, which he has still not done, but he probably will, and I'd look for him to do it on the last day he can, which I think is January 4th because why not milk it for all the delay that you can get if you're Trump? Some folks have suggested that the court won't take this case, that it's only Colorado and that Trump and the Supreme Court will just let it stand. I think that they've got to go ahead and hear this case because the issue is percolating elsewhere. Minnesota has said no to taking Trump off the ballot. There's an act of process in Maine and in some other states, and I just can't imagine a situation where there's not a national rule where you've got this patchwork quilt of 50 different states and everybody makes their own decision. So Jill, my gut instinct is that the court has got to take this one.

Jill:

Well, I want to ask you a follow-up question to that because there is also an argument that Donald Trump should not apply for an appeal because this is just Colorado. Whereas if the Supreme Court takes it and rules in favor of the Colorado Supreme Court that it will then be a nationwide applicable ban, and so he's better off just leaving it as it is. What do you think about that argument?

Joyce:

I think it's a fascinating question. I mean, I guess the answer to it is how lucky do Trump's lawyers feel about the Supreme Court, right? If they think that there's a significant chance that they could lose, they might want to leave it alone. As Barb pointed out, Trump is unlikely to win in Colorado in any event. I have the numbers for you. I looked up numbers from 2020. Joe Biden took 55.4% of the vote in Colorado. That was 1.8 million votes. Trump only got 41.9% of the votes or 1.3 million. If he thinks that there's a risk that the Supreme Court would take him off the ballot, he might want to just let it go.

But here's the thing, he's a candidate for the presidency of the United States, and how do you credibly run for that job after a court has found you are an insurrectionist and you do not appeal that ruling? I mean, I guess with Trump, all things crazy are possible, right? Maybe next week he'll say, I am the candidate of insurrection and spin that however he wants to for his followers. But honestly, I think even for Trump, that's a little bit too much Alice in Wonderland.

Jill:

So another interesting thing in the majority opinion is that the Colorado Supreme Court quoted now Justice Gorsuch while he was still on the Circuit Court of Appeals that said, "A state may exclude from the ballot, candidates who are constitutionally prohibited from assuming office." So Barb, what do you think the significance of quoting Gorsuch is? Whether that indicates how he will rule in this case, if it goes to the Supreme Court and how other conservative justices will rule?

Barb:

Yeah. This is, I don't know, to think about this as honoring Justice Gorsuch by quoting his words or trolling him by reminding him what he said. Remember what you said. I mean, it really says, states get to decide these things. State's rights, right? I mean, a lot of these conservative justices, conservative legal scholars have always been all about state's rights. And now when it seems not to suit them so much, state's rights suddenly are less important. And so I think it's a good reminder to Justice Gorsuch what he said in the past. It makes him a little harder, I think, for him to disagree with that sentiment lest he appear to be hypocritical. I don't think it's binding in any way, but I think it's actually pretty interesting to say. Remember, states get to decide who's on the ballot.

Joyce, I'd want to ask you about OneSkin except my daughter stole all of mine and thinks it's the greatest thing she's ever used. Tell me about it because I lost mine.

Joyce:

It's so funny that you would say that. Ellie actually took mine off of me when she was home at Thanksgiving, so I have the same dilemma. But she tells me it's wonderful. In fact, it's so great. I can't say who I got it for Christmas because I think she listens to the podcast. But I did get one of the really nice packages that has a lot of the different products in it for someone who I hope will really enjoy it for Christmas. The holidays are here. That means it's perfect timing for today's sponsor OneSkin. We all know that with all the holiday fun and festivities comes stress and harsh weather, that can really take a

toll on your skin. But thanks to OneSkin's disruptive approach that targets skin aging at the source, you can finish off 2023 with your skin at its healthiest as long as you don't have 20 something daughters who steal it from you.

Jill:

So I guess I'm really grateful that I don't have a daughter who steals it from me because I get the benefit of using it, and I'm grateful to this podcast for making me aware of OneSkin. It feels amazing to apply, especially on my face. I feel so fresh. It's like a massage at the Fountain of Youth. The regimen worked very fast and I love that OneSkin just launched a mini bundle, which includes face and eye topical supplements, body lotion and cleanser, which all come in a really cute travel bag. It's a great gift. And if you're traveling this winter, OneSkin has your mini skincare essentials totally covered. And if you are gifting this holiday season, they are the perfect stocking stuffers.

Barb:

OneSkin is the world's first skin longevity company. OneSkin addresses skin health at the molecular level, targeting the root causes of aging, so skin feels and appears younger. It's time to get started with your new face, eye, and body routine at discounted rates today. New customers get 15% off with the code sisters at oneskin.co. That's 15% off oneskin.co with the code sisters. Order soon for the New Year. The New Year is approaching. So now is the best time to invest in your skin. Age healthy with OneSkin and look for the link in our show notes.

Joyce:

Well, I've always wanted to be able to say breaking news, and today I get to say that as we talk about Trump world, but interestingly enough, what I had thought would be the big breaking news story actually got surpassed a couple of minutes before we started to tape the podcast. It's Friday afternoon on December 22nd, and I hope that this is it and that no more news breaks before you all are listening to the podcast. But we'll start with yesterday's big breaking news. Because last night, the Detroit News reported that they'd been able to listen to recordings of a conversation that was held between Donald Trump and RNC Chair Ronna Romney McDaniel, and two Wayne County, Michigan Republican vote canvassers. And the call was an effort to prevent certification of the county vote following the 2020 election. Barb, can you fill in the details and explain what the significance of the call and the fact that it's on tape is?

Barb:

Yes. So this recording comes from November of 2020 during a time when the election was over and there was waiting for the certification throughout the state. Wayne County is Michigan's biggest. It's where Detroit is. And you may recall that Detroit was one of the scenes where there was some chaos on election night as people were claiming that fraudulent ballots were being counted and other kinds of things despite absolutely no evidence of anything of the sort. And so the time came for this board of canvassers to certify the election, and there's this phone call of Donald Trump and Ronna Romney McDaniel, who is from Michigan and was serving at that time I think still is the chair of the Republican National Committee, urging the two Republicans on that board of canvassers to refrain from certifying the vote. And in response to their demands, they did that, they switched their vote and said, we're not going to sign off on it.

They first had verbally indicated that they would approve and then left that night without signing. And in that call, one of the things that Trump and McDaniel say is, we'll get you lawyers. Don't sign that thing.

Go home without signing it. We'll get you lawyers. And then the next day they signed affidavit saying that they were withholding their approval because they had been pressured the other way they claim to have been pressured to certify. In fact, it appears the pressure went the other way. So what's the significance? Well, first and foremost, this is very good evidence for Jack Smith in his federal election interference case to prove up. There are some allegations about what happened in Michigan that Trump was pressuring officials and lawmakers in Michigan to switch the outcome of the election. And now there's recorded evidence, which is really powerful evidence that prosecutors love.

It's so much better than just asking someone to share their reflections of this. The two canvassers had previously testified about the call and just said that Trump had called and said, "Thank you for your service, have a good holiday." So this is quite different from that. I also think it can be useful in Georgia as 404(b) evidence. We talked about this in a prior episode that is evidence of a different episode of bad acts that can be used to show a person's intent, motive, absence of mistake or modus operandi. And I think that's exactly what this is under these circumstances. There's also some chance that this is a standalone crime. I'm not sure a prosecutor would charge it as a standalone crime, but there is a crime for neglect of duty of office by a public official. So these two officials could face that. There's another crime of obstructing an official in the performance of his duties, which is a misdemeanor, that could apply to McDaniel and Trump. But I think what's more likely is this becomes evidence in some of those already pending cases.

Joyce:

Yeah, I think that last point you make is so fascinating. I was looking at Michigan crimes last night, I think we even texted back and forth about it. And the crime that I landed on is that Michigan has this bribery crime that's very much parallel to the federal crime and it would make it a crime, for instance, to offer a public official something of value in exchange for making or not making an official decision. And the reason that that appeals to me as an appellate lawyer is that there's a Supreme Court case that limits the federal bribery statute, and it's the case involving the Virginia Governor McDonnell where he's alleged to have taken a bribe in exchange for setting up an appointment for somebody to push their corporate interest. And the Supreme Court says, no, that's not enough for it to be bribery. You have to be offered something of value in exchange for taking or not taking an official act.

This looks very heartland to me, right? This is offering something of value a lawyer's services in exchange for not certifying the election. And so I'm with you Barb, on this point of whether or not a prosecutor would exercise their discretion to charge it standalone. I bet you that Michigan prosecutors are looking at that bribery statute in addition to the official duty ones that you mentioned. I'm fascinated by where this could end up.

Jill:

And I wonder if they're looking at perjury as well because they submit it in affidavit.

Barb:

Well, I was going to ask.

Joyce:

What do you think is important here for prosecutors?

Jill:

Well, I think Barb referred to this in her answer, but the most important thing is there is nothing as compelling to a jury as a recorded conversation where you can hear the crime being committed. And so I know that from the Watergate case, there was nothing more compelling than hearing the tapes with all the defendants and co-defendants and unindicted co-conspirators having conversations that were the commission of a crime. So none of us has heard this tape. So it's a Detroit news story and NBC hasn't heard the tape or confirmed its existence, but assuming that the tape says what is alleged, it would be a slam dunk in terms of admissibility and compelling evidence for conviction in many of the cases, including in Georgia and including in the January 6th trial in federal court. So I think it's really important.

Joyce:

Yeah, I mean it's really something that the President of the United States had time to call two county officials. It really suggests that Trump had this very granular involvement in the whole scheme. If I was a prosecutor, I'd be proud to put that evidence on. Okay, that's the news from Detroit.

Last week in the podcast, we were talking about the oral argument that had occurred that morning in Mark Meadows bid to get his case removed from state court, Fulton County, Georgia into federal court. Barb had listened to the argument and had a pretty negative assessment of how it went from Meadows and we got a fast answer, right? That argument was on Friday the 15th. We got the opinion ruling against Meadows the following Monday morning.

Barb:

That was lightning pace.

Joyce:

I mean, were you surprised by how quickly that happened?

Barb:

Yes. I was because I do agree that the judges showed a lot of skepticism in the argument that was being made by the Trump lawyers, but a couple of them were also showing a little skepticism against the prosecutors from Georgia about this idea of whether it ever applies to former officials. So I thought they'd wrestle with it a little bit, but they clearly had that opinion written over the weekend, ready to go, boom. So I thought it was very good though that they issued an opinion so quickly because it does seem that they understand the need to keep these cases on track and to move very quickly. And so, it was, I think the right decision. It went even further than I expected.

As we said, it says a former official is never able to remove a case from state court to federal court, which I found surprising. But regardless what Meadows did here was certainly outside the scope of his duties as the chief of staff. And so the case stays in state court. So I was surprised, but I also think it has now ramifications for anyone else who might be inclined to try to remove the case.

Joyce:

Sorry. Can I just say, and this is just I think something that you could only think if you had practiced in front of the 11th Circuit as much as I did because I was the appellate chief in my office before I was the US attorney and argued a lot of cases in the circuit. And I have to say I was not surprised. I was tempted to take, actually Saturday had there been a betting pool among appellate lawyers in the 11th Circuit, which of course I would never gamble. But had there been, I might've even gone earlier. I think it really

matters that this opinion was written by the chief judge Bill Pryor, a conservative Republican who was on Trump's shortlist for the Supreme Court, and he spoke very definitively, and boy did he speak fast.

So Jill, Meadows is not the only Fulton County defendant who wants to get out of state court and into federal court. That includes people like one of my least favorite villains in this entire insurrection incident, Jeffrey Bossert Clark, who was at the Justice Department, what does this ruling mean for the other folks who wanted to get this treatment?

Jill:

Well, first of all, I think we could talk about who our favorite villains in this case are. Clark would certainly be high on the list, but there are plenty of others. And what it means for all of those who were federal officers, their case is not going to get removed. If Meadows didn't win, none of them is going to win either. And both in terms of whether because they're former officials or because none of them can claim that committing a crime is within their duties and unless it's within the duties of the office that they held, they can't get removed to federal court and they can't raise any federal defenses. So I think it's all over for everybody in terms of removal. They're going to all have to stand trial in Georgia, and that means that maybe there'll be some more pleas.

Joyce:

Well, interesting, interesting, right, because the real breaking news this Friday afternoon is that the Supreme Court has denied Jack Smith's request for them to directly hear Trump's immunity issues before the Court of Appeals can. And of course, quick refresher, Trump asked the district court to dismiss the indictment against him claiming he had presidential immunity and some peripheral double jeopardy arguments that meant that the case needed to be dismissed. Judge Chutkan reviewed it, wrote an extensive opinion and said, "Sorry, no dice. You're not entitled to that dismissal." Trump appealed to the District of Columbia Court of Appeals pumpnickel. That's actually not the correct lingo. So let me just re-say that. Trump appealed to the Court of Appeals for the District of Columbia and Jack Smith went straight to the Supreme Court and said, "Please go ahead and hear this case quickly before the Court of Appeals does. It's a matter of national importance and we should just cut to the chase since you're going to have to decide it anyhow."

Just before we did the podcast, the Supreme Court said no, they're going to let the Court of Appeals proceed with this case. But it is very interesting, right? Even though the removal issue is a little bit separate, it sort of tangled up in this same thread of trying to figure out what does a president have immunity for? Trump says he has absolute immunity for anything he did while he was the president and certainly for anything in the outer perimeter of his duties, which he claims is what he's charged within DC. Jack Smith says, "No, you don't get immunity for criminal acts, and even if you get some, this isn't what you get immunity for."

He's really arguing that it's akin to what the 11th Circuit just ruled against Mark Meadows on and by implication would apply to Trump that what he was doing here was the conduct of candidate Trump, not of President Trump. So no immunity. But here we are, we're not going to get the quick decision from the Supreme Court that many had hoped would keep Judge Chutkan's March trial if not on track, that only delayed by a few weeks. What do you make of what's going on here, Barb? How do you think that this will play out?

Barb:

Well, it's certainly a setback for Jack Smith. I think this builds in some additional delay for the trial. We were looking at that March 4th trial date, and I think when Judge Chutkan issued a stay, meaning nothing could happen while this appeal was pending that put that trial date in jeopardy, I think we're now looking at even further delay from all of that. I suppose it is not necessarily any signal on the merits because after Jack Smith filed that motion for a writ of certiorari for the Supreme Court to take this case up immediately, the DC Circuit Court of Appeals issued its scheduling order including oral argument for January 9th, which is pretty quick. And so maybe upon seeing that the court thought this is all going to happen pretty quickly so we can let the intermediate Appeals Court take its normal course and then we can make a decision here.

So I don't know that it should send any bad messages on the merits. But Joyce, you were pointing out that this could impose more than a little delay even if the Court of Appeals acts quickly just because of some built-in timelines about how much time a non-prevailing party has to appeal, right?

Joyce:

Yeah. I mean it's hard to figure this one out, but Trump, after the Court of Appeals Rules has 45 days to ask the full court to rehear the three judge panels decision with every judge sitting in an en banc proceeding and he gets 90 days before he has to ask the Supreme Court for certiorari. That's a lot of delay. The government anticipated that, and they did ask the Supreme Court, "If you won't agree to hear our case right now, will you at least please take the case immediately after the Court of Appeals Rules without any of that additional delay?" Supreme Court did not speak to that. And there's also this other hidden issue here. Right now, the stay in front of Judge Chutkan prevents any further trial preparations from going forward. Well, the DC Court of Appeals could remove that stay. They could decide the case. They can do it pretty quickly, right? Oral argument is now scheduled for something like January 9th. They could say an oral argument, we're going to lift the stay and everything can proceed. And that might incentivize Trump to appeal to the Supreme Court sooner rather than later.

So there are a lot of weird variables here. It's hard to game out right where this goes. But I mean the potential downside here is that 90 days that Trump would get to ask for certiorari, and that knocks out, I think perhaps even the possibility of a trial before the election.

Barb:

Especially because I want to just add one other point to that is if the stay does not get lifted, nothing more can happen. And so there are still some pretrial things that have to happen before the case can go to trial. So it's not like on the 91st day trial is starting. They still have other motions to resolve. They have some discovery to exchange. They have some CIPA litigation, Classified Information Procedures Act litigation, and they were sending out questionnaires to jurors. All that got halted when the state got entered, when the judge entered that order. And so even after those 90 days, I think there's another month or two before they can start trial.

Joyce:

Clearly there is, right? Judge Chutkan thinks it's going to take her a month to get a juror. She was going to start screening jurors in early February for an early March trial. So pretrial matters then they're selecting a jury and there's no guarantee the Supreme Court would decide this quickly. They could even, and I don't even want to say this, but they could even say we're going to grant cert on this matter for the next term, the term that starts in the fall of 2024.

So look, there's a whole list of horrors here, but let me say one good sign that I saw. There were no dissents from the denial of certiorari before judgment here. I would've expected to see dissents from the progressives, from the liberal wing of the court if this was like a death knell to accountability for Trump. So perhaps they really do intend to hear the case immediately after the Court of Appeals decides it. I'm sort of thinking the delay in the trial court is a day for a day, right? However, many days this procedure takes, let's just say the Supreme Court acts quickly and the matter is decided on the 45th day or something after Trump appealed, then I would think there'd be about 45 days worth of delay in the trial court. And that would not be catastrophic.

Barb:

Yeah, that'd be okay.

Joyce:

That would mean like an April trial. Yeah.

Barb:

Let me ask you this. So say January 9th is the oral argument in the DC circuit. Say the court rules just like the 11th Circuit. The very next business day, January 10th, we've got a decision and rejecting Trump's immunity argument. Trump would have to be the one to appeal it, right?

Joyce:

Yes.

Barb:

And so how long could he drag his feet before he files his appeal?

Joyce:

Yeah, I mean that depends right on how the Supreme Court handles it. He could certainly, I mean, Jill, tell me if you think I'm wrong, but he could ask for an appeal on day 90 unless the Supreme Court tells him he's got to go ahead. Right?

Jill:

Exactly. So there's a minimum of three months. It sounds longer to me when you say three months than when you say 90 days. Three months is a long delay. And we also have the delay from the stay of all proceedings. So it's what, at least a four-month delay and it was supposed to start on March 4th. Well, that puts you a long way into the summer, and that is a problem. And don't forget, there are other trials that are scheduled. And so it's not just like, okay, it's a 90-day delay. No, it's not just that because then you run into other trials and they would either have to be rescheduled or you'd have to fall to the back of the line, and that would definitely be after the election. So I think it's a serious problem that they didn't take it right now, and it's not just 90 days, it's more than 90 days.

And that is a serious problem with other trials scheduled. And besides the criminal trials, there are civil trials, and so he can only be at one place at a time and he's entitled to be at his trials. So I think that there's really a problem that unless they act super, superfast, and let's keep in mind in *US v. Gore*, they decided in one day after the argument. So it is something that could happen fast. And let's remember that in the Watergate case, they postponed their summer break in order to have the argument and to

issue the opinion a few days later. So I'm certainly sure that they realize that this is a case of national importance and that if they say, well, we'll take it up next October, that they would be really guilty of partisanship in a way that would not be acceptable to the majority of this country. So I don't think they're going to do that horrible, but 90 days is what he gets and they can't act until after the 90 days.

Joyce:

It's utterly crazy. I mean, I guess the Supreme Court could affirm the DC Court of Appeals, but it's hard to believe that they would do that with an issue of that magnitude without really wanting to decide it for themselves. So I guess my best hope is the fact that there were no dissents from the denial of cert means that the Supreme Court really doesn't intend to let the 90 days run and that they'll hear this immediately. But that's a pretty weak hope, Jill, and the scenario that you're laying out really scares me because you could imagine the Manhattan DA's case goes to trial in late March that could go while all of this is happening. And then there's Aileen Cannon who doesn't look like she's on track to try her case in May. Maybe she gears up. Maybe she goes again.

Barb:

Yeah. No one is unhappy about today's decision than Judge Aileen Cannon like, "Oh no, I'm going to have to try that case now."

Joyce:

But the thing that has always worried me about her trying that case is she gets to decide what evidence gets submitted. And if she sort of kneecaps the government and doesn't let a lot of their evidence come in and Trump gets acquitted, that's it. The government can't take an appeal from an acquittal. And if she takes up enough time that really could functionally put this one out of time.

Jill:

One of my favorite things to do as a way to keep my sanity is to take a break and cook dinner with HelloFresh. And every week I get some really incredible menus. This week, one of my favorites was the chicken curry soup. Love it. Have you tried it, Barb?

Barb:

I have. Those soups are great. They also have a great chili. So all of those warm winter dishes are really nice options With HelloFresh. With HelloFresh, you can get farm fresh, pre-portioned ingredients and seasonal recipes delivered right to your doorstep, no trips to the grocery store, and no time planning menus and a grocery list and no wasted ingredients. Count on HelloFresh to make home cooking easy, fun, and affordable. That's why it's America's number one meal kit.

Joyce:

Spend your time shopping for gifts and sipping cocoa, not stuck in the checkout line at the grocery store. When you sign up for HelloFresh, you get everything you need to whip up fresh, tasty meals delivered straight to your door. Just choose your recipes, select a delivery date and relapse knowing that your meals are on the way. You can also make hosting a joy rather than a hassle with the help of HelloFresh Market, from crowd pleasing charcuterie boards to photo worthy desserts, it's easy to add these party pleasers to your weekly order saving so much time.

Jill:

It's really amazing. You can also change how many meals you get and how many people it's for. So if you're hosting something and instead of having just meals for two, you can add two more and have a great meal for four. HelloFresh even works with your schedule. Their plans are flexible and you can change your meal preferences, update your delivery day and change your address. So if you're going away for the holidays to someone else's house, you can have your meals delivered there or cancel them for that week. Imagine getting fresh country produce from the farm to your kitchen in less than a week so you can enjoy the flavors of the holidays right at home.

Barb:

So I love it. I am going to visit the in-laws over the holidays. I can just have HelloFresh delivered to their house, and when they offer me a meal, I say, actually, I brought my own. Just stand back. I'm going to cook up some chicken curry soup. Go to [hellofresh.com/sisters free](https://hellofresh.com/sisters-free) and use code Sisters Free for free breakfast for life, one breakfast item per box while subscription is active. That's free breakfast for Life at [hellofresh.com/sisters free](https://hellofresh.com/sisters-free) with code Sisters Free. Everyone can also look for the link to HelloFresh America's number one meal kit in our show notes.

Well after that down topic, here's one maybe that will give you some holiday joy to no one's surprise. This week, Rudy Giuliani filed for bankruptcy that followed the entry of judgment for Ruby Freeman and Shaye Moss on Monday. They, of course, are the two election workers who won a \$148 million judgment in a defamation case against Giuliani last week. It seemed noteworthy to me that in the judgment, their lawyer, Michael Gottlieb, who has been pretty sharp throughout this whole thing, was careful to get certain words included in that judgment. And those words were intentional, willful, and malicious. And so let's start there, Joyce. What is the significance of getting those words into the judgment as it relates to Giuliani's bankruptcy?

Joyce:

Yeah, they're really important words. They should mean that this debt can't be excused as part of the bankruptcy proceedings. Some debts will get discharged as part of a settlement of bankruptcy, but because by specifying here that this was willful and intentional conduct under the federal bankruptcy statute, Giuliani cannot get out from this debt that he now owes to Ruby Freeman and Shaye Moss.

Barb:

Yeah, so that was really important that he won't be able to discharge this in bankruptcy. Giuliani though refused to share his finances with Moss and Freeman as part of the discovery, his discovery obligation or with the court during the defamation trial. And he got all kinds of sanctions as a result of that. But he stood firm, he never turned over his finances. Why do you suppose he did that, and what are the consequences for either Giuliani or Moss and Freeman?

Jill:

Well, first of all, he's not going to be able to do it in the bankruptcy court, so that's something that we can kind of cheer on. I think the bigger question is, why did he even go to trial in this case? Why didn't his lawyer say, the evidence is overwhelming and you're going to spend a lot of money and you're going to owe me a lot of money at the end of this trial. You shouldn't even go to trial. But okay, that's a different thing.

In terms of his non-cooperation, there is no excuse or reason that I can posit for him doing that, but it did lead to \$132,000 penalty for him, a fine from the judge who found him liable for this and punished him for that, and actually issued that he was liable for defamation and ordered him subsequently to pay immediately, which the day after he then filed for bankruptcy to pay immediately because his past behavior had indicated that he might hide his assets.

Barb:

Yeah, I thought that was important. The judge was onto his games. Well, Joyce, let me ask you, do you think Moss and Freeman will ever be able to recover the whole 148 million? I mean, you can't get blood from a stone. And what if Rudy's really broke and he doesn't have the money, he's got other assets. How do they make good on that judgment?

Joyce:

Yeah, I mean, you can't get blood out of a stone, as you say. I mean, it's unlikely. Look, let's just be frank that they're going to get all 148 million at any point in time. First off, there'll be a delay as the court stays any debt collection while the proceedings get underway. That's just how bankruptcy works. But in bankruptcy, Rudy can be forced to use, I think all of his assets except for his primary residence, to satisfy what he owes to his debtors or rather to his creditors. And it's not clear where Ruby Freeman and Shay Moss will end up in that line. It's unlikely that they'll collect the full amount that they're owed, but at least they'll see some of it.

They will have a claim against any future earnings he might make. Right? If Rudy Giuliani writes a tell all book about Trump, any proceeds that he would get from that would go to satisfied judgments. And there's also the prospect of using investigators to see if he has hidden any of his assets offshore. The fact that he would never tell the court where his assets were is sort of a red flag that there's something funky going on there. It's a federal crime to make a fraudulent transfer of your assets, anticipating a bankruptcy, all sorts of stuff that can be looked at there. But 148 million, I don't believe that they'll see that.

Barb:

Yeah, but I think you make a good point, which is that they can chase him down for the rest of his life and take every penny that...

Jill:

They can, but the secured creditors are going to take priority over them. So some of his biggest assets are his residences and those are probably mortgaged. And so the mortgage holders are going to take priority, and so I'm not sure at this point how much they will actually get, but you're right, they're going to be working for him or he will be working for them is what I meant to say from now for the rest of his life. If he does what George Santos has done and is going to make greeting cards for hundreds of dollars, all that money is going to go right into an account for them and other non discharged debtors.

Barb:

Oh yeah, he could do cameo appearances. Maybe you could get him to say happy birthday to, I don't know. If your loved ones want one your enemies, you can have Rudy Giuliani jump on and say Happy birthday. Well, Jill, let me ask you just the consequences because of course Giuliani is a defendant in other civil cases and in the criminal case in Georgia where he is part of that multi-defendant RICO case

along with Donald Trump. How does he pay his legal fees? What happens if he has no money? Will he get appointed counsel down there?

Jill:

Public defender could be. You have to wonder what lawyer is going to take him on once these amounts are known. I mean, it was very interesting to read the reporting on his bankruptcy. His lifestyle at one point cost him \$230,000 a month.

Joyce:

Gosh.

Jill:

He belonged to 11 different country clubs. He had six different residences. He doesn't seem to have that anymore, but where did the money go? Is it offshore? So it was interesting to see what is happening. I think it'll be hard for him to get a lawyer to spend the kind of time and we've seen the evidence. So I'm back to my original question of why even spend the money to defend yourself when you know you're going to be convicted? And isn't he better off thinking about, "Oh, maybe I should make a deal if I flip. I could maybe save myself from going to jail. I don't have to pay lawyers." So it could be interesting whether he'd be a credible witness at this point. I don't know.

Barb:

Well, we'll leave it there.

So holiday season is a time when I worry a little bit about identity theft. I can remember a time several years ago when my husband said to me, "I think our credit cards have been compromised. I got a call from the credit card company saying that our cards had been used to various retailers all online, all over the place and mostly after midnight." And I said, "Actually, I think that's me." That's how I do most of my online shopping. But it's a real risk because of course your information is out there and when you do have your identity stolen, it can be a nightmare to get it back. And as Joyce said, your personal information is out there for anyone to find. Data brokers, scrape public tax records and sell that information legally making it accessible to anyone. We all need to fight back. When privacy is paramount, that we are thrilled to partner with Aura. Aura is the all-in-one online safety solution that helps protect you and your family from identity theft, financial fraud, and online threats before they happened. Jill, how important is that to you?

Jill:

Of course, it's important to me. I have been hacked and getting a new credit card, even though they send it out fast and cancel your old one really is inconvenient, especially if you have auto charges on it and have to notify all those vendors.

Joyce:

I have not been through this for a long time, but when I went through it was many years ago. In fact, Barb, it was when we were US attorneys, I ordered cupcakes for our boss for his birthday in Georgetown, and by the time I got to the hotel I was spending the night in Norfolk, Virginia that night, my credit card had been used to buy \$50,000 worth of train tickets in Mumbai, India.

Jill:

Wow.

Barb:

Wow.

Joyce:

It was a lot of fun to sort that one out. I'm a big fan of Aura, especially at this time of the year when many of us are doing a lot of shopping online. I think it's incredibly important, and I'm really glad I learned about Aura when they began to advertise on the podcast. I always learn great things from our advertisers. This one has really come in handy. The security with Aura is a great feeling and Aura offers a suite of tools to protect you and your loved ones, including real-time alerts on suspicious credit card activity. I would've benefited from that. Computer virus protection, parental choices, a VPN and a password manager. It's a comprehensive safety solution that provides the tools you need all in one place. Aura also helps reduce annoying robocalls, telemarketers and junk mail by sending take down requests for you regularly on your behalf. Aura is just a great deal.

Jill:

The best thing about Aura right now is for a limited time, they are 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 aura.com/sisters to sign up for a 14-day free trial and start protecting you and your loved ones. Again, that's A-U-R-A.com/sisters. Certain terms apply, so be sure to check the site for any details and of course, you know you can find the link in our show notes.

Barb:

Well now comes the part of the show that we love the most. This is the part where we answer listener questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tag us at SistersInLaw Podcast on threads or tweet using hashtag SistersInLaw. If we don't get to your question during the show, please keep an eye on our threads feeds throughout the week where we'll answer as many of your questions as we can. Our first one has Jill Wine-Banks written all over it. I'm going to ask you this question, Jill. It comes from Steve who says, can you please compare and contrast Judge Aileen Cannon and Judge John Sirica?

Jill:

So I feel like I'm back in college or law school. Compare and contrast. I bet you Steve is a college student and I can, and mostly contrast would be the answer. Judge Sirica was streetwise and smart. He was very involved in the trial. He really believed that there was guilt beyond what had happened during the burglary trial, the actual breaking, the people who broke into the Democratic National Committee headquarters. And he went after it in a big way and he wasn't afraid to push the prosecutors and he wasn't afraid to create new kinds of strategies to get things in the public. So for example, when we heard about the missing tapes, we were going to go to the grand jury with it and he said, "Oh no, this is too important. It has to be in public. We're going to have a public hearing. There was no such procedure available."

Whereas I see Judge Eileen Cannon and I don't know her, I've never practiced in front of her. I did interview for iGen Politics, a former Watergate colleague, Jon Sale, who has practiced in front of her and

actually has a high opinion of her. So I am not judging her, but I'm just judging her behavior, which has seemed to favor him and to favor him in ways that are going to be very dangerous by delay, delay, delay. She has postponed arguments and hearings beyond the possibility of her starting the trial as it is currently scheduled, but she's not releasing the trial date, which means that, for example, Fani Willis cannot step in and say, oh, I could go sooner than August because the August date was based on there was going to be the Mar-a-Lago trial.

So I just feel like she's an inexperienced, and you can compare that to Sirica was the chief judge at the time. He was senior person on the court and her as an inexperienced person who's learning on the job, he knew how to do it and he was willing to do the job. So I think there's a big difference between them.

Barb:

Our next question comes to us from John in Sea Ranch, California. What did you think about the pardons Joe Biden granted this week for defendants convicted of possessing marijuana? Joyce, what do you think about that one?

Joyce:

Yeah. Barb, you and I both worked on pardons as US attorneys because there was a real commitment in the Obama administration to use them to close gaps that had led to disparate treatment for some people who were prosecuted for possessing crack cocaine as opposed to crack powder where the sentences were very offbeat. Biden did something similar today, and I think something that's been a long time coming. He pardoned people who had federal convictions for simple possession of marijuana, even some who had convictions for attempted simple possession or use of marijuana. It's important. This is really what the pardon process is meant for. It's to do justice or to grant mercy to people. And it's in a sharp contrast to how Donald Trump has said he would use the pardon power, right, to pardon what he calls hostages, people who were convicted of rioting and obstructing the certification of the vote on January 6th. So there's a sharp contrast for you.

As a practical matter, this really is important because there are so many collateral consequences that come with a conviction. By that I mean, once you're released from prison, every time you try to get a job, you have to tick the box that says, "I have a former felony conviction." Every time you apply to college or to graduate school, you have to check that box and it can keep you from getting all sorts of things. A license to be a barber in some states other sort of professional licenses. So by issuing pardons, Biden removes all of these collateral consequences from people's lives and lets them get jobs and become productive members of society. They've repaid their debt in many cases by serving some or all of a sentence. Now they can go back to being citizens and supporting their families and going on to lead fulfilling lives. I'm a huge fan of using the pardon process in a limited appropriate way like Biden did here.

Barb:

Yeah, and it really is interesting. I think marijuana prosecution is one that really has not done all that much federally. And so I think there was a lack of uniformity around the country of how this was done. In Detroit, we've got bigger fish to fry. We're not charging people for marijuana possession, but I think in some smaller districts, people do get charged federally for that. It tends to be more of a state crime here or a declination here or some sort of deferment if you're young. There's some youth probationary programs and things like that. And so I think this not only recognizes changes in the law and attitudes about marijuana in 2023, but also provides a kind of uniformity that makes for a more fair administration of justice.

All right, our last question comes to us from Susan who says, President Biden has not done anything worthy of impeachment. Can the house either simply vote based on insinuations and oust a president without any actual evidence? And the answer, Susan, is yes, it's a political process. It is not like a criminal charge where there is due process and a jury makes a findings and there's a presumption of innocence. I remember Gerald Ford was one who said, what is the definition of a high crime or misdemeanor for which impeachment is appropriate? And his answer was whatever the House decides it is. And same is true with regard to the Senate, which has the trial, whatever they decide is sufficient for a conviction. So I don't think that if the Senate will ultimately convict even if the votes should go, but I guess you never know. But what disturbs me most about the impeachment proceedings against President Biden based on absolutely no evidence whatsoever is what I think is really going on here is an effort to cheapen the impeachment power.

And so that Donald Trump can say, everybody gets impeached. It's all just political. And I think it's a way to whitewash the Trump impeachments to just say, it's all just based on politics. It has nothing to do with wrongdoing whatsoever. See Biden, even Biden say so. That's what disturbs me about this. I see it as an abusive power. But I think because of their political authority, they have the ability to do it if they want to. They can impeach him just because they don't like the way he looks at him. Now, the people's response to that is the ultimate accountability is to vote the bums out of office. But I think for those who are leading the parade here on impeachment come from states where such sentiments are popular. So unfortunately, they have a lot of power and they're using it in what I perceive to be a very irresponsible way.

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Joyce Vance and me, Barb McQuade. Kimberly Atkins Stohr will be back with us next week. 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 please show some love to this week's sponsors Reel Paper, OneSkin, HelloFresh and Aura. You can find their links in the show notes. Please support them because they support this podcast. And if you're listening, I know you've already done this, but if not, 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. Happy holidays and see you next week with another episode #SistersInLaw.

Welcome back to #SistersInLaw with Jill Wine-Banks, Joyce Vance, me. Sorry. Who are you?

Joyce:

I'm Joyce Vance, of course.