

- Joyce: #SistersInLaw is going on tour in May. Get tickets at politicon.com/tour. You can see us live at the Athenaeum Center in Chicago on May 2nd, the Royal Oak Music Theatre in Detroit on May 9th, and the Shubert Theatre in Boston on May 30th. Go to politicon.com/tour to get your tickets now.
- Barb: Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade. Jill will be back soon. We already miss her. We're so excited to be able to tell you that we're going to be back on the road. We'll be appearing in Chicago on May 2nd, Detroit on May 9th. Tickets are selling like hotcakes, or at least like Detroit hot dogs, and that means fast. For tickets, now you can go to politicon.com/tour. Today, we will be discussing the latest in the Trump cases, limits on judge shopping and a new case by the Supreme Court deciding social media limitations. But first, before we get into it, one of my favorite holidays is coming up, sisters, and that is St. Patrick's Day. I'm about as Irish as they come. What about you, guys? You like St. Patrick's Day? Is that a holiday you celebrate?
- Joyce: St. Patty's Day is perfect for a marriage between a Jewish girl and an Irish boy, right? Because I make corned beef and cabbage and everybody claims the holiday. We really do love St. Patty's Day though. There's something about it. Secretly, Barb, I'm always jealous of people who are Irish because it seems like such a wonderful culture and lots of good traditions.
- Barb: Thank you. I think it is. I agree. How about you, Kim? Do you guys celebrate St. Patrick's Day?
- Kim: Oh, I love St. Patrick's Day. I mean, I lived in Boston for a very long time and it is one of the most important holidays there. When I worked at a law office, I was the only non-Irish person in the whole office, but they made me honorary, and I have now married into Irishness as well-
- Barb: Oh, part of the clan.
- Kim: ... so fully in. But, yeah. I miss the days in Boston on St. Patrick's Day, when it fell on a weekday, it was generally accepted that you worked until, I don't know, maybe lunchtime, and then you headed out. You enjoyed yourself for the rest of the day. And I love green. It's one of my favorite colors, so I love wearing it. So, yes, always a wonderful and festive time.
- Barb: Well, very good. Well, I'm sure I'll be getting my corned beef and cabbage. Our tradition in recent years has been, my friend, Mojo, who's also quite Irish, cooks a really mean corned beef and cabbage, and she often schedules a gathering for us to get together and she makes the best corned beef and cabbage, and we get together and we have a fine time. So, Mojo, I know you're listening. I'm waiting for my invitation. Let's-
- Joyce: Can we come too? I'll be there too, Mojo. Thank you.
- Barb: Yeah, I'll be bringing the sisters.
- Kim: Hey, Joyce. I'm batting my eyelashes at you. Can you see them?

Joyce: I can. They're absolutely fabulous. Whether your style is fresh-faced, full glam or somewhere in between, you've probably seen the Thrive Causemetics spiral tubing mascara that Kim is batting at me right now. It's the one in the turquoise tube all over your socials. Thrive Causemetics beauty products are certified 100% vegan and cruelty-free. They're made with clean skin-loving ingredients, high performance trademark formulas, and uncompromising standards. And I have a confession to make. I hate wearing mascara. I feel like it's stiff and unnatural. But Thrive, I really like this one. It's easy to see why their bestsellers have gone viral with thousands of five-star reviews.

Barb: I like that phrase, batting your eyes. Isn't that a good one? Batting your eyelashes? It's a good phrase. Usually, when I do that blink of the eyes, it's more of an incredulous stare. I just blink a couple of times, it means, "You didn't just say what I think you said, did you?" I just do that a couple of times. Well, we love that cause is in the name for a reason. Every purchase supports organizations that help communities thrive. With causes like education, cancer research, and working to end homelessness, you'll feel great and look great with Thrive.

Kim: We love their brilliant eye brightener too. There's nothing better to give you a fresh effortless look after a long night of preparing for the day ahead, which we do a lot. It's a luxurious highlighter stick that brightens and opens eyes, giving you an instant eye lift. Use it as an eyeshadow for a perfect daytime glow or apply the metallic shades for an easy smokey eye. It's foolproof and extremely easy to apply and blend any of the 16 shades. You can apply it to the inner corners of your eyes to look like you've had plenty of restful sleep, even if you're an insomniac like me. And another trick that I do is I put it in the middle, a little bit in the center of my lips, after I apply a lipstick just to give it a little definition and pop, but not something that's super, super noticeable. Just a nice little extra bit of shine.

Joyce: That's pretty cool. I never knew that you could do something. See? You really do learn something from #SistersInLaw's ads. Thrive Causemetics. It's luxury beauty that gives back. And right now, you can get an exclusive 20% off your first order at thrivecausemetics.com/sisters. That's [thrivecausemetics, C-A-U-S-E-M-E-T-I-C-S.com/sisters](https://thrivecausemetics.com/sisters) for 20% off your first order. And you can also find the link, you know where, in our show notes.

So y'all, there is so much going on in the Trump cases that, about midway through the week, I just felt like I was going to have a meltdown. I mean, every time you picked up your phone, something new had happened. And in that situation, I think it becomes important to try to separate what's important from what's just the bright, shiny thing of the moment. So let's try to go ahead and separate the wheat from the chaff for our listeners and talk about what's really going to matter going forward. I always tell my kids, if they're upset about something, they should think, "Is this something that will still matter in two weeks?" And if it won't still matter in two weeks, just let go. So let's try to figure out what's really got lasting significance here. First off, Fulton County. We've got this decision from Judge McAfee on the disqualification issue. He says that Fani Willis gets to stay on the case. What do we think? Important lasting significance?

Kim: Yeah. So for those who have not seen this news yet, the ruling found... Judge McAfee went through a couple of things. One, he considered whether there was an actual conflict of interest based on the fact that Fani Willis chose someone who, at some point, she had a

romantic relationship, Nathan Wade, to lead this case. And after a long rambling discussion of it, he found that, no, there was no actual conflict. Then he took it upon himself to discuss the appearance of conflict, which, as far as I could understand, under Georgia law, it was not clear that that would even be a basis of removing somebody, the mere appearance and not an actual conflict. But he went through that exercise anyway and found that, no, there was not an appearance of conflict to the reasonable person, but because there was something he called an odor of mendacity attached to what had happened that there needed to be a remedy.

And so he gave the district attorney a choice. Either she and her office can step off the case or Nathan Wade could. And as expected, Nathan Wade tendered his resignation to her. I think the outcome was fair. I think that the legal determinations by Judge McAfee were right. I think that Nathan Wade stepping down is a fair thing because I think that it was a lapse in judgment for her, for District Attorney Fani Willis to offer, and for Nathan Wade to accept that position, knowing that there was any potential for any... It was either incorrect for her to offer and him to accept the position or for him to continue once a personal relationship started, regardless of when that relationship started. But I think the gratuitous swipes that Judge McAfee took at the district attorney were unnecessary. The fact that he scolded her for defending herself in what was, as I've discussed before, really a character assassination. I think the defendants knew they really didn't have enough evidence to prove even an appearance of a conflict, let alone an actual one.

Since even if they were in a relationship, that had nothing to do with the decision to prosecute Donald Trump and the other defendants, nor the speed with which they prosecuted them, and that was laid out in this decision. But they brought this anyway and they used the evidentiary hearing to basically try to absolutely destroy her reputation in the public eye. And I thought it was gross. I mean, the way they went into the great details of their relationship and things. This is a woman who has been doxxed. She had to leave her home. She has been on the receiving end of all kinds of vitriol since this entire case started, particularly from the right. So I think this little gratuitous swipe, I don't know if it had anything to do with the fact that Judge McAfee too has to be reelected and that he felt like he needed to wag his finger at her or slap at her a little bit in order to save his own hide, but I thought that-

Joyce: But in Fulton County, that really hurts him. Right? Fulton County is as blue as Jefferson County where I live, that cuts against him.

Kim: Yeah. I don't know what his reasons are, but I thought that that was unnecessary. But I thought that the judgment was correct.

Joyce: Yeah. I mean, there's so much going on here. Part of it, I wonder, this is a judge who was a federal prosecutor where the standards are a little bit different. And I used to have this experience with judges who had been in state court. When they became federal judges, they kept wanting to apply state law. I almost felt like, here, the judge wanted to hold her to a higher standard, to the federal standard because it's very clear that, under state law, she doesn't have a qualifying conflict of interest. I'll tell you what I like about this process, as painful as it's been for Fani Willis, is that he has made such a clear record that it is abundantly clear that there is no disqualifiable conflict of interest, and the fact that he's gone above and beyond I think really protects the ruling.

But, look, I'll just say this as a former prosecutor. You have an obligation to make sure that the case is about the case and not about you. And she did have a terrible lapse in judgment here and she compounded it by not responding immediately in writing in court when these allegations were raised. And it was her decision to go to church, and then to let this linger, and then to take the witness stand and leave the judge with the impression whether it's accurate or not that she was lying, that has really brought us to a point... There's been what? Five or six weeks of unnecessary delay. The case has been completely derailed. This is clearly the work of professional Republican operatives. Mike Roman has a history of doing this work in elections. But nonetheless, she stepped right into it, and it's just regrettable on every front.

Barb: I agree with that. But I don't know that it's the judge's place to, say, create this remedy, either, "Fani Willis, you and the whole case are out," or, "Nathan Wade, you are out." He finds there is no conflict of interest. He even finds that he takes exception to her statements at the church where she says that they played the race card and other kinds of things, but he said even that it's troubling, but it doesn't go so far as to be this forensic misconduct. So I don't find any actual conflict. It's really just an appearance of conflict. At that point, I feel like the judge had bought out.

Kim: You said it wasn't even an appearance of conflict. You said it was an odor of mendacity.

Barb: Odor of mendacity and a tremendous lapse of judgment.

Kim: Yeah.

Barb: So I feel like he's overreaching by creating this remedy. I mean, I think she has an ethical duty to her office that she may have violated as a manager. That's different from any conflict of interest she might have against these defendants. There is no indication in any way that their rights to a speedy trial have been compromised in any way. And so the judge seems to be wanting to say, "I'm not sure I believe them. It seemed like it was a little shady here. So just to make sure, I'm going to make sure... And he knows what the choice is going to be that Nathan Wade is off. I think Nathan Wade should have resigned from this case-

Kim: I agree.

Barb: ... long ago. They could have avoided this. But I do think this was a deliberate effort to distract from the facts of the case to create a sideshow to undermine the credibility of the prosecution. And I think they have succeeded. And I think the judge really went farther than he needed to in ordering either of these people to leave the case. There's no conflict of interest that, in any way, affects the rights of these defendants.

Kim: Joyce, I know we disagree a little bit about what we think should happen next, but I'll let you go first.

Joyce: Well, I mean, I think Fannie Willis should step aside. I think she should. And let me say, I don't say that in the sense that I'm blaming her. And I agree with Barb's assessment of what the judge did, but I think, as a prosecutor, you've got to make sure that it's about the case and not about you. That is a tough call for an elected DA to make, although in some

ways, it would free her up to go out and campaign between now and May, which is something she's not going to be able to do if she has to take over this case. But I think Fani Willis needs to be the adult in the room. And she issued a very gracious statement when she accepted Nathan Wade's resignation, complimented him on the work he was willing to do when no one else was willing to step up in this case.

I think she could do the same thing here and say, "Look, I am confident I did nothing wrong. But I read the judge's order, I understand that he has concerns. And my office stays in this case regardless, and I'm going to let some of the career folks or some of these folks that I've hired handle the case," and then it's not an issue. Because we all know what's coming next here. The defendants are all going to file Bar grievance complaints against Fani Willis. They're going to go after... I mean, this is just such a great example of the way that Trump forces attack the prosecutors, right? It's not about the case. It's about attacking the prosecutor. I think if she steps aside, she refuses to play their game, refuses to let these ethics sorts of issues dog the progress of the case. It's not a happy outcome. It's not what I would wish for her because I think she's been a standup person here, but I think it's the right thing to do.

Kim: So, first, I want to state for the record, I love and adore Joyce Vance. I think she is brilliant and wonderful-

Joyce: It's okay. Go ahead and disagree with me.

Kim: But I could not disagree with you more. I think, first of all, the attack on Fani Willis was a part of the plot. Right? The entire effort by those on the right, Trump supporters, the defendants, conservatives, everybody who were attacking her, was an effort to discredit her in the public eye, not just disqualify her work. And I think that the very last thing she should do is give the bullies a victory in this case, not just for her, but because of the fact that we see this happening increasingly, especially when it comes to the people who are defending the rule of law who happen to also be women and who happen to also be women of color.

And one thing that I find really frustrating is when there is what I'll call friendly fire, right? When something like this goes down, you have the people who support the efforts of these folks. You have the people who want justice to be done in these cases saying, "Well, she should be the biggest person and step down. We can't support you," and they're the first people to back off from giving them the support that they need. When we see other people, certainly the people on the right, we see them getting backed up. You see nobody on the left saying that Clarence Thomas should step down or recuse from the case because that's the right thing. You saw nobody from the right saying that Justice Kavanaugh should not become a justice after his ridiculous performance at his confirmation hearing that came from directives, I think, from Trump World for him to get out there and fight and not just roll over in the face of credible allegations.

But we always see that on the other side. We see that in the attacks on Ketanji Brown Jackson before she was even nominated, let alone confirmed. We see that on the attacks of Claudine Gay. We saw that in the attacks of Lani Guinier. And Fani Willis, if she has proven anything, she has proven that no number of attacks, not even attacks that forced her out of her home when she was doxxed, not even the racist spewing that Donald Trump himself, the Republican nominee for president, is throwing at her. None of that is

keeping her from doing her job. So I believe everybody who supports the rule of law should be rallying behind her, not telling her to take the L and step away and, not to mention, set this case back if you want to see this going forward. Finding somebody even within the office to get it up to speed is only going to take more time. And it really frustrates me. She won here. She was in the right. She made a mistake, but it was not a fatal mistake.

And I'm just really tired of the people on the good side being asked to take a knee when everybody else can do what they want to. And Trump, the last point is the folks on the other side are going to attack whoever the prosecutor is to say, "Oh, this keeps them from being distracted-

Barb: Right. This is not like, "Well, [inaudible 00:19:06].

Joyce: ... keep going absolutely. But the problem is Fani Willis missed her moment. The moment for her to make this right was right after they filed against her in court. And she should have said, "Sure, we had a relationship. And it's not a conflict of interest and it's not a big deal." And I think the problem here, and I take your point, Kim, about support. And I am a huge fan of Fani Willis' and have been supportive of her throughout this process, especially early on when she drew fire. But I think she became her own worst enemy here by not being candid with the court. And no matter who you are, no matter what your background is, your duty as a prosecutor is to be candid with the court and to keep the court's confidence.

And I think by taking this to a public forum, the judge did something I think is remarkable in this order. He invited the defense to seek a gag order against the prosecutors, and he did that because she went out and rather than filing a responsive pleading, she made those comments in church. And so I don't think anyone here should condemn Fani Willis. She's a great prosecutor. This is a horrible situation. Like you say, the people on the other side do not have clean hands. But I think I look at this as a prosecutor as what lets this case move forward to conviction without generating issues on appeal. So we'll just have to agree to disagree on this one, I'm afraid.

Barb: So if I can just chime in on that point, I think if she leaves the case, that slows things down too. I mean, are you suggesting that her whole office would be recused or just-

Joyce: No, just Fani. She lets Anna Cross go ahead and try the case. Fani hasn't been the lead prosecutor in the courtroom on this case, so I don't think that's a delay factor.

Barb: Yeah, I just don't see any reason that she has to do that. She may have ethics issues for failing to disclose a relationship with a prosecutor in her office. That was poor judgment. But it has absolutely no bearing on the rights of the defendants in this case.

Joyce: I mean, it's just incredible how much is going on all at once. Earlier in the week, Judge McAfee dismissed six counts in this case. So how do y'all think that that plays in the long run?

Barb: Well, these are interesting choices by the judge because the basis for the ruling has nothing to do with the substance of the charges. It's really all about the form. And so

these were the charges of soliciting a public official to violate his oath of office, which oath says that, "I will support and defend the constitutions of the United States and Georgia." And so what the judge said is, "Well, which provision of those constitutions? These are some pretty long documents, and these documents have a lot of different clauses and have been the subject of much debate throughout history. You have to be more specific than that."

So I think that Willis can cure the flaws in these counts by just adding a constitutional provision there about which part of the constitution she alleges is her theory was violated, which I think she could do. Now, it would require going back to the grand jury though and superseding. And so as a practical matter, it might be too cumbersome and take too long and she might just simply forego it. I mean, there's... What? 34 counts in this indictment?

Kim: Yeah.

Barb: Including a conspiracy. Maybe she just says, "I'm going to punt. I've come this far. I don't want to have to start over or even have any delay at all by going back to a grand jury." But that's her option. I don't think it would slow the case down by more than a month or two. And since we don't have a trial date for this case yet, maybe that's the better course. I don't know.

Kim: Yeah, I don't think it's a big deal. I think all the time in criminal cases and civil cases alike, charges and counts get shaved down. As the case approaches trial, I think the big game here is the RICO charge, which remains in place. So I don't think it's a big deal. I expect Fani Willis to... I expect her not to step down. I expect her just to keep it moving.

Joyce: Yeah. I mean, I think the key is that these dismissed counts are overt act in the RICO charge. So all of this evidence still comes in at trial. This is about the pressure phone calls that were made. I think that this doesn't amount to much, and because in Georgia, they would have to wait for a grand jury to be in session and then go, just don't think it's worth the time to go back. So this one gets the thumbs down on long-term significance. But wait, there's more. Right? There was a lot of activity in Mar-a-Lago this week. Judge Cannon denied Trump's motion to dismiss based on unconstitutional vagueness. That was one of the two motions she took up at her hearing earlier this week. Barb, what do you think that ruling means and does it have any legs for the case?

Barb: I don't think so. I know I saw your comments, Joyce, that you thought that she was being a little bit weenie here and saying, "I'm going to deny the motion now, but maybe it can be renewed later after trial," and she even said like, "Oh, this is a hard question." The Espionage Act is a statute that's been around since something like 1917. It's been used many, many times. All of these cases where government officials are charged, or former government officials, with mishandling classified information involves the Espionage Act. So these terms have been litigated and there's been judicial gloss in case law that has defined these terms over time.

So I don't think this is going to have any impact whatsoever on this case. And even giving Trump the chance to renew it at the close of his proofs after the evidence has all come in so the judge has a little better sense of it, I don't have a problem with that. I mean, I don't think that's going to be the case. But she denied it without prejudice, which

means once she actually sees the facts at trial, when all the facts come in, all the witnesses have testified, all the documents are in, maybe she'll change her mind, but I don't think so. I think that the case is only going to get stronger once they see these facts in this case based on the allegations.

Kim: Yeah, I hope that Barb is right. I agree with everything you just said, Barb. My only worry is if she waits too long to rule on this after the jury is seated, jeopardy attaches. And so at that point, if she throws it out, then the prosecutors can appeal. But beyond that, I'm with you. I don't think that this is a big deal either. This isn't making me return to the ledge.

Joyce: Yes. So I am way out on the ledge on this one-

Kim: Really?

Joyce: ... and here's why. Absolutely. Had she granted this motion right now, prosecutors would absolutely be able to take an appeal and she would be reversed. It's a frivolous motion. As Barb says, this has been looked at virtually every time somebody gets charged under this provision, they argue that it's void for vagueness. And the court uses an as-applied standard. That means they look at how it's applied to each defendant. Trump gets tons of advice about what this statute means. Right? He walks in the White House door and he gets a briefing from the White House Council on handling classified material. That goes all the way through. When he's on the way out, he's told he has to return this stuff.

But here's the nightmare scenario. If you really believe that Aileen Cannon has got her thumb on the scales for Trump, then all she has to do is wait until the jury is in panel, and that means that double jeopardy has attached. And if the case against Trump is either dismissed at that point or if a jury acquits him, that's it. The government doesn't get to take an appeal. And so Aileen Cannon could say, "Well, I need to hear more of the evidence before I rule on this motion." She gets five or six witnesses in and she says, "I've had enough. I'm going to grant this motion. I'm dismissing these charges." The case is all over right there. There are some limited ways the government can appeal in that posture, but the judge controls all of them. So she could actually make sure, for instance, that the jury doesn't render a guilty verdict before she rules. And then that's it, y'all. So I am on the ledge here.

Kim: But do you think, Joyce, that that will happen when the flip... The scenario you're describing though, means that this evidence will have been aired, it would have been brought out, people will see it. And if it's a particularly strong case, you think she'd still grant a motion to discuss at that point?

Joyce: Well, look, I mean, this is the woman who said that Trump was entitled to have a special master to consider whether the government could use evidence it obtained during a lawful search warrant. I mean, that was just the boldest of bad rulings, right? The Eleventh Circuit was all over her. I mean, I don't know what animates her. I don't know. Is it inexperience? Is she really biased? I hate to think that about a federal judge. It just really galls me. But so many bad rulings here that I don't want... I'm the fool-me-once-shame-on-you-fool-me-twice-shame-on-me school, and she has fooled me one time. So-

Kim: All right, I'll put one foot back on the ledge then.

Joyce: Yeah, I'm sorry. I mean, I hate to do that to you.

Barb: I'm also ledge on this, so I think it's fine. I think it's fine. I agree with you, Joyce, that her decision on the search warrant issue in 2022 was awful. It got reversed appropriately, but I don't know if that means she's just looking for ways to connive to salvage Donald Trump. I think she's certainly got a particular worldview, as many judges do, but she denied the motion. If the facts change after she hears the evidence, he can raise it again. And I don't know that there's any nefarious plotting going on. Maybe you'll prove me wrong.

Joyce: Well, as a practical matter, I'm not sure we'll ever find out because I think her ideal trial date is never. So there's other stuff going on though in Mar-a-Lago this week. Two key pieces. First, there's still a pending motion to dismiss the prosecution under the Presidential Records Act. Judge Cannon didn't rule. Does that mean she's seriously considering that motion or does it mean something else?

Kim: I don't know. I honestly don't know what's going on in her mind. I don't know.

Barb: This one strikes me as maybe one that requires just a little more writing because it's a little more fact-specific, I think. The opinion on the Espionage Act was less than three pages, is two and a half pages. Just, "Here's the legal standard, and no. If you want to, Trump, raise it again after I hear more at trial, but for now, no." The Presidential Records Act one, it's such a bizarre argument because the Presidential Records Act, as Jill Wine-Banks has explained to us many times, was passed in the wake of Watergate to make it clear that these records do not belong to the President, they belong to the people. And so Trump has this whole weird hocus-pocus thing that, "I designated them all personal records, so I was free to take them." I don't think that's how the Presidential Records Act works, but my guess is this is one that has less clarity in the case law and requires a little more work. I don't see this motion being granted either, but it may be just taking her a little bit longer to write it up because it's not quite so summarily decided.

Kim: Yeah. And when I said I don't know, I certainly don't think that these emotions are meritorious. I don't know what's taking her so long, I don't know what she might do, I don't want to make that prediction.

Joyce: Yeah. I mean, it's crazy, right? Again, it could have been a three-page motion. No, this is specious. But it's interesting to me that it's still pending. So moving on to Manhattan, there was also a bombshell there, Thursday night. We learned that Trump had filed a motion to dismiss the prosecution for discovery violations, or at least to delay the trial. The Manhattan DA actually agreed to 30 days of delay. What is going on in Manhattan?

Kim: See, I'm the one least on the ledge this week. I didn't think that this was that big a deal. I think it starts from the fact that I was not one of the people who thought that this trial would get going as quickly as other people may have thought anyway, I thought I expected some delay or another to come up. Yes, it's a hot mess that the delay was caused by prosecutors in the federal case not turning over these documents as quickly as they

ought to have. But it's 30 days. I mean, I think that that's a reasonable amount. It wasn't a big deal. But I want to hear you guys, the prosecutor's view, on this. Maybe I'm wrong.

Barb: No, I think once it became clear that the defense was receiving... I think it was 70,000 pages plus 30,000 pages, plus 15,000 pages, 100,000 pages or more of documents like now, I think Alvin Bragg had no choice but to agree. I think Trump wanted 90 days, and Bragg said, "I think 30 seems about right. We'll see where the judge lands on that." I think he had to concede that there's more time. There is some lack of clarity, I think, about the reason for this delay, first, Alvin Bragg's office filed something that sounded a little bit snippy about... That suggested the Southern District of New York was sitting on this stuff.

But then they filed something, Friday, that suggested that this was different material that was subpoenaed, that some materials already turned over. And then in addition to some of the material that the Manhattan District Attorney's Office asked the Southern District of New York US Attorney's Office for the defense subpoenaed the Southern District of New York US Attorney's Office in January for some material. And in light of the fact that there were 100,000 pages, it has actually taken this long to process and review and turn them over. So if that's the case, and they're responding any timely fashion to a request that didn't occur until January, I don't know that there's much else that can be done, frustrating as it may be.

Joyce: Yeah, I think that's the only thing that makes sense here, that prosecutors might've asked for a narrower subset of materials than Trump sought through subpoena. And apparently, the Southern District of New York asked for some delay time, and of course, Trump's lawyers were happy to lean into the delay. And so here we are. But I think that assessment is right. Alvin Bragg had to agree to some limitation. What's interesting to me is that there's more in this motion alleging that Bragg actually failed to comply with his discovery obligations as well. It doesn't look meritorious. I think we'll learn more when we see the DA's response next week, but we'll get a good measure of Judge Merchan, I think, when we see how he handles this, and is he going to cave in and give Trump 90 days just because he asked for it, or is he going to punch back and say, "Here's how much time you're entitled to." So lots of developments, lots to stay in progress. I'm sure we'll be talking about all of this again next week.

Barb: Kim, you're looking particularly... I don't know, zen today. What's your secret?

Kim: It's been a busy newsweek, and when that happens, I try my best to keep calm, and the way that I can do it is with Calm. Do you get into bed and start checking all your social media apps and suddenly realize 45 minutes have passed, or are you like me and it's more like three hours? If you're a nighttime doomscroller or often really stressed out, let Calm help you form new and healthy bedtime habits this year. Calm is the number one app for sleep and meditation, giving you the power to calm your mind and change your life.

Joyce: Calm recognizes that everyone faces unique challenges in their daily lives, like a week like this where everything goes to hell in a hand basket on Trump legal, that mental health needs differ from person to person, and that time for meditation may vary since self practices are deeply personal. Calm strives to provide content that caters to your preferences and needs.

Barb: Their meditations cover reducing anxiety and stress, relaxation and focus, building healthy habits and taking care of your physical wellbeing. They even have sleep stories with hundreds of titles to choose from, including sleep meditations and calming music that will have you drifting off to dreamland quickly and naturally. We also love their expert-led talks on topics like overcoming stress and anxiety, handling grief, improving self-esteem, caring for relationships and more.

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The US Judicial Conference, that's the group that makes rules governing how federal courts operate, approved a new policy that would require that any challenge seeking to block any broadly-reaching state or federal policy in federal district court would be assigned randomly to a pool of judges. This was an effort to cut back on something we've talked about frequently on this podcast, which is judge shopping. I love shopping, but not that kind of shopping. Our listeners are very familiar with that concept. It's why so many cases challenging everything from President Biden's efforts to forgive student loans to the FDA's approval of the abortion drug, mifepristone, were filed in Texas. So, Joyce, explain this to us. What do you think about this new policy and how will it work?

Joyce: Yeah. I mean, it's really pretty interesting. Apparently, the judicial conference feels a little bit of weight from public pressure. What this policy does is it puts an end to one-judge divisions within districts, and the permissibility of judge shopping in that setting. The country is divided into 94 judicial districts all across the country. They fit into the 11 courts of appeals. But inside of each one of those 94 judicial districts, there are a number of divisions. For instance in mind, the Northern District of Alabama, there are seven divisions. And usually, judges are randomly selected for cases across all the judges in that district. Sometimes there are processes within divisions, and that's where the problem crops up in situations where there's only one judge in a division.

And so people file a case in that division knowing that they're almost assured of getting that judge if they like that judge's predilection for their case, and that's the subject of abuse. We saw that in the abortion cases when anti-abortion forces went to Amarillo, Texas in hopes of getting Judge Matthew Kacsmaryk whose views on abortion were well-known, the judge who entered that nationwide ban on mifepristone. And that's what this is about. Settings where a judge, one judge in one division takes action that affects the whole country. This policy is intended to impact cases where the parties seek a nationwide injunction or other relief that would have a nationwide impact, like lawsuits that try to ban federal or state laws. So it's limited to some extent in its scope, but it does address a serious problem that, by the way, cuts both directions on the political divide.

Kim: So, Barb, are there any drawbacks to this idea of using a pool of judges in cases like this? For example, there might be some meritorious challenge to some policy that's really having a terrible impact, but it can be assigned to a judge in some far-flung location

making it a real challenge for the people filing these claims. Couldn't that discourage some people from filing claims when they should?

Barb: Yeah, that's the reason they have these outposts in the first place, especially in big states. A state like Texas where you've got the main headquarters city, and then you have these satellite offices for the court. And the idea is it saves people lengthy travel time to have these different divisions where people can file their cases so they don't have to travel quite so far. So it's definitely a drawback. But it's not every case, it is just these cases that might implicate a statewide or a nationwide injunction.

And so I also think that the world has changed a little bit in recent years, maybe the last five years, where much more of the court proceedings can be done online, not trials, but a lot of conferences and a lot of things are done online now. And so I think that these rules were initially decided in an era before we had TV court. And now, there is stuff done remotely. COVID was certainly a challenging time for everybody, but brought with it some silver linings, and one of those is introducing remote virtual hearings and conferences to courts. So I think that all in all, the balance here weighs in favor of this decision to eliminate this judge shopping. It will certainly create some inconvenience, but I think in light of the realities of today and the technology of today, this is a good call.

Kim: So there was a swift reaction to this new policy. Some came from conservative lawmakers, including the architect of the right word shift of the entire federal judiciary himself, Mitch McConnell, but also some conservative justices. Joyce, what's their gripe and what do you think about that?

Joyce: Yeah, their gripe is that this might interfere with putting an end to dangerous policies like legalized medicated abortion, right? I mean, I think this whole thing is unseemly. McConnell, he's joined by Republican senators, John Cornyn from Texas and Thom Tillis from North Carolina, and they actually sent letters to some of the chief judges in district courts that are affected by this and said, "Hey, you guys don't have to follow this new rule. Go on doing your own thing." That really feels like interference and separation of powers to me. I mean, the courts are their own separate branch of government. They've taken on this new policy. It's unseemly for the Senate, the legislative branch, to try to interfere in that, and it's just smacks of politics, right? I mean, that's what this is about.

Kim: Yeah. Barb, what do you think about the fact that judges too, Judge James Ho and other conservative judges themselves are like, "Wait a minute."

Barb: I find it indefensible. I'm trying to avoid the knee-jerk. If Mitch McConnell dislikes it, it must be good because I don't want to play into those tribal politics like that, but it's a good rule. I mean, we did discuss some of the downsides, which is this idea that there could be some situations where it's inconvenient, but I think it prevents this challenge that we have seen around the country. And look, it could apply to progressive judges as well if there was some policy in their shopping to find a progressive judge. I think the reason we're seeing more of it is, right now, we've got all these Trump judges who are in these single districts, in these big states, which tend to be the red states, and they're the ones who are gaming the system at the moment. And so maybe that's why they're acts that's scored right now. But this is just good for the administration of justice overall, regardless of which side this might benefit or harm. I think judge shopping undermines public confidence in the independence of the judiciary, and it's a good rule.

Kim: Yeah, I would agree too. And it's also worth noting that, at this moment in time, when the judiciary is still really tilted to the right, it may not always make a big difference, right? It depends on who's in the pool. If there are still more conservative judges in the pool, it's not a perfect remedy for judge shopping either, but it, at the very least, gives a better shot to litigants to have a fair administration of justice. So I agree, it's a good rule.

Joyce: There are some short memories here. Remember when Jeff Sessions complained about a little judge sitting on an island in the middle of the Pacific Ocean entering a ruling for all of us as though he didn't remember Hawaii was part of the United States? [inaudible 00:44:17], How could a judge in the middle of the Pacific Ocean decide a case that's binding on us here in America [inaudible 00:44:26]?" I mean, a single judge ended the Muslim ban. He complained about John Tigert in Berkeley. There were complaints about a judge... Remember, he attacked a judge for having Mexican ancestry. So, Republicans, this is a politics-neutral law that, as you guys say, is good policy for everybody.

We are a Helix family in the Vance house. All of our mattresses are from Helix because we love them so much. You can find your perfect mattress for the best sleep of your life when you take Helix's two-minute sleep quiz and match with a customized mattress for your body type and preferences. When I took the Helix quiz, I matched with the Helix Midnight Mattress, and I liked it so much that you know how this ends. We ended up with them in every bedroom in our house. Everyone loves their Helix mattress, and if you're like us, your sleep will be better than ever with Helix. So upgrade to a mattress tailored just for the way you sleep. Like us, you'll never go back.

Barb: And I know, Joyce, you even have room for your cats and dogs in your Helix mattress.

Joyce: Are you kidding? The cats and the dogs get priority.

Barb: Well, the Helix lineup offers 20 unique mattresses, including the award-winning Luxe Collection, the newly released Helix Elite Collection, mattresses designed for big and tall sleepers, and even a mattress made just for kids. There's something for everyone. Helix designs cradle your body for essential support in any sleeping position, with enhanced cooling features to keep you from overheating. And if your spine needs some extra TLC, they've got you. Every Helix mattress has a hybrid design combining individually wrapped steel coils in the base with premium foam layers on top. It's the perfect combination of comfort and support.

Kim: Helix knows there's no better way to test out a new mattress than by sleeping on it in your own home. That's why they come with a 10 to 15-year warranty and offer a 100-night trial to try out your new Helix mattress. Plus the setup is fast and easy, and Helix mattresses are delivered in a box straight to your door for free. Helix has been awarded the number one mattress by GQ and Wired magazines. Leading chiropractors and doctors of sleep medicine use Helix as a go-to solution for improved sleep. And now, Helix is offering 20% off all mattress orders and two free pillows for our listeners. Go to helixsleep.com/sisters and use code HELIXPARTNER20. This is their best offer yet and it won't last long with Helix. Better sleep can start now. Find the link in our show notes.

Barb: The Supreme Court decided an interesting case on Friday, and that is that public officials may block people on social media, but only under certain circumstances. Kim, can you tell us what the court decided?

Kim: Yeah, so this is a really interesting case that involved the city manager of Port Huron, Michigan, over in Barb's neck of the woods, who had a Facebook page where he predominantly posted personal stuff, but occasionally would post things that are related to his job. So in addition to pictures of his kids and whatever, he would also post some information about his work. So there was somebody who really opposed him in his work who would frequently comment on his page, disparaging comments, which I think the manager called stupid. And so first, he started deleting these messages, and then eventually blocked this person. Well, this person filed a lawsuit claiming a violation of Section 1983, and that the fact that a city manager was blocking him and preventing him from commenting on matters involving his public office was violating his First Amendment rights.

Trial court and the Sixth Circuit said, "No, he really wasn't. He could totally block you." And the Supreme Court took it up because there was a circuit split on the standard, and they said, "Look, there are certain circumstances in which a public official's action, blocking someone from commenting, can run afoul of constitutional rights of people." And it's a two-step process. One, the public official, he has to have the power to do whatever he's talking about, whatever he or she is posting about in this post. So if I am, say, the dogcatcher in a certain jurisdiction... I like that idea. And I think I'd be a wonderful... The problem is I wouldn't be able to let them go-

Barb: You'd keep them all. You'd keep all the dogs.

Kim: I know. I know. I would be like, "No, you can't have your dog back. He's mine now." But if I were the dogcatcher and I'm posting about, I don't know, the stop sign down the street, and you get after me about the fact that you hate that stop sign. I can delete you because I have nothing to do with that stop sign. But if I'm the public health administrator and I'm talking about COVID rules and you comment on that, then that's within my power, right? I'm somebody who is responsible for doing it. And the second part is the public official has to be exercising that specific authority. So if I go on, I have to be saying, "Hey, you really need to follow these COVID rules." And if somebody says expletive me, and I delete them, I could be violating their First Amendment rights because they have a right to express themselves, even profanely, about me executing this duty that I have.

So in this case, they remanded it back to the lower court so that they can do a fact-finding consideration of whether this public official actually violated this person's First Amendment rights. We don't know. And there was another similar case that the court also remanded back down under this new rule, but it's really interesting. It really is for the first time that the Supreme Court is setting out a standard for what it means when a public official posts on social media, even if it's from a private account. So it's an important case and it will have big implications, I believe, all the way up to the presidency maybe, depending on how the election comes out moving forward.

Barb: Yeah, I worry that the standard is very fact-specific. You really have to look at the actual post before you can decide whether the person is acting in their official capacity, and exercising their authority, and all that stuff. Joyce, the court dealt with this issue when Donald Trump was president. But when he left office, he was blocking people, and people were filing lawsuits against him saying that that violated their First Amendment rights. But he left office before the case was over, and so it was dismissed as moot. What

do you think about this decision looking toward the 2024 election? And Donald Trump is, no doubt, going to say a bunch of stuff on Truth Social and other kinds of things. What implications might we expect for the way he uses social media? Can you say, "I'm a private actor... I guess, as a candidate, he's a private actor. What implications do you see there?"

Joyce: Yeah, I think if Trump is elected and if he continues to use his Truth Social feed the same way he used his Twitter feed to make official pronouncements, then he would run afoul of this statute. But your point is a really good one, Barb. This is not so much a legal standard as a direction to the district courts to make a case-by-case decision. And so you could see the specter of some of Trump's use of social media running afoul of this rule and other parts of it being okay if it wasn't sufficiently entangled with his official function. So I'm not sure that this decision really decides anything, which makes it really interesting that it's unanimous, right? I mean, this is where the court wanted to end up every last justice.

Barb: Yeah. Well, sometimes there's some horse-trading that goes on at the end, and you end up with a compromise that nobody loves. It's like we had this rule in our house when our kids were around that we never picked a movie, if we're renting a movie or streaming a movie, we never reached a decision by consensus because then nobody was happy. So we rotated who got the pick. Because whenever you have to rule by consensus, then you end up with like, "Eh, all right. I guess I can live with that," which is what this opinion looks like to me.

Joyce: Hey, Kim, I hate doing housework. Do you have any secrets to make it easier for me?

Kim: I do have secrets-

Barb: You can listen to SistersInLaw.

Kim: Well, that's a good way to pass the time while you're doing it. But to keep you and your house so fresh and so clean while also helping the planet, I would give Blueland a try. Did you know your detergent pods are wrapped in plastic? It's true. The film around your pods, the ones you get in the store, is plastic, and it's ending up in our oceans, our rivers, and our soil. It gets all over the dishes you eat off of too. I hate when it doesn't dissolve completely. So make a change for the better and do something about it by using Blueland.

Barb: Blueland is on a mission to eliminate single-use plastic by reinventing cleaning essentials to be better for you and the planet. There's no single use plastic in any component. That includes the bottles, tablets, wrappers, and even shipping. Their tablet packaging is fully-compostable, and all of their products are effective and affordable.

Joyce: You'll still get the powerful clean you're used to. Their laundry tablets are proven to lift the toughest stains. They'll handle anything from grass to food. We love how you get even more savings by buying refills in bulk or setting up a subscription, and it's customizable and convenient so you never run out of your most-used products. I keep experimenting with the scent every time I get Blueland, and I have yet to come across

one that I don't like. They really are good, but I think the Blue Agave is my all-time favorite.

Kim: I like that one too. Blueland is trusted in over one million homes, including the homes of the #SistersInLaw. And now, Blueland has a special offer for our listeners. Right now, get 15% off your first order by going to blueland.com/sisters.

Barb: You won't want to miss this. Again, blueland.com/sisters for 15% off. That's blueland.com/sisters to get 15% off. You can also find the link to a cleaner, greener home in our show notes. And now comes the part of our show that is really our favorite, the part where we answer your 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 #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 to us from Kim, so I think I will direct this question to Kim. Different Kim. Here's the question, though, Kim. Now that embryos are children, at least in Alabama, could they have standing to sue like the Montana children who sued over climate change?

Kim: I like where you're going, Kim, as much as I like your name, it's really beautiful. So I think that's an interesting question and point. What I will say, I think it is unclear. But what I will say is I hope that people do bring challenges, Kim. I hope that people bring challenges such as suing over climate change. I hope 20-year-olds bring challenges wanting to buy alcohol. I hope that 17 year-olds bring challenges wanting to vote since life began nine months before their birthday, if they would've otherwise been 18. I mean, I just hope that the absurdity of... And it's not even a fetal personhood rule, it's an embryonic personhood rule, that the absurdity of that is brought to bear wholly and fully that people seek tax credits for... It just shows how unworkable and unfeasible this rule is.

So my tongue is in cheek, but this is a really serious topic, and I think the more it is pointed out... We saw that with IVF consequences, right? That caused Republicans to backtrack and say, "Oh, wait, that's not what we meant." The more we point out the unintended consequences from the comical to the tragic, I think the more it becomes apparent how dangerous these rulings are. So my answer is I hope so.

Barb: Very good. Our next question comes to us from Bethany who asks, "I appreciate the discussion on women not feeling like experts despite being experts. So many professional women deal with imposter syndrome. Have any of you ever dealt with this? And if so, how did you overcome it?" Joyce, what about you?

Joyce: I deal with this every day of my life. I mean, I'm a constant captive of imposter syndrome. I was on a panel a couple of weeks ago and I was talking with my husband about it in advance, and I said, "I am really punching above my weight. There's a retired federal appellate judge on this panel and some lawyers with just outsized reputations, and this just is not a panel I should be on." And he just rolled his eyes at me like, "What are you talking about?" And I am reminded constantly of the fact that, as women... I mean, I wish I wasn't this way, but I think we are just more receptive to being critical of ourselves, to looking at issues from all sides and not thinking that we are always right. And maybe in some ways, this is a strength. But I have a really good friend who constantly reminds me, "Hey, don't do that. Don't dish yourself. You are worthy." And I

think maybe that's the answer to this problem, is to surround yourself with wonderful, supportive friends.

Kim: Yeah, I agree with that wholeheartedly. I have, I would say, until recently, very greatly suffered from imposter syndrome. And I had to tell myself that. I had to tell myself to stop for all the reasons that I pointed out why I don't believe that Fani Willis should step down and why I get really irritated when people focus their attacks, because they do on women in power and on women in places of expertise. It's why I get many more...

I was talking with another columnist from The Globe and he was proposing that we engage more with commenters and stuff on our columns. I'm like, "Have you looked at the comments that the women of color get on their... No, no. We get attacked so much more and harder, and it's tougher to be an expert if you're a woman, in particular, a woman of color. And I think that's why you see fewer of us, the higher the rung of whatever industry you see. So I think it's really important, as Joyce said, to have a good support system. But even if you don't, just really important to tell yourself you belong there just like everybody else. And there are a lot of people who are going to take a lot of joy in trying to tear you down, and the best revenge is for you to stay there and do a great job.

Barb: Yeah, that's interesting. I look at this from the opposite perspective because no one has ever accused me of lacking confidence or self-confidence or self-esteem. And I want to make sure I am remembering to be humble and to have humility when I am offering expertise. So I think that's important too. So all around, lots of interesting thoughts on that topic. Our final question comes to us from Susan who asks, "Why doesn't Jack Smith go ahead and indict the unindicted co-conspirators in the January 6th case?" I'll take a stab at this. I mean, I suppose we don't know the answer, but one of the reasons I think is to avoid delay. And that's because if you had six defendants, or I guess it would be... Are there six unindicted co-conspirators?

Kim: Yeah.

Barb: That would make seven defendants. It multiplies sevenfold the likelihood of a trial delay. That's because you're dealing not with the motions of one defendant, but the motions of seven defendants. You're dealing with potential hiccups in the schedule, not just from one defense and their counsel, but seven defendants and their counsel, if somebody gets sick or changes a lawyer. And so I think this is about an effort by Jack Smith to get this case streamlined, focus on the greatest wrongdoer, Donald Trump. He can always deal with the others later as long as they're charged within five years of the conduct. So that gives him till 2026 to decide whether to charge these people.

And in the meantime, they all know who they are. They all know that they're facing criminal exposure. And so it provides them with an incentive to enter into a deal, a guilty plea, in exchange for testimony against Donald Trump. There's been no public report that anyone's done that. That doesn't mean it hasn't happened. It could have happened under seal, but I think mostly it is an effort to streamline the case in what smidge of hope remains to get this case tried before the election.

Kim: Yeah, I do believe that at least some of them may be cooperating because some of the ones that we could guess have already pleaded guilty in Georgia. So I think that's a good indication.

Barb: Yeah, agreed. Thank you for listening to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade. We can't wait for our live shows. We'll be in Chicago on May 2nd, Detroit on May 9th, and Boston on May 30th. Hope everyone can go to politicon.com/tour now to get your tickets. And please show some love to this week's sponsors, Thrive Causemetics, Calm, Helix, and Blueland. You can find their links in the show notes. Please support them because they really do make this podcast possible. Please follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five-star review. It really does help others to find the show. See you next week with another episode of #SistersInLaw. We're selling hot dogs... Sorry. Hot dogs.

Joyce: We're selling hot dogs? We might end up selling hot dogs at this point. We've talked about them so much.

Barb: Sorry. Sorry, sorry.

Kim: [inaudible 01:04:02] people with those little things, those little metal containers walking up and down the aisle in a baseball game. "Get your hot dogs. [inaudible 01:04:11]."