

Jill: Welcome back to #SistersInLaw with Joyce Vance and me, Jill Wine-Banks. Don't worry, Barb and Kim will be back next week. The resistance mini tote and T-shirt are selling out fast once again, so get yours now. I love carrying mine to the farmer's market and to the pool. Go to politicon.com/merch and get yours there. We have a big show today that has been changed because what can I say? Donald Trump and Pam Bondi are at it again. But we're still going to cover what Hegseth said about women not voting, about the impoundment decision of the Circuit Court for the District of Columbia. But now we're going to talk about DC suing Trump and the hearing that was held just before we started recording today, which is Friday. And of course, as always, we'll answer your questions. Before we get to those heavier duty topics, let's chit-chat. Hey, Joyce?

Joyce: Yeah.

Jill: Did you see the video of JD Vance in the Cotswolds on vacation while the world is falling apart in DC and everywhere else?

Joyce: I saw that video. It was crazy. He had 50 cars in his motorcade. They were going through these beautiful small towns doing the motorcade thing, where one car stops when they turn the corner and they all go screaming through. And Jill, I'm sure you've had the same experience. I have had the opportunity to ride in a presidential motorcade a time or two. I've never been in one that was as jacked up as that one. It really looked like it was ruining peace and quiet in some of those beautiful areas.

Jill: Of course, it's also ... I'm sure you saw the pictures of a lake level being raised, so that his boat and all of his protectors could be in the lake while he was on vacation.

Joyce: Well, girl. Everybody's got to take a vacation. Look at Donald Trump getting out of the heat in DC and going to Alaska. [inaudible 00:02:14] a vacation instead of giving away Ukraine.

Jill: Right? And we're back to filming on TV of, "He's about to land. Let's see the empty landing strip." That's not the news that I want to see. But where do you like going on vacation? Where would you go right now if you could just pick anywhere to take off to?

Joyce: Wow, I love to travel. I thought the Cotswolds looked pretty good. I sure would like to go to Alaska. Those both seem desirable. And we have just gotten home from Maine, which is I think my blood pressure just goes 10 points down every time I go across the state line, because it's so peaceful and wonderful. I would say right now what I would need is not a challenging vacation where you're running all day long. I could use the kind of vacation where you do a little bit of light hiking, some kayaking and spend some time relaxing with family. What about you?

Jill: Well, I've been to Alaska. My very first trial ever was in Alaska. So I have very happy-

Joyce: That doesn't sound relaxing.

Jill: Well, it wasn't, but it was enormously fun. What can I tell you? It was absolutely fabulous. I love to travel and I love very exotic travel, adventure travel. So I don't know

where I would pick. One place I haven't been that I would really like to go is to see mountain gorillas or lowland gorillas in Gabon, either one.

Joyce: That's a date. Let's go.

Jill: Okay. All right, let's plan it. I think we would have so much fun. Really fun.

Joyce: I'd love that. [inaudible 00:03:50]. But look, all of our listeners, we'd love to know what's your dream vacation? So write into us at sistersinlaw@politicon.com, or link to us on social media. We're having a rough week here in America.

Jill: Yeah.

Joyce: Let's at least have some fantasy vacation energy going.

Jill: I love having an Aura Frame and being able to see a rotating list of great memories.

Joyce: Between vacations, time with loved ones, beautiful locations, and exciting and unforgettable moments, summer is the season of incredible memories. I know we all want them to last forever and we discovered that the best way to do that is with an Aura Frame. They make unique and stylish digital picture frames that make displaying and sharing your favorite memories easy and fun. With an Aura Frame, you're creating an amazing way to stay connected to the important people in your life. And remember the great summer times you've shared. An Aura Frame is the perfect way to enjoy the best memories or give them as a gift to share with your loved ones. There's even unlimited space, so you can always add photos from new adventures.

Jill: Whatever it is, whether it's vacations, lunches with friends ... And I don't take picture shots, I only take pictures of my friends. Brisby obviously gets a major role on my Aura Frame. What about you, Joyce?

Joyce: Yeah, it's the same. We have one in the kitchen and it's so much fun to see old pictures of the kids and the animals crop up while you're cooking dinner, just hanging out, doing whatever you're doing. Sometimes, it can be a real conversation starter and the kids will start reminiscing about things we've done together. So I love having mine there.

Jill: Aura Frames are so easy to set up, even for me who's a little bit compromised technically. But pretty good. It's easy to set up and they look stylish in any home. It's not a surprise that Aura Frames got recognized as the best digital photo frame by Wirecutter. It's easy to see why there's unlimited storage, and it's so simple. Just plug your frame in and share away. Aura Frames are made for the moments that made your summer and the people who were critical to it a part of it. So start reliving your favorite memories by visiting auraframes.com. For a limited time, listeners can get \$35 off on their best-selling Carver Mat Frame. That's [A-U-R-A frames.com](http://A-U-R-A-frames.com). Promo code: SISTERS. Use that one and support the show by mentioning us at checkout. Terms and conditions apply and the link is in our show notes.

Joyce: Last Friday, Secretary of Defense, Pete Hegseth, reposted on social media a CNN report featuring a religious leader named Doug Wilson. Wilson was sharing views that I can

only characterize as backward, and they're views that Hegseth certainly supports. This is what Wilson said. "Women are the kind of people people come out of." Stop and think about that one for a minute. "It doesn't take any talent," he added. Other religious leaders in Wilson's orbit joined in to explain to reporters that the man is the head of the household and the wife's job is to submit. Then they delve into their belief that women shouldn't be able to vote, with one of the pastors saying he supports repeal of the 19th Amendment. So as you all guess, and if you read my newsletter, you know because I wrote about it, I was just apoplectic after seeing all this. Jill, what do you make of this? In any other administration, that would be game over. You would be humiliated and out of government service. But Hegseth didn't really take any heat for this. What do you make of that?

Jill: Of course, I share your disgust. It is revolting. And I just want to point out before I answer your question, that this pastor is not just some random cleric. He is related to the church that Hegseth is a member of. So this is not just random. I just have to say I can't believe that Republicans, particularly maybe Republican women, but it should be all Republicans, aren't screaming about this. And it reminded me when I got married the first time to my practice husband, the rabbi in our ceremony said that, "I would not be my husband's chattel." And that was based on ... I didn't know the rabbi. We met him for the first time just before the wedding.

But he obviously got the independence that I would go on ... And I was still a law student, I wasn't a lawyer yet. But it does reflect the laws and stereotypes and social norms and the media that existed when I was younger and that obviously still exists. Not only shouldn't the 19th Amendment be repealed, but we need the Equal Rights Amendment. This is absurd. Of course, it will never happen during the Trump administration. But I hope that all the groups that have been supporting the Equal Rights Amendment will get to work on figuring out what to do as soon as Donald Trump is not president anymore, and as soon as we have a Democratic house and Senate.

Joyce: I think that's absolutely right. I feel like it's become too important for us to give up. You have always championed the ERA. I remember thinking the ERA is dead in the water and I admire her for continuing to push this, but it's not going to happen. Now, I realize what a toxic attitude that was, and that we should have been insisting from the get-go of the Biden administration, really during the Obama administration. And now we can't afford to give up, not even while Donald Trump is in power. I think this is an issue that women's groups and just groups of right-thinking people need to coalesce around, to make sure we don't give it up. Jill, 28% of the members of Congress are women. And it seems more than likely that people who want to keep women from voting certainly don't believe that they serve. So how do Republican women like Joni Ernst who was in the military, and Katie Britt who voted to confirm Hegseth, how did they look at themselves in the mirror? What do you think they do?

Jill: Well, we could talk about Joni Ernst. But let's not talk about Katie Britt because I think her views are probably aligned with this, except maybe for her own.

Joyce: Except when it comes to her, right? Yeah.

Jill: Yeah. But I have to say that ... As you said, I've been serving. I served in the Pentagon and I know that troops don't think that this is a smart thing. Women, first of all in

Congress should be at least 50%. 28 is only half of what it should be. It's a lot more than it was, but it's still not representative of America. And the military could not exist without the service of members from the female sex. I think that troops accept the skills and experience and contributions of women. One of my proudest moments was eliminating the woman's Army Corps, which segregated women and limited them to only two generals.

Now, women serve in the regular army and are eligible for any general slot. So I think women have come full circle. I was part of a committee looking at sexual assault in the military. This was during the Obama administration. What we saw was that men and women serve equally together and accept each other. As general counsel of the army, I oversaw the integration of women into basic training, and how successful they were. I saw them integrated into West Point and all the other military academies and performing very well. And the male classmates, seeing them perform, accepted them. Once they saw they could do and were doing everything that they did, it wasn't a problem anymore. So this is ridiculous.

Joyce: Something that I'm always very struck by when I teach my democratic institution seminar at the law school, we do a segment on the military as an institution. And frequently, we've had the opportunity to be visited by very high ranking officials from the National Guard or the regular military. A theme that they repeat time and time again, and I wonder how this resonates with you, is that the military is the best version of American society. That they have led the way when it came to integration, that they've led the way when it comes to equality for women. Sure, they have problems. You worked on this issue of sexual assault that's rampant in the military like it is in our society. But in so many other areas, they've gotten it right. Promoting education, really incorporating families into the work that they do. Now, we've got Pete Hegseth. I just wonder whether that's a sad moment for you looking at the military, which has done so much to take us forward, and now seems poised to drag us back.

Jill: Well, I was vehemently opposed to Hegseth becoming secretary. He is clearly not qualified for the position. He has never managed a budget anywhere near this budget or a staff anywhere near this size, and he was just completely not qualified. But I want to answer two things you said, which is the focus on education that the military has. I grew up during the Vietnam War and was a Vietnam War activist, anti-war activist. And when I was offered this position, I wondered how it would be. And then I realized how smart military officers are. There is not a general who doesn't have at least one advanced degree. Most have two or more master's degrees. They are smart, smart people, and they also are committed to our democracy, to our constitution. They understand full well. And on the sexual assault thing, I just want to clarify one thing.

Given the percentage of women in the military versus the percentage of men, most sexual assaults are male on male. It's not just male on female. There are even some reports of female on male, but it is mostly male on male. So it is a problem in the military. The military also, if you ask about how they feel about transgender or gay members of the force, they're fine with it as long as the person does their job right. It's a question of training and performance, not of gender. So I think this is a big, big setback. It's a really bad thing to have happened, and shame on Hegseth.

Joyce: It's mystifying how he's gotten away with it so easily. You've got the head of the military, one of the most important cabinet officials, saying, "Nah, let's make women second class citizens again." And it really feels like what our good friend, friend of the podcast, Preet Bharara, calls a checkmate question. A question there's literally no good answer. If Hegseth was called on this and had to justify what he did by say, a subcommittee in the Senate that was engaging in oversight, I think he'd be hard-pressed. What's he going to say? "Well, I think women should have to submit"? That would be quite a piece of congressional testimony. But he hasn't even been asked that question by people who are powerful enough to make it stick. And the president is certainly fine with it. He's not reprimanded him. He probably has the same view. So what do you think, sis? What's the course of action that women like us, who don't have any intention of becoming second class citizens, should take?

Jill: Obviously, voting is the important thing. And this is not a surprise because Donald Trump set the way. Before he was elected the first time, he said, "Oh, I can grab, you know what, because I'm a big deal." And he has ... Obviously, E. Jean Carroll is another example. There are so many examples of his demeaning women that it shouldn't be a surprise that the people who work for him do the same. That is really, really wrong. But what can we do? All we can do is stand up for our rights and vote for people who will not allow this kind of behavior. And it's a shame that Hegseth is getting away with it, but no one should be surprised.

Joyce: I think that we should really take it to them. If you've got friends and family who still support this administration, download the clip and play it for them, and ask if they're okay with women not being able to vote. Maybe you'll get a snarky comment from a person or two. But I bet you there's no woman out there who's okay with this. We need to make sure everyone is aware of what's happening.

Jill: That's a great idea, Joyce. And I want to point out there has been some backsliding from this. Hegseth is saying through spokesman, "Well, he didn't really mean they shouldn't vote." Who believes that? I believe he meant what he said when he first posted this terrible thing.

Joyce: Absolutely. Watch what they do and not what they say. We all know the truth.

We really love our cats in this house and I think I have confessed before. If I haven't, I'll do it now and you guys can all laugh at me. I've got a freezer that I bought dirt cheap on sale in our basement that I use to protect my yarn from moths. And I'm pretty protective of it. I won't let anyone put anything else in it.

Except when we started advertising for Smalls Cat Food and I realized that you could freeze it to always keep it on hand for your cats. Our cats loved it so much that I cleared out a shelf in my yarn freezer and that's now devoted to keeping Smalls on hand for the cats all the time.

Because when you love a pet, they deserve the best. And until recently, I didn't realize that the cat food most people rely on has some pretty questionable ingredients in it. That's why we're so glad that the podcast is sponsored by Smalls. I've learned a whole lot, and Smalls Cat Food is protein packed, great recipes that are made with preservative free ingredients that you'd find in your own fridge. It gets delivered right to your door and

that's why cats.com named Smalls their best overall cat food. Right now, you can get 60% off your first order plus free shipping. Just head to smalls.com/sisters for a limited time only. Your cats will love you for doing it.

Jill: And I loved hearing you tell about sharing your yarn freezer.

Joyce: That was embarrassing. I'm going to regret saying that.

Jill: No, everyone who knows you knows how much you adore knitting and how important the yarn is to that. So that says a lot about how excellent Smalls is. And Smalls was started back in 2017 by a couple of guys who were home cooking cat food in small batches for their friends. A few short years later, they've served millions of meals to cats across the U.S. Plus, Smalls works with the Humane World for animals donating over a million dollars worth of food through them to help cats. They even give you a chance to donate at checkout, whether you donate \$5 for flea and tick medications or \$7 for vaccines. But don't just listen to us. Smalls customer, Jennifer M. said, and I'm quoting her, "After every feeding of Smalls, he gets his burst of energy and starts running around the house. And now his fur is softer and more vibrant with higher contrast. Honestly, I couldn't recommend anything else."

Joyce: I have to agree. And look, I've seen a crazy change in our cats' energy level once they realized they could enjoy real food from Smalls instead of yucky kibble. We are never going back. One of the things that cat owners love most about Smalls is that you can even find other cat favorites, these little amazing treats and snacks. You can add those to your Smalls order and give them to your cats, so they have a total feline feast. So what are you waiting for? Give your cat the food they deserve. For a limited time only, because you're a SistersInLaw listener, you can get 60% off your first Smalls order plus free shipping, when you head to smalls.com/sisters. That's 60% off when you head to smalls.com/sisters. Plus free shipping. Again, that's smalls.com/sisters. The link is in our show notes.

Jill: Joyce, I'm so happy to have you to talk to today. You're an appellate expert with a gift for meaningful explanation of complex cases. And Trump just had a big win in a case called *Global Health Council v. The President*. It was a two to one decision of course following party lines, which pains me to have to say that we talk about who appointed a judge because they're supposed to be neutral arbiters. And apparently, these days they are not. But this allowed the president to ignore Congress's express funding decision and impound money that was supposed to be spent. It was appropriated for foreign aid. And he's refusing to spend it because he doesn't agree with the policy it reflects. Much of it was life-saving funding. Estimates are that the cuts could result in more than 14 million additional deaths in the next five years, including four to five million deaths among children under five.

Food is rotting in warehouses or has already rotted. Been thrown away because it couldn't be distributed. It's really bleak. Joyce, how did we get there? The Impoundment Control Act should have stopped it. The law was passed because our first criminal president, Richard Nixon, my favorite of course, refused to release funds for programs Congress approved, but that he opposed. The law is based on the constitutional separation of powers. The president can veto programs or anything that Congress does. But if he

doesn't veto it, or if the veto is overridden, can he just not use funds as Trump has done with foreign assistance, from the Department of State and USAID?

Joyce: Yeah, it's a really crazy situation. We all know that under the Constitution, Congress holds the power of the purse strings. That gets repeated a lot of the time, right? Congress can delegate where funds go, the executive branch gets to spend the money and implement the programs. And so that has two parts to it, as you're pointing out. It's pretty easy for Congress if it doesn't like something the president is doing to exert its purse strings. It just refuses to fund the program. If it doesn't like something that the executive branch is planning to do, it literally can cut the funding. We've even heard this happen in I think a dangerous threat form, where there was for instance, talk of unfunding the special counsel's office during the Mueller investigation. Congress was saying, "We don't want to have a special counsel investigating."

That one is a little bit dicey, but that's an extreme example. The problem that we have with impoundment and with what Trump is doing now is impoundment is when the president says, "Okay, Congress, I see that you've delegated funding for this. But I don't want to do it. I'm not going to do it." Well, Congress wants it done and do they have that ability to insist that it happen? And Donald Trump is not the first president to impound funds. It goes back to Thomas Jefferson who impounded funds that were meant for naval vessels.

But in that situation, he actually delayed the spending out of concerns about out-of-control costs, right after a war had ended. So it was a very different scenario and this notion that Trump can come in, and in a very wholesale fashion, refuse to spend money that Congress has allocated, is new. Except as you point out Jill, with Nixon, and the Impoundment Control Act was passed. Because Congress, in the context of Watergate, it all happens together. So there's disillusionment with the presidency. They don't like some of the areas where Nixon's withholding funds. Some of it had to do with housing and education. And so they passed this law that puts very strict limits on what a president has to do to avoid spending money. And since then, there haven't really been problems until now. Now, there's a problem. That's what the case is about. Trump impounded funds across these fiscal 2024 spending initiatives, and he got challenged in court for doing it.

Jill: And so I was disappointed at the least in the decision allowing him to get away with this. I have a couple questions for you though. First of all, do you think that this is a political decision, or leading back to a unitary executive, which is certainly a goal of this administration? Or is there an actual legal basis for this outcome? Is it just a jurisdictional issue about the grantees or the plaintiffs, and they need someone else to bring the lawsuit? What do you think is going on?

Joyce: Yeah, so this is an interesting decision. An the question you're asking me to answer is a little bit of an inside baseball thing. You mentioned that the case split two one along political lines. And Judge Florence Pan, some of y'all may remember her name from *United States v. Trump*, the criminal case where she was one of the panel judges. A Democratic appointee. She's the dissenter in this case. And she makes a very important point about how the majority gets to this decision that lets the Trump administration impound these funds. She points out that they don't rule on the basis of any of the arguments that the Trump administration made. Instead, they reframed the issue, so that they could rule in the government's favor. In essence, they're excusing the government's

forfeiture of this key argument, which is not how appellate law works. You either make your good arguments or you waive them.

And instead, this panel of two judges just puts its finger on the scales of justice in a very heavy-handed way. They rule for Trump departing from procedural grounds. And what they in essence do is they say, "Well, somebody can sue to raise these impoundment claims, but it's not these plaintiffs." And they end up saying that only the GAO, the General Accountability Office, which is an independent agency established that's part of Congress, only that agency is able to bring this kind of a lawsuit. That's not an argument that the government made.

Jill: Of course, it raises the question of how independent that office is and whether Congress, which is obviously totally controlled by Republicans, will allow the lawsuit that needs to be filed. To be filed. But you mentioned the dissent and I thought the dissent was very powerful. It includes language that says, "Today, a president defies laws enacted by Congress without any legal basis. The court holds that he has merely violated a statute, that the Constitution is not even implicated, and that there is no judicially enforceable cause of action to challenge his conduct. By failing to rein in a president who ran roughshod over clear statutory mandates, the court invades its constitutional responsibility to delineate the obligations and powers of each branch of our government. And it goes on from there in very powerful language. What did you think?"

Joyce: It really is a magnificent a low-key dissent. So much is going on in the courts right now. I think it can be difficult, especially for laypeople to know what to focus on. But I think Judge Pan makes a really important point here and I want to read a little bit more. Hopefully, listeners, you'll stick with us on this. But this language from dissent is really important. It really helps us see how significant the case is. She writes, "At bottom. The court's acquiescence in and facilitation of the executive's unlawful behavior derails the carefully crafted system of checked and balanced power that serves as the greatest security against tyranny, the accumulation of excessive authority in a single branch. It is no overstatement," she goes on to write, "To say that our constitutional system of separation of powers will be significantly altered, because the court allows the executive branch to disregard federal law in the manner asserted in this case."

I'm not sure when I've seen a federal judge write so strongly. And I think the reality here, by the way, is that this case that there will be a request, take it en banc in the circuit. En banc is where instead of a three-judge panel, you have every active judge in the circuit rehearing a case. I think that we will see this happen in this case. I think that there's a pretty good chance that the panel will get reversed. But the problem is after that, it still goes to the Supreme Court. And what Mr. Justice John Roberts will do in this one is anybody's guess.

Jill: I agree with you. And of course, as we said before, this all ends up being on John Roberts. But I think that a stronger opinion from en banc, which en banc, it's going to not be the same outcome, I think, would be helpful. So I think going to en banc request is maybe the next step.

Joyce: Can I go back to this picky and procedural point-

Jill: Sure.

Joyce: Which I think I glossed over early on, but it's really an important one. There is a principle that appellate lawyers live and die by. It's taken extremely seriously in my circuit, the 11th Circuit. Maybe not as seriously elsewhere, but it's still well established. That if you, as an appellate lawyer, the one who's appealing the decision below, if you don't make an argument in your opening brief, then you've waived it. Unless there's really good cause. Unless new facts come to light or there's new case law down the road. And even then, you have to raise it promptly. And so in a setting like this to give the government the benefit of the doubt, we're not talking like a criminal defendant who's got one little court-appointed lawyer working for them. We're talking about the biggest law firm in the world, the United States Justice Department.

And if they chose not to pursue this argument, then there's no reason that the judges should have pursued it for them. I think in many ways, it's a shameful decision by two judges who have proven to be partisan Republicans. These same two are on the panel that just said that the Trump administration can do away with the CFPB, the Consumer Finance Protection Bureau, which for the last decade plus, has been protecting the rights of Americans including people in Donald Trump's base. And now, he's being permitted to do away with a congressionally created agency. It pains me like it pains you to talk about judges in political terms, Jill. But frankly, I'd like to see a little bit more even-handed administration of the law from these folks than partisanship.

Jill: This is a clear sign that activist judges, that used to be hated by the Republicans, are now the beloved of the Republicans. Because there is nothing more activist than raising an issue that wasn't raised and basing your decision on that. And I think it's really a shame. It's not what we're supposed to have. We're not supposed to have Republican judges and Democratic judges, and that's what we have now.

Joyce: And it seems to me that when we used to hear these arguments about Democrats being activist judges, it wasn't that they were executing a political agenda. It was a difference in theory over constitutional interpretation. The Republicans were always the strict constructionists. They've pretty much abandoned that now.

And Democrats saw the ... Or rather liberals I think is the better term here, saw the Constitution as a living breathing document that grew with the Republic. And so sometimes, that led to differences in how you interpreted laws. That became particularly acute in the civil rights era. But I don't think that that accusation was a bad faith political accusation. What we're forced to contemplate now is whether or not there are members of the judiciary who support this president and will bootstrap their decisions to please him. Because after all, the District court for Columbia, is a feeder circuit that goes to the Supreme Court. Some of these judges may have hopes that they too will one day become members of the Supreme Court, and they will not do that if they displease this president. And that above all else really makes decisions like this Impoundment Control Act case very concerning.

Jill: And it is completely inconsistent with what they would've defined as activists because the clear language of this statute says he can't do what he's doing. And they're just ignoring that.

News is going around that most of us are ingesting over a credit card's worth of plastic every week from plastic residue permeating our homes. Yuck. It gets on our dishes, in

our foods, and worst of all, in our bodies. Most of us don't know we're cleaning with plastic every day. That's why we've made the switch in our home to Blueland across all the cleaning products around our houses. Their products meet the highest standard of cleanliness. They're effective yet gentle on our families and the planet. Blueland has been previously named an EPA Safer Choice partner of the year for a reason. From cleaning sprays and toilet bowl cleaner to dishwasher and laundry detergent tablets, and hand soap that's the best, Blueland's formulas are 100% micro-plastic free, made with certified clean ingredients free from chlorine, bleach and harsh chemicals. Which means Blueland is safe to use around my family and pets in the house. I love not having to choose between the safe option and what actually gets my house clean, and I know you will too.

Joyce: Recently, I helped my daughter set up house and she is very environmentally conscious. But she was a little bit skeptical about Blueland until we started shaking up all these great glass cleaning bottles with the little tablets. And she realized, like I have, that Blueland is on a mission to make it easy for everyone to make sustainable choices. We believe that hardworking, clean products can be the norm, not the exception when we use Blueland. That means you can do better for your family and the planet at the same time. Better yet, Blueland products are independently tested to perform alongside major brands and they're free from dyes, bleach and harsh chemicals. That's why they're trusted in over one million homes, including mine. The fragrances add such a pleasant vibe to your home, and I can't begin to tell you how many times having the subscription has saved me from running out of cleaning products, especially dishwasher soap.

It feels great knowing that I'm incorporating sustainable practices into essential everyday activities. And I'm always amazed by how well the laundry tablets work. They've proven time again that they will lift the toughest stains. I get a lot working out in the yard with the chickens and the dogs and the cats. Whether it's grass, food, whatever the kids manage to bring in, whatever the chickens dragged in, Blueland really works. And that's why I'm happy to share that they have a special offer for our listeners. Right now, you can get 15% off your first order by going to blueland.com/sisters. You won't want to miss this. [Blueland.com/sisters](https://blueland.com/sisters) for 15% off. That's blueland.com/sisters, and you'll save 15%. The link is in our show notes.

Jill: Joyce, something really big happened. After you had gone to bed probably last night, while I was still awake, I saw the announcement that DC was suing Donald Trump because of an executive order ... Maybe it's not an executive order, an order from Attorney General Pam Bondi, that she was taking over the Metropolitan Police Department. This morning, we woke up to read the 30-page plus complaint from the District of Columbia Attorney General against Trump and Bondi and others, in the top levels of the administration for an illegal takeover of the Metropolitan Police Department and law enforcement in DC. So let's start with just a brief summary, Joyce, of what the lawsuit is alleging and what the grounds are. Then I want to talk about the hearing that happened just before we started recording this, and which we do not have a final outcome of. But let's start with explaining what the lawsuit is about.

Joyce: So this is all happening incredibly quickly. Last night, Bondi asserts just enhanced control over the police department. DC sues, saying, "This is more than you're entitled to do." And mid-morning, the judge, Judge Reyes says, "Okay y'all, I'll hold a hearing today at 2:00 P.M. get into court. And so Judge Ana Reyes, moving really fast here. Jill and I were able to listen to the start of the hearing, but it is ongoing while we're taping today.

So I think we can talk a little bit about how she set the table. But this gives us an opportunity to do something that we often don't get to do with y'all, which is to talk in detail about the lawsuit that's been filed, and most importantly, what the District of Columbia is asking the court to. You'll recall that DC did not file a lawsuit right away. And that's because the home rule statute in DC, the law that permits Donald Trump to try to take control of law enforcement, is written with some pretty loose language, that frankly gives Trump a lot of room to maneuver.

It says that if the president declares an emergency, then he's entitled to direct the mayor to deliver the services of the Metropolitan Police Department, for him to use for federal purposes. And so you can hear from how that's phrased, right? If you're Donald Trump, if you're not a good-faith actor, then you can make ... Barb isn't here, so I'll say it. You can just make shit up. Which is what Trump did when he said that crime was rampant in DC because all of the crime statistics show that crime is in fact decreasing in the district.

But he just makes that up. He uses it and that permits him to ask for the services of the department for up to 30 days. He can't stick around after 30 days without congressional permission, which is a separate situation. But he's here for 30 days. The problem last night was that he went a step further. Instead of just asking for those services, he tried to affirmatively take over the department. He had already said that Pam Bondi would be the overseer for the department. Now, he added in Terry Cole, the administrator at DEA, in the position of the head of the police department. And DC said, "That's too much." So let me read to you from the prayer for relief. This is the very end of the government's complaint.

Jill: Joyce, before you get to that, I just want to stress some of the words you said because it's hard to take in. I want our audience to really pay attention, that the section of the law gives him permission, the president, permission to require the mayor to provide services of the Metropolitan Police Department for federal purposes. It does not permit the president to seize control of the police department, nor does it authorize the president to direct them in how to police local crime. And it requires a federal purpose. None seems to exist here. It's not a federal purpose that there's crime in DC and that it's declining. So I just wanted to emphasize that. Sorry to interrupt. Go ahead.

Joyce: Yeah. No, I think it's a good interruption because the judge was very clear at the start of the hearing. She said, "I'm not going to go into those issues. I'm not going to go into whether or not there was a legitimate reason to declare an emergency. I'm not going to go into whether this serves a federal purpose. I would need to have a full-blown factual hearing, evidentiary hearing, to develop those issues." And she said, "I won't do that. If I need to, I'll do it next week." Today, we're just here to determine whether or not he can do what he did, even if I assume that there's a real emergency, and that it does serve a federal purpose. So that's the sort of posture judges will often take in these early temporary restraining order sorts of stages. And that's what DC is asking the court to do.

They want the judge to vacate the order that puts Pam Bondi in charge. They want to say that it's an unlawful final agency action that was taken. They want an order that preliminary and permanently enjoins the implementation of the Bondi order. And they want to also enjoin Cole, the head of DEA, from assuming what they characterize as any position of command at MPD. They want an order that enjoins the defendants from issuing future orders or directives, taking any action that attempts to place the police

department under the control of anyone other than the mayor and the chief of police. And that seemed to be the primary issue that the judge was interested in, when she took on opening the hearing today. There are other requests that they make, but they all boil down to this. The Trump administration has finally gone too far.

In its efforts to implement Trump's executive order where he rants about crime in the District of Columbia, they also make an argument that Jill has been flagging, talking about constitutional violation of separation of powers, and the president's failure to uphold the Take Care clause, which requires him to take care, to administer the laws effectively and with regard for their legality. So there's a lot of opportunity here for the judge to rule in the government's favor. Because frankly, this law in the District of Columbia is unusual. DC is what lawyers say, *sui generis*. It's a law unto itself, and the law in the District of Columbia doesn't apply in other places. But this judge did show at least some interest, in inquiring into whether or not these sorts of actions were legal, at least as she gets further down the road into next week.

Jill: Joyce, one of the interesting things that you and I both heard in the very beginning was that Bondi clearly didn't have the power to do what she was doing. But that she did, if she was, the delegate of Donald Trump. Again, the judge assumed that she was just acting as and on behalf of the delegated powers from the President.

Joyce: I think that's right. And sometimes, it can be hard to follow when you're listening to these hearings. This was just a dial-in phone line. But it sounded to me like she asked the lawyers for the plaintiffs if they agreed that Bondi was acting as Trump's delegate. They agreed. I don't think that issue will really have any traction or that anyone will push Trump's ability to appoint an inferior officer, Pam Bondi, to carry out his beliefs. But where it seemed like the judge might want to draw a break would then be this appointment of the head of the DEA, to in effect act as a super police chief. That might be where we see the judge engaging in some nuanced decision-making.

Jill: And some of the reporting has shown his badge. He now has a badge that shows him as a member of the MPD. It also shows the head of the martial service and it doesn't show ... There is an additional act, which is the head of the martial service, is supposed to be taking charge of the day-to-day operations of the police department. And that the actual people who run the police department cannot issue any orders to the police, without the permission of those above him. Above her, sorry. The police chief is a female. So that's a great concern to me, is that they're really trying to take over day-to-day operations of day-to-day crime in the District of Columbia and homelessness in the District of Columbia, with horrible orders to clear the streets. Is that of concern to you, Joyce?

Joyce: Yeah. The whole pre-textual nature of everything that's going on here I think is alarming. But the one thing I'll say, and I'll put my former U.S. attorney hat on, because I carried the portfolio when I served the criminal prosecution side of things. We often looked at issues of crime prevention and of criminal justice reform. And if you truly believe in reducing crime, then you look at data. The data suggests that best practices involve community policing and sending officers who know communities out to interface, particularly when you've got issues with juveniles. What you don't do is send in the National Guard, which is trained in riot control. Or the military, that's a fighting force that's trained to kill. And so I'm not sure if this is really the question that you're asking, but it resonates with me in this way. I doubt the sincerity of this administration. Because

if what they were really concerned about was crime, then they would be fighting crime, and they are not fighting crime.

Jill: And in fact, in the complaint, the District of Columbia really makes a point about how they are endangering the safety of the District of Columbia by doing this, and putting in doubt who is issuing orders and who the police on the street are supposed to respond to. And I thought they turned that argument very effectively against the Donald Trump administration.

Joyce: I think that's right. The judge, I don't know if she'll rule from the bench so that by the time folks are hearing the podcast tomorrow morning, there will be reporting on her decision or not. But I think it's important to make sure people understand that this is a close call, because of the way that the law in D.C. is written. But there's this overarching constitutional principle that reserves law enforcement, that reserves policing to the states.

This is not the federal government's job. So the Republican Party, which has traditionally stood for federalism and for the idea that all powers not specifically granted to the federal government, are reserved to the state, that's a traditional Republican view. And here, we have Trump trying to usurp the police power that belongs to states, or in this case, the District of Columbia. That's not a new idea. That is just ground level federalism from start of this country moving forward. It's really a remarkable moment, where for Republicans to get on board with what Trump is doing in the district, what he has said he intends to do elsewhere, this is a real abdication of core Republican principles.

Jill: Joyce, you're raising an issue that I want to expand on, which is this is different because it's the District of Columbia. And the District of Columbia is not a state. They have limited home rule. Whatever is done here, the rules are different. Don't you think? That if he tries, as he has threatened to do, to apply this in Chicago and other blue cities, do you think he can get away with this? Or is it a clearer cut case, when he tries it somewhere outside the District of Columbia?

Joyce: Yeah, it is easier in the District of Columbia because of the law that gives him control of the National Guard. That's not the case in the states where governors are in control, and the law that lets him demand the services of the police department for 30 days. Good luck with trying to take over the police department in New York City, Donald Trump. That won't happen. So I think the reality is if we're talking about going to other big blue cities, which Donald Trump is talking about doing, the paradigm looks a lot more like the way it looked in Los Angeles, when he tried to federalize California and succeeded in federalizing California National Guard. That I think is really dangerous for democracy, because it starts trending towards imposition of the Insurrection Act. It is not a good look. Members of the military policing on America's streets. In Los Angeles, the primary flaw in Trump's argument was this notion that state and local police were incapable of taking care of whatever problems they had on their own.

And of course, those problems were created by Donald Trump because this was citizens out protesting against ICE. So there's that whole piece of it. But the reality is, in those situations, Trump argues again that the courts can't second guess his decision, just like he says in DC. "No matter how much I lie and say that there's crime when there isn't, you can't second guess me." But I think it's different in these situations in other states, where the courts can second guess him when he makes this sort of baseless claim of emergency.

The President can't just gin up an emergency in order to put troops on the streets in American cities. And I think that there are many people, traditional conservatives, independents, swing voters, who will feel very strongly about that. So that's a very different world for Donald Trump to try to operate in.

Jill: It is. And you said that he won't be able to do certain things that I can only hope the courts do not allow him to do. And in terms of LA, there was a hearing this week in front of Judge Breyer. And there hasn't been a decision, at least as of the time of our recording, that will determine whether what Donald Trump did in LA, in federalizing troops, is going to be considered legitimate.

Joyce: Yeah, it's fascinating. The issue there turns in large part on the Posse Comitatus Act that we've talked with you a lot, and whether he used the guard forces that he had federalized or ... Rather, there's military and there's guard here, and there are separate Posse Comitatus issues for both of those groups. But the issue is whether he exceeded the ability to use forces for domestic law enforcement purposes. And that's the bright line that's being drawn here. We are used to having our local police departments, our sheriffs. They're the ones who take care of crime in our communities. The military, the National Guard, they're not coming in when there's a bank robbery or a burglary. Or like in the District of Columbia, they're not the ones that are out there looking at people for drinking in public. Just the sort of nature of the crimes that they're trying to deal with in the District of Columbia, make it abundantly clear that this is meant for state and local law enforcement. There's no national emergency that should permit Donald Trump to bring the feds in.

Jill: We all need to protect our skin from the sun. But what if you could protect it from things like collagen loss and inflammation at the same time? Or even repair some of the damage you did when you were younger and didn't know better? Luckily ... Yeah. Well, I didn't know better back then.

Joyce: No kidding, right. Baby oil [inaudible 00:55:29].

Jill: No, I'm not. Baby oil with iodine. Do you remember that?

Joyce: I do.

Jill: Oh my God. Oh! Luckily our scientist friends at OneSkin have great news and amazing products. I've been using their whole line of mineral SPFs for the face, body and lips. Not only do they protect our skin from UV damage now, they work at the cellular level to help repair the sun damage I did in my teens and even into my twenties. My skin feels smoother, looks more even. I've even noticed some of those age spots and wrinkles begin to fade.

Joyce: I was super happy I made room for ... In my carry-on bag, the only thing I travel with, to carry all of my OneSkin products when we went to the beach a couple of weeks ago. The face SPF is super lightweight. It's breathable and it comes in tinted or untinted. The body SPF is water resistant and it helps prevent collagen loss. Also, there's a new lip SPF. I used it for the first time. It hydrates instantly and it's scientifically proven to keep your lips healthy, bouncy and firm. If you're like me and your lips run a little bit dry in the

summer, you'll really appreciate how it feels on them. The whole line is made with mineral non-nano zinc oxide, antioxidants like Vitamin C, and the OS-01 peptide. So you get protection, nourishment, and repair in one simple step. It's advanced sun care that performs like skin care. Try them all with 15% off your first purchase using code, SISTERS, at oneskin.co.

Jill: Joyce, I'm just like you and I can't get enough of OneSkin. Whether I'm out in the Chicago wind or basking in the sun, under cover of course with their SPF, I use two of OneSkin's OS-01 face topical supplements to fight back against dryness, and the sunscreen is just great. The supplements make your skin look fresh and leave it ready for anything. The elements throw at you, and the sunscreen feels great and protects you. My husband's using it too. I especially love that Oneskin's regimen works fast and the formulas feel amazing to apply. I'm certain all of you listening are going to be big fans.

Joyce: OneSkin is the world's first skin longevity company. By focusing on the cellular aspects of aging, OneSkin keeps your skin looking and acting younger for longer. For a limited time, you can try OneSkin with 15% off using code, SISTERS, at Oneskin.co. That's 15% off oneskin.co with code: SISTERS. After you purchase, they'll ask where you heard about them. Please support our show and tell them we sent you. The link is also in our show notes.

Jill: Now, it's time for one of our favorite things to do, which is to answer our listeners' questions. And we got really tough ones this week asking really important issues. And I want to start with one because we haven't talked much about this, Joyce. So we have a question from Sheila. She wants to know, is Maureen Comey able to share what she knows about the Epstein and Maxwell cases?

Joyce: Yeah, this is a really great question. Often, we see people leave their government jobs and then they go on TV and they start talking about what was happening while they were in them. You will not see federal prosecutors doing that however. When you work on a criminal investigation, as a federal prosecutor, a lot of the work that you're doing has to do with the grand jury. A lot of the investigation is materials that are obtained via grand jury subpoena, testimony given by witnesses in response to grand jury subpoena. Sometimes, they talk to you informally without going into the grand jury room. But if you've issued a subpoena to obtain that testimony, it's covered. And so much of that is formally protected by grand jury secrecy. But even beyond that, there would be something unseemly about a federal prosecutor leaving office and spilling the beans, so to speak.

Sure, in the Epstein case, this might be the example where people really are for very good reason, curious about what the government knew and when it knew it. But the real answer out there for anybody who wants this administration is that while Maureen Comey, who is the fired lead prosecutor on the Epstein case, Jim Comey's daughter, who is now out of government because her boss fired her, while she should not reveal any of the details of that case, the person who can but refuses to is Donald Trump. Because what we've learned this week is that the only thing that they had in the grand jury was two summary agent witnesses. That's all that the government asked the judges to release. And of course, two judges have now declined to do that, because the government didn't make a good case for it. But Donald Trump could take that whole universe of evidence and

information that they have gathered, and he could make that public this afternoon. If you want information, that's where it needs to come from.

Jill: So Joyce, I want to combine two questions we got. One from Mary and one from Agnes because they both deal with the Voting Rights Act. And you are someone who really is a good knowledgeable person on this. Mary asks, "Would the Texas gerrymandering violate the Voting Rights Act?" And Agnes asks, "Please explain why the Voting Rights Act needs to be ratified regularly, but the Trump tax cuts are now permanent."

Joyce: These are two really great questions. I'll take the second one first. It's simply because the Voting Rights Act, when it was passed, required that it periodically be re-upped. And it was re-upped I think almost every time Congress had to vote to re-up. It was during a Republican administration. People would make statements about the importance of the right to vote and it would be extended. And of course, that all comes to a glaring halt during the Obama administration, when the state of Alabama, when Shelby County, Alabama, challenges Section Five of the voting rights. And suddenly the court says, "Oops, maybe it won't be this easy to do this time." Congress refuses to do its job and update the data that would be necessary for Section Five of the act to pass constitutional muster. In any event, it's simply because that's how the law was written.

There's nothing nefarious about that. The question about Texas gerrymander is a pretty interesting one. In a case called *Rucho*, the Supreme Court said that it would not weigh in on political gerrymanders. So if all you're doing is gerrymandering to try to get advantage for your party, Supreme Court's not going to interfere. It will still interfere, at least until next term, under Section Two of the Voting Rights Act, if there's a deliberately racial gerrymander. But what's going on in Texas, and here, Donald Trump took advantage of the law, he said, "I think we're entitled to five more Republican seats in Texas." That will be a political gerrymander when they pass it, and the Supreme Court will not intervene. However, by the same token, if California turns around and plays tit-for-tat and does the same thing there, if other blue states line up and do it, those two will be political gerrymanders that won't be objectionable under the way the Supreme Court has interpreted the law.

But y'all, that is a race to the bottom. That's a downward spiral for democracy. And the hope would be that Texas would have second thoughts, that everybody would find some face-saving language that they could use to back off from the abyss, I fear though that that won't be the case. That we're just going to see more and more of this political gamesmanship, instead of this reverence that we should have under the Voting Rights Act for the votes of Americans.

Jill: I'm going to take the last question, Joyce. It's from Anne. And she asks, "What can be done on behalf of the transgender military members who are being separated from service without retirement benefits? Will there be a legal challenge?" I certainly hope so. Anne, I think that what should happen is that each and every one of them should bring a lawsuit claiming that they were unfairly and illegally separated from service, and that the reason that they're being separated is unjust and illegal. That they should be entitled to their full benefits and retention of their jobs.

I think there will be many legal groups that will stand up and volunteer to represent those service members who have served honorably and effectively. And that's what should happen.

That's it for today. Thank you for listening to #SistersInLaw with Joyce Vance and me, Joel Wine-Banks. Follow the #SistersInLaw wherever you listen, and please give us a five-star review, because that's how other people will find us. Please show some love to this week's sponsors, Aura Frames, Smalls, Blueland, and OneSkin. The links are in the show notes. Please support them because they make this podcast possible. See you again next week with another episode. #SistersInLaw.

Joyce: Oh my goodness, y'all.

Jill: What?

Joyce: One of my cats was up in the ceiling.

Jill: Oh my God.

Joyce: He just jumped out of the ceiling.

Jill: I see him.

Joyce: Did you see?

Jill: Oh my God.

Joyce: That was insane. He's done that [inaudible 01:05:26].

Jill: How big a jump is that?

Joyce: We've got this open ceiling and so see in the corner.

Jill: Oh my god. No, I can see it.

Joyce: Come here, Dean. Are you going to come be a star? Come say hi. Dean, what are you doing? Nope. He's in a mood. That was so loud. He usually jumps down quietly.