

Jill: Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me, Jill Wine-Banks. Barb is away this week, but she will be back next week. We are selling out of our Resistance shirts, so we've ordered a lot more. So if you go to politicon.com/merch, you can get one now. And I know I'm going to be wearing mine this weekend because we're having a big protest in Chicago. Well, actually around the country there are protests, and I can't think of anything better to wear. And anybody who's there with one on now in Chicago, it's going to be under a puffy coat because it's going to be pouring rain and cold. But maybe I'll wear my SistersInLaw pin as well, so that I can wear that on the outside.

But let's get onto the show. We have three great topics today. We're going to be talking about tariffs and presidential power, the protests, and whether there's a threat of an Insurrection Act being called, and the 22nd amendment, and whether Donald Trump could serve a third term. But before we get to those heavy-duty subjects, I want to talk about spring, because it started officially a few weeks ago. But Chicago doesn't have a spring. We get maybe one or two days that are in the 50s or 60s, and then we go back as we are now into the 30s and 40s. And I remember when I lived in New York, I used to actually have a spring coat because there was a long enough spring that I needed something lighter than winter. I don't have a spring coat anymore. There is no such thing. And so I want to know what's happening in Alabama and D.C., where I know you guys get spring. I want to enjoy it vicariously. Tell me what I'm missing.

Joyce: Well, what you're missing is the fact that Bob and I had to go out, it's been a couple of weeks now, with painter's drop cloths and cover all of the furniture in our screen porch, and we did it just in time. There is pollen everywhere. My car, my dark green Subaru, it is yellow right now. This morning I went outside with a hose and I just sprayed off the... We have a little small deck that comes off of the back of our house, I just sprayed the whole thing with soap and water because it is high pollen season in Alabama. But we nonetheless managed to go outside every morning and have a cup of coffee, and we're trying to teach our new puppy it's not polite to chase the chickens. So that's most of our spring enjoyment, it's like, "No, Elsa, sit and eat the chicken's cucumbers. Don't chase after them." And she is really smart and learning everything else really fast, but I think chasing the chickens is near and dear to her heart. So it may be summer before we convince her not to do that.

Kim: She's got to just get a little older and get a little self-control.

Joyce: She's enjoying it. They're not [inaudible 00:03:18].

Jill: I don't know, Brisby's 12.5 and he doesn't have self-control. He woke me up last night because there was a rabbit outside our house.

Joyce: What did he want you to do about the rabbit?

Jill: He wanted me to let him out so he could chase the rabbit. That's what he wanted.

Kim: It's like, do you understand it's an emergency?

Joyce: Love that.

Kim: Well, in D.C., we are enjoying spring very much. In fact, it seems that half the world is enjoying spring because we just had the peak of our cherry blossom season. And when I tell you that everybody and their Uncle John was in D.C. in the last week, just judging from the traffic, I really... It's been a long time since I've seen just tourists that robust during the cherry blossom season. But they are beautiful. And it's not just around the Tidal Basins and the monuments, it's really just about every neighborhood in the whole area. So every dog walk with Snickers is not just cherry blossoms, but magnolias and daffodils and just all these really, really gorgeous blooms.

And one thing I love about D.C. in spring is that even after the cherry blossoms peak, there are other flowers that come after that, all the way through the very end of May. And so it's really my favorite time of year, but we too are starting with the pollen. But this year I'm so proud of myself because around the end of February, I started doubling up my Zyrtec dosage. So I have actually, while normally I am miserable this time of year, I've been doing okay. I've been doing okay. And so has Snickers gets allergies, too. She's also on Zyrtec and I've also been rubbing a little coconut oil into her so she's not as itchy. But she's doing better this year than last year, too. We still have not gotten the yellow green pollen yet though, Joyce. We can see that it's about to drop all the trees, those little pods, you could see them coming. They're looming over ominously.

Joyce: I mean, you can hear it in my voice, right? My voice will be like this until the pollen is gone.

Kim: So talk to me next week, it might be a different story. But so far we've enjoyed the beauty without being defeated by the pain.

Jill: Well, I miss spring in D.C. It is an incredibly beautiful time. And I'm sorry that I'm not seeing-

Kim: Oh, did you see that on... I saw it on social media that somebody was at the Tidal Basin, taking a picture of their family with the cherry blossoms, and Obama walked past them. So Obama photobombed them.

Jill: Yes. Photo bombing.

Joyce: No, I have not seen that.

Jill: Yes, I saw that.

Joyce: That's crazy.

Kim: He was casually walking by and got in this family's cherry blossom pictures.

Jill: Obviously, that picture went viral.

Joyce: And you know he was loving it. He must have loved it when he realized.

Kim: Oh, my god, it was so funny.

Jill: Yeah. Nothing more beautiful. And Chicago, somewhere around June, will get to be what we call summer. So there is no spring and I just have to hang in there and wait.

Kim: So sorry. So sorry, Jill.

Jill: Did you know Fast-Growing-Trees is the biggest online nursery in the US? With thousands of different plants and over 2 million happy customers. They have all the plants your yard needs, like fruit trees, privacy trees, flowering trees, shrubs, and so much more. Whatever plants you're interested in, Fast-Growing-Trees has you covered. Find the perfect fit for your climate and space. Fast-Growing-Trees makes it easy to get your dream yard. Order online and get your plants delivered directly to your door in just a few days without ever leaving home.

Kim: That reminded me a little bit of Forrest Gump, Jill, fruit trees, privacy trees, flowering trees, lemon trees, apple trees. But it's really true, they do have just about every kind of tree you're looking for. And their alive-and-thrive guarantee ensures that your plants arrive happy and healthy. Plus, get support from trained plant experts on call to help you plan your landscape, choose the right plants, and learn how to care for them.

Joyce: Fast-Growing-Trees offers 6,000 plants to provide the perfect choice for you. Everything from indoor plants to fruit trees, full-size privacy trees, and more. There's more Forrest Gump for you, Kim. Just follow their 14-point quality checklist and Fast-Growing-Trees will help you care for each plant individually. Everything from watering routines to maintaining the correct sunlight exposure becomes easy. That means you'll be giving your plants the care they deserve the moment they ship to your home.

We have talked in past about the fact that I love Fast-Growing-Trees long before they advertised with the podcast, but most recently I got this unbelievably beautiful lilac tree that's planted just at the bottom of our stairs that go from our deck down to our backyard. And every time I walk past it smells amazingly good because it's in full bloom and it came from them with the blooms on it. I put it in the ground, it bloomed. It's utterly wonderful. There are a few things in the world that make me happier than getting a new order from Fast-Growing-Trees.

Jill: And I agree with you, Joyce. I love the green velvet boxwood shrubs that I got from Fast-Growing-Trees. They have survived the harshest winters ever and are just looking gorgeous. And they're green even in the dead of winter, even surrounded by snow. It's a fantastic shrub.

Kim: Talk to a plant expert about your soil type, landscape design, how to take care of your plants, and everything else you need. No green thumb required. So don't wait, this spring they have the best deals for your yard. With up to half off on select plants and other deals, listeners to our show get 15% off their first purchase when using code Sisters at checkout. That's an additional 15% off FastGrowingTrees.com using the code Sisters at checkout. Again, that's FastGrowingTrees.com, code Sisters. Now is springtime and it's the perfect time to plan. Use Sisters to save today. The offer is valid for a limited time. Terms and conditions may apply. And the link, as always, is in our show notes.

Joyce: Well, as I know everyone saw on Wednesday, Trump has imposed some pretty radical, not the good kind of radical tariffs. If you've got investment funds or retirement funds or savings, you're undoubtedly either watching with a lurching feeling in the pit of your stomach or just trying to look away. It is not an easy moment for Americans. There are many people who will complain about higher prices and loss of savings, and there are some Americans who will be affected by this in catastrophic ways. So if anything, this is a time for us to think about taking care of our communities and our neighborhoods. And if you have the ability to help others, this is a good time to do it. But the blame for this, the blame lies squarely on one man, and that's the President Donald Trump. So Jill, let's start there and talk about Trump's legal authority to impose these tariffs. Where does it come from? And is it Article I constitutional power or is it something else?

Jill: It's nothing. There is no power for him to do this. Let's start with that. Okay. Let's look at Article I, Section 8, which is Congress's power. And I'm just going to read you some lines from Article I, Section 8. "The Congress," not the president, "The Congress shall have the power to lay and collect taxes, duties, impose, and excises, and provide for the common defense. But all duties, impose, and excises shall be uniform throughout the US." So it's Congress who has that power, not the president.

So how is the president doing this crazy thing, which is obviously causing economic chaos and damage, not just in America, I'm sure you're all getting emails from friends abroad who are saying we suffering, too? Okay, so in order for the president to do something that is specifically assigned to Congress, the power has to be delegated and it has to be delegated in such a way that it is clear and definitive and limited and specific, and that hasn't happened. So we look at the major decisions doctrine that the Supreme Court has laid down, and we find that unless an agency or the president gets a delegation of power from Congress, that is Congress's power, they can't do it. And he's-

Joyce: Okay. But wait, my inner legal nerd is getting really excited here because I feel like you're talking about a Supreme Court case that we talked about last year, Loper Bright, right?

Jill: Oh, yes, you are so right.

Joyce: Loper Bright was the case that said that executive agencies couldn't just go and decide for themselves what Congress meant and that it was up to the courts. And now here we've got Trump deciding what it means. Is this a Loper Bright problem?

Jill: It is more than that. And let me just go on from that, because the very organization that brought us Loper Bright, the New Civil Liberties Alliance, that's the organization that brought us Loper Bright by filing a lawsuit, they now have filed a lawsuit against the president for the same reason that they brought Loper Bright, saying, nope, I'm challenging it. He is using what is the International Emergency Economic Powers Act, which is known as the IEEPA, which somebody abbreviated. In fact, the people from the New Civil Liberties Alliance called it the IEEPA. I don't know if that's proper or not. But anyway, this Emergency Powers Act.

But they're saying in the lawsuit quite correctly that even if this emergency powers extended to tariffs, which are never ever, ever mentioned in the act, but even if it did, it would have to be linked to the emergency and the emergency would have to be declared

properly. So one, they say he hasn't declared the emergency in the proper format. Two, there's no power to impose tariffs under that emergency power. And three, even if there was, there's no linkage between the emergency he's declaring, which is fentanyl and immigrants coming in, and tariffs. How are tariffs going to stop fentanyl? I mean, fentanyl is not a legal product that he's putting a tariff on. No, he's putting it on-

Kim: If you could tax fentanyl, that would be awesome, but that's not how it works.

Jill: Right, exactly. And if anybody would pay it and declare it, that would be amazing.

Kim: Right?

Jill: So basically they have a very good lawsuit. And like so many of his executive orders, I think that we're going to see a big loser in this one for Donald Trump. I'm not tired of his winning, because I'm not seeing him win.

Joyce: I love y'all, because I didn't think anything could make me laugh about tariffs, and you guys have managed to do it. Okay, so we'll continue to watch that lawsuit as it proceeds with great interest. But Kim, given that his power comes from someplace else, not the constitution, do you think that there's an opportunity here for Congress to give up this supine position that it's been in and resume the constitutional function that the founding fathers intended for it to play, countering power grabs by the president? I mean, as a practical matter, do you think that there's anything that they could or will do here?

Kim: Well, there are at least a few Republican members of the Senate that have joined with Democrats to file a bipartisan bill to state clearly that no, no Mr. President, it is Congress that has the power to impose tariffs, not you. And this bill would prevent him from doing that in most cases without congressional approval. Problem is there aren't a lot of really independent-minded Republicans in the house. So this bill by all accounts will be dead on arrival as soon as it lands there. So yeah, theoretically this is exactly where Congress should be speaking up, reminding the executive that they are a separate co-equal branch of government that serves as a check and balance and that they can also read the constitution and understand what that means. There's a little bit of effort, but I don't think there's enough appetite there, unfortunately.

Joyce: Well, I hope that the Congress is listening to you, Kim, because you make so much sense.

Jill: I keep hoping that Congress is going to wake up from its coma and start taking some serious action to protect its powers. And we know that they have the power of the purse, but they're letting Donald Trump do whatever he wants. They're letting him ignore law. I don't know if you saw, but today, Friday he extended the TikTok deadline. Congress passed a law that said TikTok was out of business unless they sold to a company other than the Chinese government. And he just gave him another 75 days in total derogation of what Congress passed. And at some point, I don't know what it is that's going to wake them up and make them say, we have the power and we will be a useless the appendix of the government if they don't start exerting their own power. So I'm hopeful.

Kim: Just to explain it to our listeners, that in itself is violating the constitution. There is a clause called the Take Care Clause, where literally the top job of the president is to take

care that the laws of the United States are faithfully executed, and he's literally just flouting it, giving himself extensions or granting these extensions that he does... It does not say take care if you feel like it, it says take care. It's a directive. So yeah, he just violates a law or constitution it feels like on the hour almost.

Joyce: Yeah. I mean, you heard it from Kim, there's no take care if you feel like it clause. And it reminds me, I mean, not to be the nerdy historian here, but going back to the founding fathers writing the Constitution, and there's this concern about a president that could become too powerful, that could be tyrannical like a king. And so James Madison writes in Federalist 10 about the fact that there should be no concern about that because we've got three separate co-equal essentially branches of government, and each branch will fight to protect its own power. That's how you would expect a rational world to work. But we've long since learned nothing about Trump is rational.

And I watched this recent power grab, we've talked about it a little bit in his executive order on voting, where he simply exceeds the authority granted to the president to interfere in elections. And there's already a lawsuit about that. But I mean, I'm wondering, Kim, I want to push on your analysis a little bit further. I know neither you nor I has been a huge fan of how Congress has acted since Trump was re-inaugurated. But do you think that there are some issues? Can you think of an example where Congress might feel obligated to reassert guard rails? Because Madisonian theory, they don't want to lose all of their power and be the appendix of government.

Kim: I mean, they obviously should for that reason. I mean, I think that Republicans, particularly Republicans in the house have made their calculation that their power lies in their alignment with Trump. So they're no longer seeing their power as coming from the constitution and therefore they're not seeing a need to protect their constitutional power. And Joyce, I'm so glad that you made that point about the Madisonian idea, that the way that you keep your power as a branch of government is to assert it. You give it up and then it's game over and then it just slides into tyranny. And I'm hoping that not only Congress wakes up to that fact, but so does the judiciary. I worry that if the Supreme Court does not step in with all these challenges when they come in, I'm sure Trump's not going to lose all of them, but there are some that really should be easy losses.

And if the Supreme Court tries to avoid it or get out of ruling directly on the issue or just rule on procedural grounds and kind of tiptoe around it, like they can do sometimes when constitutional issues are facing them in the face, they too are abdicating their own power in a way that will again erode trust in that institution. I just saw a poll where actually trust in the Supreme Court is inching up a little bit, and Americans do believe that the court will stand up to Donald Trump if he tries to do something unlawful or unconstitutional. They should take that and realize that that is where their power lies and that they need to do their jobs and not abdicate it if they want to still be a powerful court, if they want to, to use Justice Sotomayor's phrase, survive the stench of looking as if they're giving up that. The Congress, it's stinking. They're already there, but the court needs to, if it's going to survive as an institution, step up here, too.

Jill: I think that there is more than the three branches of government that need to take action. And I agree with everything you said, Kim, but I would say the people have some power that's going to have to be exercised, the media has some power that needs to be exercised, and lawyers, who are an essential branch of the court system, have to take action. And

we're seeing that in the resistance to some of the attempts of Trump through executive orders to kill big law. I hope that more law firms will join, and we've seen a large number of firms sign on as an amicus threatening or challenging the executive order. But without all of those forces coming to bear, without universities standing up to him, without the press standing up to him, we're going to see more of this unconstitutional, illegal use of power. Clear abuse of power.

Kim: All right. I know that not everybody is as excited about makeup as I am. But whether you like a simple look that's just a little bit of mascara and a gloss, or you like to go in with a full face beat, Thrive Causemetics has what you need. One of my favorites is the wonderful mascara, but I like a lot of their products and I've really had fun lately playing with some of their newer things. Thrive Causemetics has a trusty favorite that you can use for every look. They make certified 100% vegan and cruelty-free products that you can depend on for everything, from simple daily wear or even just your SPF, to show-stopping self-expression on a night out. Plus, it's all made with clean, skin-loving ingredients, high performance, and trademark formulas, and uncompromising standards.

Jill: I agree with everything you said and I'm on the side with you of I love to play with colors. And I love so many Thrive products that it would be impossible to list all the ones that I actually use. I've been using the mascara forever, way before they became an advertiser. But their eye cream sticks, their SPF before foundation, it's fantastic. Their brilliant eye brighteners are amazing, and you can make it as light or as dark as you want. You can get the depth you want. There's nothing better for a fresh, vibrant look than Thrive. Thrive's foolproof formula makes it extremely easy to apply and blend any of the 31 shades. Yes, there's 31. And I am using right now, maybe close to a dozen of them in different combinations. It's fantastic, it's so much fun if you love playing with it. But if you don't, pick out some basic neutral color and it will work.

My faves depend on my mood and where I'm going. You can use as little or as much as you'd like to create the look you want. I apply a light shade to my lid and under the brow an even lighter shade, and then a darker color in the crease. And sometimes I use one of their darker colors as a liner as well. The eyeshadow creates a perfect daytime glow, but it looks natural. I recommend just so many shades. I don't even want to list the ones I'm using now. You can use a metallic shade all over your eyelid and blend it with your finger for an easy look. Use a white to line the tear line to make your eyes pop.

Joyce: Another thing we love is that cause is in the name for a reason. Thrive not only defines luxury beauty with their clean, skin-loving ingredients and uncompromising standards, they give back, too. Every purchase supports organizations helping communities thrive. Thrive donates to eight major causes, including the fight against cancer and domestic abuse, veteran and education organizations and more. I'm really glad that we are a part of it. And you guys, I'm going to need tips about that foundation you were talking about. I'm not using it, so can we get to that after the show please?

Jill: Yes, absolutely.

Joyce: Try your new trusty favorites with an exclusive set for our listeners. New customers can get the liquid lash extensions mascara and a mini-sized brilliant eye brightener at a special set price with free shipping. It's all available at thrivecausemetics.com/sisters or save more with 20% off your first order at thrivecausemetics.com/sisters. That's Thrive

Causemetics, C-A-U-S-E-M-E-T-I-C-S dot com slash sisters for 20% off your first order. And the link is in our show notes.

Jill: There is now an organized nationwide resistance planned for today, when this podcast comes out, and there's speculative fear that President Trump might invoke the Insurrection Act to shut it down. It's highly unlikely, but I think it's a compelling question and interesting enough to explore so that everybody listening to us knows what the act says and what it might allow and what it might not. So Joyce, let's start with, we have something known as the Insurrection Act of 1807, which is really a compilation of laws that started in 1792 and continued on until 1871, and they're now codified in Title 10 of the US code. What does that law say and allow?

Joyce: Yeah, so the act authorizes the president to deploy military forces inside the United States to suppress rebellion or domestic violence or to enforce the law in certain very limited situations. And the statute implements Congress's authority under the constitution to "provide" for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions. It's not something that he can do otherwise. Even then, in those very limited circumstances, the military can only be used for emergency needs towards the goal of reestablishing civilian control as quickly as possible. So the insurrection attack is not this wide overarching take apart government sort of tool if it's used lawfully, and I think it is doing a lot of work in that last sentence.

Jill: Right. And it does seem like this is an extension of what we were talking about in the last segment, which is what is the power that the president has? And if it's not delegated specifically where it is as here assigned to Congress, then he can only do what Congress delegates. And here, as you said, it's extremely limited. It actually creates an exception to another law, the Posse Comitatus law. And so Kim, talk about what that is and maybe start with what is the concern that was the reason why Posse Comitatus was passed and why the president shouldn't have overarching authority to just use the military in a domestic civilian situation?

Kim: Yeah. Well, so actually the Posse Comitatus Act had a bit of a rocky origin story that I'll get to in just a minute. What it does is it prohibits the use of the military to be used for law enforcement domestically within the United States in a civilian capacity, except as otherwise designated by law. And as Joyce just pointed out, the Insurrection Act is one of those laws that serves as an exception to the Posse Comitatus Act. Now, the Posse Comitatus Act is almost 150 years old and it was passed after reconstruction, after the Civil War, when reconstruction was wrapping up and Jim Crow was rearing its ugly head as a result of Black people being able to be treated as citizens and vote and participate in American civic society, even hold office in Congress. And there was a big Jim Crow backlash. And the Posse Comitatus Act was actually passed to prevent the military from stepping in and intervening and interfering basically with Jim Crow. It was to allow the South to do awful things and to bring in horribly restrictive and sometimes violent policies against Black people.

So not a great reason, but I'm going to go with the reclassified origin story, which is that it's an American ideal that we should not turn the military against the American people unless there is a really crucial emergency reason of limited scope that is happening. But generally speaking, that's a really un-American thing to do, Jill, and you should not want to do that. But we can't forget, when I used to write for the Emancipator, there was a

cartoon that I really enjoyed and it was called Everything is Racist. And it really points out how many policies in America have racist origins. The Posse Comitatus Act is one of them, but it's still something that despite its origin is really important.

Jill: Yeah, it is a valid concern, I would say. Do you agree it's a valid concern about turning the military into a law enforcement-

Kim: Absolutely. That's what I'm saying. I'm saying the reason that it was passed was bad, but the principle that it stands for is sound, is that you should not use the military against the American people. You certainly shouldn't use the military to further racism. But yes, it does stand for a very important concept despite its ignominious origin, despite the fact that it has racist origins, it is a really, really sound principle that should be upheld.

Jill: Joyce, I want to go back to the Insurrection Act for a minute because almost uniformly people think that it is overly broad and vague and that it needs to be fixed. So if you could talk about do you agree that it's overly broad and vague, and what are the dangers of that? And what are fixes that have been proposed or that might take care of the problem?

Joyce: Yeah. I mean, the problem is that the Insurrection Act creates a giant loophole in the Posse Comitatus Act. What Kim was talking about, it's not a limited exception, it's like such a big loophole that you could just drive a truck through it. It's an act that was adopted in 1792, it hasn't been updated since 1874. So the language is very broad and it gives the president enormous discretion. It's better suited for the political paradigm in that era than it is for the Trump era. Essentially what happens here is it gives the president so much discretion. For instance, they can use the military to arrest American citizens who are engaged in protest so long as a president is willing to designate what's going on on American streets, an insurrection, a rebellion, or civil unrest. And there's an 1827 Supreme Court case, *Martin v. Mott*. In that case, the court says it's up to the president to decide whether the Insurrection Act should be invoked, and the courts cannot review his decision in that regard. So some similarity with the Alien Enemies Act that we've talked about in the past.

So look, here's the basic situation. We've got this 1820s law that's just not updated enough to fit today's needs. Trump loves to assume power, right? And if there's a vacuum, he's going to jump right in and claim it for himself. So there was an effort laid in the Biden era to reform the statute. But here's the problem, it's a statute, it has to be amended by Congress. That's the fix, for Congress to tighten up this law, to give the president less discretion, to provide explicitly for some form of judicial oversight. And that is simply not going to happen right now.

Jill: So Kim, with that in mind, do I have anything to worry about being part of a protest on Saturday? And what is the history of this act being used? It has been used in the past, not often, but if you can maybe talk about when it has been used and talk about whether I should be worried that this could happen.

Kim: Well, I mean, I hope not. I hope that something like a protest does not spur the president to try to use this act in any way. But yes, it has been used sporadically throughout history. It's also important to note that even when it has been invoked, that does not mean that

members of the military actually were deployed, let alone arrested civilians or anything like that. It has happened at time.

The last time it was used was in 1992 in response to a request by officials in California, in response to the violent uprising after the Rodney King incident. If you remember that, he was a Black motorist that was beaten by police and the police were ultimately acquitted. But in that case, by the time it was invoked and military was deployed, the unrest had largely settled, and so it wasn't actually used. The National Guard, which is controlled by the state, had come in. And between them and law enforcement, they had gotten the crowds under control. But that was the most recent time that it was used, over 30 years ago. And as I said, it wasn't the military that ended that unrest, it was the National Guard and police.

Jill: And let me ask a slightly different question, Joyce, which is people sometimes confuse the Insurrection Act with a declaration of military law. Are they the same? And if not, what's the difference?

Joyce: So this is such a good question because it is easy to confuse the two, but martial law is something different. First off, it's a little bit complicated because there's no firm definition at US Law, but martial law generally means that civilian authorities are displaced by the military. That's for instance, what happened in Hawaii after Pearl Harbor. And so the real power to declare martial law is much more sort of a state power than a federal power. For instance, there's a Supreme Court case, *Luther v. Borden*, an old case involving President Jackson, who was then General Jackson, declaring martial law in New Orleans for three months. And the court held that state legislatures are entitled to invoke martial law.

But the law is messy here. It's not clean. And there's a suggestion that governors can invoke martial law. There's a suggestion that presidents can do it. It would be a frightening picture, quite frankly, if someone like Donald Trump were to do it. But I'm going to say this is one area where I'm optimistic that there are guardrails, and it's hard to imagine doing it short of a true emergency, because martial law is primarily intended to be used in wartime situations. It gives the military enormous power. They could take over law enforcement from local police. Habeas corpus could be suspended, policy decisions get made by the military. This is not like the Insurrection Act, which is a temporary meant to restore order setting. This is more like a slightly longer, but still temporary sort of a governance sort of a setting.

And so because the law about who can invoke it is unclear and some scholars believe that under current law presidents lack authority, others take a different view. But there is plenty of Supreme Court case law on both sides of that issue. And as we've discussed, Donald Trump is on this campaign to assume as much power as he possibly can. Right? That's the MO that we've all been watching happen.

So I think, and Jill, you talked about this a little earlier, you asked Kim if you should be scared to go out and protest. Look, I think we should be well-informed. I think we need to understand the Insurrection Act. I think we need to understand martial law. I don't think that we're going to see either one of them imposed immediately. Should we be concerned that there might be some incident of violence at these protests on Saturday that can trigger it? Yeah, we absolutely have to think about that. But imagine the response of the

American people, and as you said Jill, it's ultimately the people that will control what happens in this democracy. And we still have First Amendment rights. We have the right to assemble, we have the right to protest. We should continue to exercise those rights because that's what makes us Americans fear or not.

Jill: I asked the question exactly for the reason that you answered, is that I want people to be informed that we do have the right to assemble and the right of free speech, and that these are highly unlikely. But I thought it was interesting enough that people should know about it. And the issue of military law came up because I just very late last night saw that in South Korea, the Supreme Court had said that when the president invoked military law, he was arrested. He was impeached by the General Assembly and suspended from office. And now the Supreme Court says he is permanently removed and a new leader will have to be elected. But that was the invocation of military law and the government, the courts, the people protested. And this is what happened, the president is out of office.

Joyce: May I make a point about South Korea? I thought it was really interesting. Obviously, their law is not our law, two entirely different systems. But in that case the President Yoon, he argued that martial law was justified because the opposition-led parliament had paralyzed his government. And what the court said is, "You've got to resolve your gridlock problem with political measures, not military action." And so just going back to the notion that these extraordinary measures that would disrupt civil society are meant really for warlike situations. I think that's the key here. Donald Trump has political problems, he needs to employ political solutions. And if the court tells him, no, you're exceeding your political power, that doesn't mean he gets to impose either the Insurrection Act or martial law. It's something we need to be well-educated about as Americans, because I got to say, South Korea is looking really good. They're a shining example that we should all be reading up on.

Say goodnight to wrinkles and hello to OSEA's new dream cream serum with bio-retinol. Dream Night Serum works overnight to visibly reduce crow's feet, fine lines, wrinkles, and even deep wrinkles, so you wake up to visibly firmer, smoother, more youthful looking skin. And the best part, you get results without irritation. No dryness, no peeling, and no adjustment period, just smoother, firmer skin from night one. And even more than that, at night, sometimes after I wash my face, my skin can feel a little bit tight. I've been using this cream right before bedtime and especially sort of in the zone under my eyes, and I find that I feel no tightness at all. It's really fantastic. OSEA's Dream Night Serum is for every stage of aging, whether you're targeting the first signs of fine lines or addressing deep wrinkles later in life.

Kim: So how is this for an endorsement? The last time I went to see my dermatologist, I told her that I had sort of stopped using the retinol cream, the prescription cream that I've been using for a couple of years because I found it really irritating, especially when the seasons change. And I also found that using OSEA with its wonderful seaweed-based, plant-based stuff that requires no prescription at all and is all natural, has made my skin look so good. And she agreed. She said that my skin looked fantastic. If I didn't want to keep up with the prescription, that is fine. And whatever I was doing was-

Joyce: It's a pretty amazing endorsement.

Kim: Yes. Whatever I was doing was working great, so keep it up. So I was like, I'm sold. I will be an OSEA customer for life. Now that I've started using the Dream Night Serum as well, I just have not only great looking skin, but it's a lovely night ritual that I have. It smells great. It goes on and leaves your skin feeling great. Sometimes you wake up and your skin is dry or patchy. I always wake up and my skin feels great, and that's how I know that it is working. I can't believe it took me this long and all that money I spent on prescription stuff to finally be an OSEA girl when it comes to my skincare.

Jill: So Kim, I'm going to add another endorsement because I was lucky enough to just see you a few weeks ago and your skin is glowing. It's fantastic.

Kim: Thank you.

Jill: And I, too just started using that night serum. And at first, I just don't believe in serums generally, but okay, so I tried it. And I was amazed at how it's not greasy, it absorbs into your skin, and you look like you're glowing even in the morning when you wake up. And when you touch your skin, it's still... In fact right now, my skin is softer than it's ever been.

Kim: It feels really good.

Jill: It does definitely work.

Joyce: It's really good stuff.

Jill: It is. It has such a dreamy texture and the scent is incredible. As soon as you apply it, you'll fall in love with its silky feel and fast absorption. It's the perfect lavender scent to enhance your nighttime routine and relax as you start to unwind. It's not just another anti-aging serum, this clean bio-retinol-powered formula targets all types of wrinkles while being gentle on the skin. It's designed with powerful, clean vegan ingredients that are formulated to deliver real results instantly and over time.

Kim: Lock in moisture and maximize wrinkle smoothing benefits while you sleep. It's easy, just pair OSEA's Dream Night Serum with their Dream Night Cream and experience pure skincare luxury. Now is the time. Say goodnight to wrinkles and wake up to visibly firmer, smoother, naturally radiant skin with OSEA's new Dream Night Serum. And right now we have a special offer just for our listeners, 10% off your first order site wide with the code Sisters at oseamalibu.com. And as always, the link is in our show notes.

So speaking of Trump trying to be a king, I feel a theme coming on here. Now it's time for us to discuss the idea that he seems to be floating both privately and publicly, that he can stay in office beyond 2028. Jill, I think the 22nd Amendment of the constitution has a little something to say about that, despite the fact that those within his circle are apparently considering workarounds around the constitution. Jill, make it make sense.

Jill: It sort of doesn't make sense, but it does. The actual language of the 22nd Amendment, which by the way was adopted as part of the constitution in 1947 as a reaction to FDR having served four terms. And an overwhelming consensus that that was not what the founders ever intended and it was not good for our democracy. That two terms was all

that was allowed. The actual language of the statute I will read is, "No person shall be elected to the office of president more than twice, and no person who has held the office of president or acted as president for more than two years of a term to which someone else was elected president shall be elected to the office of president more than once."

So that means that if the vice president takes over during the first two years of the president's term, so if the president dies or is impeached or is declared incompetent under the 25th Amendment, in the first two years of his term, and so far his is the only thing I can say, although I hope someday to say his or her, then the vice president can only run once. If it happens that the vice president takes over in year three or four, they can run twice. So it means the clear intent is that no one shall be president for more than two terms or two and under half terms. That's the clear intent.

The loophole that you're sort of hinting at is that the word is no person shall be elected to the office. And there is this sort of speculation, well, he could now run as vice president and whoever is the presidential candidate could as soon as they are elected and inaugurated could resign, leave office, and the vice president, in this case Donald Trump, would become president and could then serve another term. That is such a violation of the clear intent of the statute that I don't think it will go forward. But honestly, the language and the words do create this loophole.

Kim: So this has come back to the fore again, Joyce, because in a recent interview with NBC's Kristen Welker, Donald Trump said, "There's a way you can do it." Which kind of reminded me of the Access Hollywood thing, I think he thinks he can do anything. But, and Jill so wonderfully plotted that out, there's always this ongoing debate as to do we take Donald Trump seriously? Do we take him literally? I take him both. I don't think, especially given everything that we're seeing him actually... the things that he said that were dismissed, that he's actually trying to move forward and do, like take over Greenland, you have to take it seriously in my view. But what do you think here? Do you think that he is literally just floating lead balloons or do you think that this is something more potentially dangerous?

Joyce: No, I think you're dead on the money, Kim, when you say we have to take it both seriously and not seriously at the same time. That's not as conflictive as it sounds, right? I mean, I think that's literally what we have to do. We have to take the man seriously. I side with Jill, I don't think he can do this under the constitution. Not only is there the prohibition on running a third time, the very last line of the 12th Amendment says, "No person constitutionally ineligible to the office of president shall be eligible to that of Vice President of the United States." So Trump may think he's going to run, and he floated that notion, by the way, in the call with Kristen, he talked about, well, maybe JD Vance could run. That might be one plan that we could have. I think the constitution forecloses that and he's just not widely enough read in it to appreciate that.

But when she asked him about his plans for serving a third term, this is literally what he said. You know how we always hear that when Trump talks about mishegoss like this, that he's just joking, that it's not serious? Well, he tells her he's not joking about the idea of a third term. He says, "No, no, I'm not joking. I'm not joking." So look, I think we got to take it as seriously as we should have taken it. Some of us did, not everyone, when Trump said before 2016 that he wouldn't accept the results of an election if he lost. He

didn't go all the way, he said he wouldn't commit to accepting the results of an election if he lost. We heard that again ahead of 2020, and we all know how that ended up.

Kim: Yeah. And Jill, politically, this matters a lot. Trump is a lame duck president, that matters a lot in terms of political capital, right? So do you think he's just trying to boost his power in the current moment, like he's trying not to be a lame duck president, even though he is? Or is this something a little bit more nefarious?

Jill: I think it's both. I think he is definitely trying to retain the leverage of a non-lame duck president. And so I think that is part of it, but I do think it is something that he seriously loves the power and he seriously wants to retain it. And so I'm not sure he's joking. I didn't mention, aside from this loophole language thing, the amendment could be repealed. We repealed prohibition. And you could repeal it, but realistically, that can't happen in time for the election. I mean, it would have to pass both houses by margins that are not conceivable, and then would have to be ratified by the states. And again, that's not going to happen quickly enough. So I didn't mention it because I just don't think it's realistic, but it is something that down the road could happen.

And the issue of this loophole language is if he does it, if he runs for vice president, who's going to sue and who's going to stop him? And will it be stopped in time? And so again, I'm back to what I said, it's the people. You can't vote for someone to be president a third time. And especially if they openly, as they often do, say the crazy thing out loud, if they say, vote for Vance so that you can get a third Trump term, or in their mind a fourth, because actually he won the other election. So I think it is a real high risk and we should take it seriously and we should be prepared, because what I have been watching is how ahead of the Democrats the Republicans have been in the plotting and the details, the project 2025, which no one said, oh, it'll never happen, and we're watching every single thing be implemented. We have to be much better prepared, and so I take it seriously.

Kim: Yeah. And Joyce, just one final thing. It's not just about politics and the constitution, it's also about accountability. We have elections so that the people can have a say. So if he thinks it can be elected again, doesn't that actually mean he's more accountable to the people right now, not less?

Joyce: I mean, this is sort of a brain bleeder trying to sort that one out. You sort of have to play like 12-dimensional chess. And I went to law school because I don't do math. But look, it is an interesting question. Right now, Donald Trump is a lame duck. If he can't run again combined with the Supreme Court saying he can't be prosecuted for anything he does during this term in office, then he can just do whatever he damn well pleases. That's just the bottom line.

That was one of the really good arguments, by the way, for the Supreme Court not to give him total immunity from criminal prosecution for official acts, but here we are, 2025. I think that there's so much uncertainty, frankly, around this issue. As you say, some people think it's a joke. Some people believe legally it's just so unwarranted that it can never happen. Others understand that when Donald Trump is in the mix, you never use the word never. But because of that uncertainty, I'm not sure that it really does much for accountability. I'm not sure anything could make Donald Trump feel accountable to the little people. And so my read of the law in this area is it would take a constitutional amendment for Trump to be on the ballot for a third run. That's not going to happen. But

I don't know that Donald Trump won't try to use this to further avoid responsibility, which is to say anything could happen.

This episode of #SistersInLaw is brought to you by Wildgrain. If you're not familiar with Wildgrain, it's the first baked from frozen subscription box for artisanal breads, pastries, and pastas. Wildgrain's boxes are fully customizable to your tastes and dietary restrictions. And there's some exciting news, in to their classic variety box, they recently launched a new gluten-free box and a hundred percent vegan plant-based box. Best of all, Wildgrain takes the hassle out of baking since all the items bake from frozen in 25 minutes or less with no mess, no cleanup. And I might add, there is really nothing that makes you more popular than pulling freshly baked chocolate croissants out of the oven on a school day, right? I mean, y'all, this is my favorite thing.

Jill: I just tried those chocolate croissants and they are amazing. They are better than any store-bought I have ever had. They're better than in France. They're really, really good. But you're right about how fast they go from frozen. It is amazing. And I love that My husband enjoys so many of the breads, the pastas, the pastries, and so do my guests. They're always impressed. I often end up having them subscribe to Wildgrain delivery themselves as soon as they've tasted it at my house.

Joyce: Do you make sure that they use our coupon code though?

Jill: I try to tell them to do that, absolutely, because-

Joyce: Please do.

Jill: ... I get free croissants for life because I subscribe. And there's always a special offer. And who doesn't want free croissants for life? By the way, you can also always customize your box so that I don't always get the same pasta. I love the Tonnarelli, but I also like the Cavatappi. There's just so many pastas, so I don't get the same one every time. I customize it every time I get the subscription delivered. It is the perfect thing for delicious meals or snacks. And especially now while Chicago's weather is still nasty, I love having that hot, fresh smell coming out of the oven. But it's also great when we finally get to the two days of spring that we get in Chicago, which is about all we ever get. Or even in the summer, when we go outdoors for grilling, it's great to have that fresh bread.

And I love watching the color and flavor come alive when the sourdough rolls are heating up. The aroma of the English muffins and the brioche buns, fantastic. The fresh bread is just unbelievable how wonderful it smells. I never have to call anyone to the table when the food's ready, because as soon as that smell reaches them, they come running. That includes Brisby and Michael. It's true, he loves it.

Wildgrain items are delicious, super high quality, and easy to make. I can guarantee that the raspberry lemon biscuits and the strawberry rhubarb little bites, and the chocolate croissants, which we've already talked about, will be a big hit. They are some of my husband's favorites. Plus, if you haven't added to your order their French butter, do it. It's really, really good.

Joyce: So good.

Kim: That butter is ridiculous. I honestly didn't think that much about butter and the different types. It's just one of those things you pick up. Oh, my goodness, I can't go back to regular butter after eating the Wildgrain butter. It's so good.

Joyce: But wait, did you say strawberry rhubarb muffins? I've missed those so far.

Jill: Yes.

Joyce: Something I need to go order.

Jill: And they also have lemon ginger. Try the lemon ginger.

Joyce: I've had those. They're wonderful.

Jill: And Parmesan, they have a Parmesan biscuit, too.

Kim: The Parmesan biscuits are whenever... And they pair perfectly whenever you're making a pasta dish.

Jill: Yes.

Kim: With their delicious pasta. The Parmesan biscuits as a... Listen, people will think that you are a chef. They're so, so good, and they elevate whatever home cooking that you're doing. So if you already-

Jill: Have you ever faked it and said that you made it yourself?

Kim: No, just not yet.

Joyce: No, because I'm so excited that it's so good.

Kim: Me, too.

Joyce: I do a lot of baking and it's fun to serve it and say, I didn't make this.

Kim: I know. I have no chill. When people are like, this is good. I'm like, oh, my god, have you ever heard of Wildgrain? I can't keep it to myself. So if you are ready to bring all your favorite carbs right to your doorstep, be sure to check out Wildgrain so you can begin building your own box of artisanal breads, pastas, and pastries. For a limited time, Wildgrain is offering our listeners \$30 off the first box, plus, wait for it, free croissants in every box as long as you have that subscription, when you go to wildgrain.com/sisters to start your subscription. You heard me, free croissants every box, as long as that subscription lasts. You can't turn this down. And 30 bucks off your first box. Go to wildgrain.com/sisters. That's wildgrain.com/sisters or you can use the promo code Sisters at checkout. And you know where to find that link, right? It's in our show notes.

Jill: Now on to a part of the show that we all love. We love hearing from you. We are inspired by your questions and challenged by your questions. We learn from your questions. So keep them coming. All you have to do is email us at sistersinlaw@politicon.com or tag us on social media using #sistersinlaw. If we don't get to your questions during the show, keep an eye on our feeds throughout the week because we go there to answer other questions than we get to during the show. And today we had trouble picking three great ones because there are so many. But let me get to the first question that we're going to answer today. And Kim, I want you to answer the question from Pat. "All the PAC money into elections lately by the super rich. Why isn't anybody challenging Citizens United?"

Kim: Ah, this is a good question. So as you all know, Citizens United was the Supreme Court ruling that basically said that corporations have First Amendment rights. And that campaign finance rules limiting corporate payments into political PACs were unconstitutional because it violated the corporation's right to speak on their views in elections, which it's nuts. But the same majority that ruled in favor of Citizens United would vary... The current majority would likely side with the majority that ruled in favor of Citizens United. That too was a Roberts Court decision, and the court has only gotten more conservative since then. So I think anyone challenging that case, trying to overturn it, would run into a dead end.

The only way at this point for that decision to no longer be precedent is to have a just extremely different Supreme Court, which would take a generation at least, or a constitutional amendment, making clear constitutionally that restricting corporate funding into elections is not unconstitutional. So that is why you're not seeing those challenges, Pat.

Jill: Great answer, Kim. Let's go to a question we got on Bluesky from Kalar0888 asks about, "Being that the president is the commander in chief, is there any point at which the military can arrest him for giving an illegal order?"

Joyce: I think the answer to that is no. Following the Supreme Court's decision that a president's official act cannot be prosecuted criminally, I don't see any prospect that there could be an arrest, military or otherwise, for giving an order which would clearly be an official act.

Jill: Okay. And one more question that I'm going to answer from Caroline. She says, "If Trump gets his way, Greenland and Canada would join the US. What would be the implications of adding members of the House of Representatives and four new senators to the mix?" And I loved that question because of course, we all are sort of laughing at whether this is something he's serious about or not. But then I started thinking about it and I was really interested because Canada has a population of 40 million people, so that's more than the lowest population 10 American states, and equivalent basically to California. And if they get two senators and the same number of representatives as California has, I guess they'd have to build extra desks in the house and the Senate. But we don't know how they would vote. Would they be conservative? Would they be liberal? Would they be Democrat? Would they be Republican?

Greenland on the other hand has 50,000 people only. So that would be probably at the lowest end, it would be even lower, I think, than the District of Columbia, and they don't

have a vote and they don't have senators. So I'm not sure what the implications would be because it would obviously change the 50/50. It would change what 2/3 is, what 3/4 is.

Kim: But Jill, isn't it most likely that he would not give either thing statehood? This would be colonialism. They would be like Puerto Rico and D.C., and Guam, and they wouldn't have any rights at all. He would just be able to pillage their land and minerals. I mean, after all, I'm waiting for people to find out that Greenland is actually a majority indigenous place. He's not going to give them statehood.

Joyce: This is not blue-eyed blondes.

Kim: Right? He's not going to give them statehood. It's going to have no implication, Caroline, I'm sorry. Because at best they will be American Samoa. That's all that happens.

Jill: That's probably, or the U.S. Virgin Islands. They don't get equal representation. Maybe. I mean, it's such a fascinating question. It's so absurd. And I mean, I think we have to look at the visit of Vice President Vance and his wife, where no one would let them into their house. No one official. They ended up doing one thing and one thing only, and that was going to the US military base and meeting with American soldiers, because no one in Greenland was interested in seeing them.

Canada, I don't know what... Maybe they would welcome them more. But Canada doesn't want to be part of the US and they shouldn't be. They were part of Britain and now they're... Anyway. I love your answer, Kim. I'm going to go with that. It's never going to happen because there's not blonde, blue-eyed people living in Greenland. And gosh, people in Canada, a lot of them speak French.

Kim: Oh, that'll get outlawed.

Jill: Yeah, for sure. Well, he did issue an executive order that English was our only language, so yeah. Okay. Anyway, that takes us to the end of the show.

Kim: These weeks are rough, y'all. Thanks for hanging in there with us.

Jill: And we thank you for listening to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me, Jill Wine-Banks. Please follow #SistersInLaw wherever you listen to podcasts, and give us a five star rating to help other people find the show. And please show some love to this week's sponsors, Fast-Growing-Trees, Thrive Causemetics, OSEA Malibu, and Wildgrain. We love them all and we know you will, too. And as always, the links are in the show notes. Please support them because they make this podcast possible. See you next week with another episode #SistersInLaw.

Joyce: All right. I was going to start by asking y'all how your 401(k)s were looking, and then I looked at mine.

Jill: Oh, don't ask.

Joyce: This is just not a talk.

This transcript was exported on Apr 05, 2025 - view latest version [here](#).

Jill: Do not.

Kim: I wish I didn't have to.

Joyce: [inaudible 01:09:03].

Kim: I wish I didn't-

Jill: I'm not looking. I don't want to know.

Kim: You see my name, my name on the thing is Empty 401(k).

Joyce: Oh, I just noticed.