

Joyce: Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Jill Wine-Banks, and me, Joyce Vance. It has been another crazy week, and we are going to get to that. But before we do, if you're headed out to protests in the coming weeks or if you just want to share your views with people around you, treat yourselves to one of our Resistance mini totes or t-shirts. Grab them while they're in stock. You can find them at politicon.com/merch.

Now, we'll get onto the show, where we'll be discussing the investigation into the murder of Charlie Kirk, the Supreme Court's decision earlier this week about immigration stops, and then some additional orders the Supreme Court issued this week as it clears out its emergency docket in the ramp-up to the next term of court, which starts in just a few weeks.

That's the serious work that we have assigned for the week. But before we get there, y'all, I'm noticing there are some leaves turning outside. Kim is talking about pulling out the pumpkin spice corduroy pants. I mean, it is almost fall, y'all, and it's been a super stressful summer in a lot of ways. I want to know what your plans are. What do you like to do in the fall to refresh and relax? Kim, what do you do?

Kim: I love tree-peeping. I am a leaf-peeper. I love doing that. I really like all of the fall-related activities. When I was growing up, there was a place not too far from where I lived in Michigan that would do hayrides, and you can drink mulled cider, and you could pick pumpkins, and it was all... I don't know if you've ever been there, Barb. It was in Franklin, and it just-

Barb: Franklin? Oh, yeah, the Franklin Cider Mill. Yeah, you bet.

Kim: Yes, the Franklin Cider.

Barb: Sure, sure.

Kim: We would go there every year.

Barb: Oh, yeah.

Kim: So even still now, Greg and I have been discussing when we want to go peep some leaves because they turn a little later down here in Washington, D.C. than they did in Michigan. So that's still on our list to do, but I love that stuff.

Joyce: Jill, what about you? What do you do in Chicago? Is there cider there?

Jill: We have cider in my house because our farmer's market sells really good apple stuff. But yeah, I'm like Kimberly. I love the fall colors, and the most amazing colors are actually in Minnesota in the boundary waters. One year, we went up there to look at the International Wolf Center, which is another amazing, amazing thing to do, but the colors were... It looked like a postcard that had been hand-painted because it couldn't be real, and I really love that.

My other favorite thing is getting ready for Halloween. I actually put up decorations at my house. It's my favorite holiday, and I wear costumes to greet my trick-or-treaters. I usually wear a Dalmatian mask that I got in New Orleans, and it's just so much fun.

Joyce: Do the kids cry? Do the kids cry when there's a giant Dalmatian? I would be terrified if I go to Jill's house, so-

Jill: It's especially bad when I actually wear my Dalmatian body suit, not just the mask.

Joyce: Oh my gosh, I'm getting a visual.

Jill: That is terrifying. I scared Brisbane wearing that. I got down on the ground, and he was like, "Oh my God." He shrieked. So, yeah, but I do love it. I think it's the most fun, and I tried giving a Halloween party, but my friends weren't as much into costumes as I was. There's no fun to give a Halloween party if people don't come in costume.

Joyce: Well, Barb, what are you going to do? I mean, you're in the middle of all the pretty color.

Barb: For me, fall is all about the football. Are you ready for some football? I'm going to Michigan's football game tomorrow. We've got the Lions playing football, so. I love football season. It also is baseball. It turns to playoff time, and the Tigers are right there in the hunt.

Joyce: They are.

Barb: So I'm hoping for some great playoff baseball and maybe even a World series as the leaves turn here in Michigan. So lots of great sports on tap. Yeah. You know?

Kim: Yeah. My mom is rooting right along with you, Barb. She is a lifelong Tigers fan.

Barb: Good woman.

Kim: She is really excited. I remember 1984. She was over the moon the last time they won, so.

Barb: It's been a long time. Yep. We're ready.

Kim: See, it has.

Joyce: Well, it's sports talk with SistersInLaw for the fall apparently this year. We'll be here all season talking with you about football. Barb and I will probably make the annual Alabama-Michigan bet, but I hope that we and you can get a little bit of leaf-peeping in too.

Jill: If you've been noticing hair loss, thinning, or shedding lately, you have to hear this. The scientists at OneSkin have developed a scalp serum called OS-01 HAIR that targets the dysfunctional aging cells that cause it. In a clinical study, participants saw on average a 40% increase in hair density after six months. That's amazing.

Kim: It is Jill, and I'm really happy that I have OneSkin because my hair is thinning, especially around the temples as what as can happen when we reach a certain age. I had been taking biotin-only tablets until my dermatologist said, "Okay, that doesn't work. So few people in the world have actual biotin deficiency, but the industry is selling all of these biotin vitamins, but the topical solutions like what is in OneSkin can work."

In a consumer perception study, 75% of folks who used OneSkin's hair serum had new hair growth after just three months. For those of you familiar with OneSkin like we are, you know how their patented OS-01 Peptide is scientifically-proven to target aging at the cellular level. It's what powers their skin and sun care. Now, it's targeting age-related hair loss and thinning. OneSkin customers have been obsessed with this new launch saying things like, "My hair feels fuller and looks smoother and shinier," and, "I already see a few baby hairs growing out around my hairline." I do too. I'm with you. I'm one of the customers who report seeing a difference and seeing new hair growth. OS-01 HAIR is drug-free, prescription-free, and since the texture is lightweight and water-like, you can style your hair like normal. Try OS-01 HAIR and get 15% off your first three-month supply with code SISTERS at OneSkin.co.

Joyce: I can't get enough of OneSkin. I really love it, and I spend a lot of time outside in the sun gardening and enjoying summer. I use OneSkin's OS-01 Face Topical Supplement to fight back against dryness from all of that time outside. The supplement makes my skin look fresh, and it leaves it ready for anything the elements can throw at me. The sunscreen feels great, and it's very, very protective. I especially love that OneSkin's regimen works fast, and the formulas feel amazing to apply. I bet you'll be a big fan too.

Barb: 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 you where you heard about them. Please support our show, and tell them we sent you. The link is in the show notes.

Kim: Well, everyone, it has been a traumatic week. The murder of right-wing firebrand Charlie Kirk at an event at Utah Valley University, really, was ground-shaking. Political violence is like terrorism in that it puts fear in the hearts of people regardless of their ideology. I must admit to myself, when I first learned that he was shot, I prayed that he would survive because I did not want this to descend into territory where conditions are rife for civil war, and I don't think that we're far off from that, and I did not get that wish. I feel terrible for his family, but we are going to talk about the legalities of it.

There's been a lot of discussion and analysis about the politics, but precious little about the law, and that's where we come in. So we're not talking about his politics. We're talking about what this means. So we have a lot to discuss. But first, I just wanted to check in with all of you because it has been a traumatic week. Political violence shakes us all, and the fear of what might come or what we've already become is really shaking. How are you guys doing? How about you, Joyce?

Joyce: I think that this is, like you say, Kim, it's a sobering moment. Obviously, this is not somebody whose politics I liked or subscribed to. That doesn't make what happened to him right, and I think political violence is just utterly abhorrent. I have checked in with a

lot of friends this week who are very worried, especially some of the young activists who have received a lot of threats or very concerned about their personal safety. What I keep hoping for is a moment in this country where Donald Trump will reach out to democratic leadership to say, "We, all of us, unilaterally reject violence." I regret that that moment has never come with him, and I don't think it ever will. That is a real tragedy for our country.

Kim: How you doing, Jill?

Jill: Well, I'm doing okay. I feel the same way Joyce does, but I was very moved by the Utah governor's remarks, calling for what Joyce is calling for. He really spoke beautifully. A contrast to what Donald Trump said was appalling. Donald Trump is fomenting exactly what we don't need. Whereas the governor was calling for bipartisanship, unity, open discussion. Like Joyce, when you listen to the actual words of Charlie Kirk, they are not things I agree with, and I've seen a lot of compendiums of his remarks against women, against Blacks, against everybody. I mean, his remarks are terrible, and at the same time, he offered an opportunity for dialogue. So I think that when you're not afraid of dialogue, and that's what the governor was calling for, that's a good thing. I hope that, as the governor said, we will move in that direction and not escalate the violence. Violence is always wrong.

Kim: Yeah. Barb, how about you?

Barb: Yeah. I've had a troubling week. The Kirk shooting is absolutely shocking and heartbreaking. He leaves behind a young family. I think everything he said and stood for is absolutely repugnant, but the idea that you get shot for saying even repugnant things is just not how things are supposed to work in the United States. Right? We can disagree all we want. You have the right to say anything that is as ugly and as hateful as you say, but no one should be taking your life for saying it, and so that's deeply disturbing.

I was disturbed that this case has gotten so much attention when meanwhile, we've had a school shooting in Colorado that is relegated to the back pages because we are more interested in the political violence in Donald Trump's attempts to exploit this and use it as another wedge between Americans. So my only hope is that maybe an event like this, if it is crystallizing, shows ordinary people of good faith. The contrast as we saw between Utah's governor who is a leader who's trying to de-escalate tensions and trying to bring calm to chaos in contrast to Trump who is trying to escalate chaos and division. Maybe, finally, this is one of those things where we turn it around and we say, "Enough with the hate. It's time to unite and to reject the division of Donald Trump."

Kim: Yes, I agree with all of that. Even when we disagree and disagree vehemently, we still have to see each other as people and not as enemies. I do hope that we can get to that place without more violence. I hold that hope.

So, on Friday, President Trump, and state and federal officials announced that a suspect, Tyler Robinson, was in custody. Even before he was taken into custody, Governor Cox said that he would seek the death penalty. Barb, I want you to put your prosecutor's hat on based on where we are now, and there's still a lot we don't know. We don't know motive or intention. That all needs to be fully investigated, and we don't want to speculate. But what might Robinson be charged with beyond murder? I mean, could this

be seen as domestic terror? Does targeting someone for politics rise to a hate crime? Might there be state and federal charges? Just give us your top-of-head, top-of-mind thoughts as to how the prosecution in this may play out and acknowledging that this is still early days.

Barb: Yeah. Under ordinary circumstances, and we live in such extraordinary times in the Trump administration, it's always hard to predict exactly how things are going to play out. But under ordinary circumstances, federal law enforcement would defer to state law enforcement officials. This happened in their state. It happened on one of their college campuses. They have perfectly adequate laws to address this with murder where the death penalty is available. So a first-degree, premeditated, deliberate murder would be the most likely and probably the strongest charge available here.

There are other things though that could happen. One of the things that's been disturbing to me has been the way Kash Patel and the FBI has been bumbling and trying to take charge and take credit, but President Trump too. Ordinarily, you're deferring to the state and locals, and providing support. So, here, maybe you find some sort of weapons charge that the Feds could charge in a case like this. Sometimes weapons charges can even have sentencing guidelines enhanced if it's used in the killing of another person, but there's going to be a statutory max that's much lower than that.

One of the things that's very interesting that I think many people do not realize is that in the federal system, there is no crime per se of domestic terrorism. So if you blow up a building, you can be charged with destroying a building used in interstate commerce or a federal building, and that's a very serious crime. If you assassinate a federal official or federal employee, that is a federal crime. But if you just use a gun to kill somebody, even in a mass shooting, there is no federal crime of domestic terrorism.

I don't know what Utah has in the books, but I can recall times when as a prosecutor, that would frustrate me because it made it difficult to start up a federal investigation, unless you have some statute you can hang your hat on. So perhaps here, they'll look into some firearms offense.

Then, finally, Kim, to answer your question about a hate crime, politics alone does not count. It is based on things like race, gender, national origin, actual or perceived sexual orientation, or gender identity are bases for it, but generally, not just politics in general. So I don't think there'll be a hate crime charged here. My best prediction and what really should be is a state murder charge.

Kim: Okay. So, Jill, President Trump and other administration officials have vowed to retaliate. I'm going to quote a little bit from The Washington Post reporting that they are planning "a broad plan to focus on public speech and rhetoric declaring that those who speak in violent terms about Trump and his allies will face consequences. Some suggested a more expansive campaign calling out school teachers and college instructors who have made public statements criticizing Kirk since his death and promising to deport non-citizens who do the same." Jill, we know that speech is constitutionally protected, and there are some limits, but the protection is pretty broad. Do you think this effort can stay within the First Amendment's lines?

Jill: I would say absolutely not, that our constitution and its protection of free speech will be violated. I want to emphasize some words that you just spoke in terms of quoting what Donald Trump said, which was speech about Trump and his allies. He's only caring about anything that affects him. What about speech that leads to action against Democrats? What about the attack on Pelosi, the attempt to kidnap Governor Whitmer and Nancy Pelosi, the attack on Paul Pelosi? What about the killing of a democratic member of the Minnesota legislature and his wife? What about all of those?

Kim: Yeah. Yeah, or setting Governor Shapiro's house on fire.

Jill: Yeah, setting his house on fire. There are so many examples of that where actual violence resulted. I think we should focus on what does the law say. I mean, for a long time now, we've had a case called Brandenburg that said you can't restrict speech, except if it is directed to inciting or producing imminent lawless action and is likely to result in imminent lawless action. So we have free speech for a reason. We have to have open debate. Actually, of course, to the extent that Charlie Kirk stood for something, it was to debate ideas and to allow free speech.

At this point, we do not know the motivation for the killing, but we do know that Trump calling it left-wing and calling for retaliation and retribution to silence dissent is not allowed by the First Amendment. So we want to make sure that we protect the First Amendment in these fraught times.

Kim: So, Joyce, as Barb mentioned before, one of the things I found at first, frankly, confusing when events were being reported in quick succession, and then really concerning in the hours immediately after the shooting was this apparent disconnect between FBI leadership and what the investigators on the ground were saying, including people from the FBI field office as well as state and local officials.

It seemed those in Utah were surprised in real time during a press conference by a post from FBI director Kash Patel saying that the suspect was in custody. It turned out that two people were questioned, but then they were released, and neither of those two people is the person that is now being charged. So what did you think of this, and can you talk about how the FBI should be working in situations like this with their field offices? Could this really cause a problem for the investigation and even the prosecution?

Joyce: Yeah. I mean, this is actually a great question, Kim, and I will put my former Justice Department prosecutor hat on to answer it because I was in a situation very similar to this one after Eric Robert Rudolph bombed an abortion clinic in Birmingham, and within hours, we found ourselves with a massive investigation, multi-agency, federal, state, and local on our hands.

What we saw with the director of the FBI putting out disinformation, misinformation, however we want to label it, we don't know his motive, it suggests that the FBI failed to follow the first step in the standard guidance issued to agents for situations like this, which is establish a command post and secure the chain of command. You have to get to work, and you have to know who's running the show. That didn't happen here, which is why this embarrassing incident where the director of the FBI announces an arrest and then has to walk it back takes place.

So, look, seriously, my perspective is deeply grounded in Rudolph. We had other investigations of this stature in my district, but Rudolph is the one where I was involved on day one. I was the first prosecutor on the scene, went through all of the setup. We stood up a multi-agency task force. Everybody works out of one command center in a really seamless fashion exactly to prevent what we saw happen here. Right? Everything funnels up to the top, and then there's a mouthpiece.

So press briefings always get conducted locally closest to the facts. There was no tweeting during the Rudolph investigation. There was no one in Washington who was trying to steal the show to curry political favor with the president. In fact, Doug Jones was the US attorney when that bombing happened, and he handled briefings along with then ATF Special Agent in Charge, Jim Cavanaugh, who may be familiar right now to those of you who've been watching MSNBC, where Jim has been talking about how to run investigations and also with our FBI SAC.

To the point of your question, Kim, our state and local partners were always looped in. The attorney general was there. The local DA was there. There were two prosecutors from the Jefferson County DA's office who worked side by side with me. If I knew something, I shared it with them, and something that no one did was bogart information or try to be the first one to go out front with it so that they could get a little bit of attention. That's what a professional law enforcement operation looks like, and it's not what we saw here.

The last part of your question was whether or not this could impact the prosecution. I think in this situation, it will not, because if we can believe the reporting that we've heard today, this young man has made a confession, and that really changes the dynamics. Although with the death penalty on the table, there may be some effort to keep that out. Right?

Kim: Mm.

Joyce: I think what they've done, worst case, lets the defense make arguments. Well, there were multiple suspects here, and it's not clear that our client is the right one, but that's going to be tough in a case like this if the evidence plays out in the way we've been led to believe it will.

Kim: Yeah. I mean, it just seemed to me, and I'm not a former prosecutor, but it seemed to me like yet another example of why you don't have anyone, including the FBI director, making comments about an ongoing investigation. I mean, he made these comments before this guy was in custody before when they actually released a photograph of him afterwards, which means that they weren't even sure at that point who he was. I just thought, "Oh my goodness, I cannot imagine being on the ground trying to do this, and you have somebody speaking publicly in a way that was so..." It confused me, and I have a fairly good understanding of how this works. Imagine the American people, especially at a time when conspiracy theories run wild.

Joyce: The FBI director has only one job in this situation, and it's to call his special agent in charge locally and say, "Do you have everything that you need? If you don't have everything that you need, call me personally, and I'll make sure you have it." That's the director's job.

Kim: Yeah, yeah.

Jill: I think, as Barb pointed out, there isn't probably even a federal crime that will be at least the first thing to go and maybe not even anything subsidiary. So why would the FBI director speak out at all, especially without having the correct information?

Joyce: I almost jumped in and said this when Barb was talking, and I really hope that I'm wrong. Barb is 105% right. It's only a federal crime, right? The only way you charge the hate crime is if there's a motive. Well, you know how deep in this crowd is on pushing religious persecution of Christians, and I wonder if we may not see it. This is a very conservative Christian.

Kim: Oh, wow.

Joyce: I wonder if we might see that. Who knows, right? We don't know what the motive is. There's a lot of talk on social media right now that this maybe was gatekeepers on the far-right who thought Charlie Kirk wasn't far-right enough to suit their tastes. So it's tough until we know the motive, but I wonder if we might not see a stab at the... These people will want a federal prosecution. Maybe there will be a gun charge like Barb said, but this is a state murder case, and it should be charged that way, and the Feds' job is to support the state, not to take over the show.

Kim: Barb, really quickly, I mean, you mentioned that there's no domestic terror statute, but you wrote a book called The Attack from Within, sorry, I'm going to get it right, The Attack from Within, that talked about homegrown terror. So just putting your author hat on, how does this incident jibe with that in your view?

Barb: Yeah. One of the things that concerns me is the way people can self-radicalize now online. There is some social media traffic about he had engraved messages on the bullets and that a lot of these types of messages are things that are commonly discussed online. He had a Halloween costume where he posed as someone writing on top of Pepe the Frog, who is a far-right meme character in all this online hate.

Kim: Yeah.

Barb: I think it is really easy today for people to self-radicalize by going online and seeing some of this kind of stuff. There's no easy answer to it, because, of course, the First Amendment gives us the right to see even repugnant ideas, but I do worry about especially younger people going online and becoming influenced by these things. There is a whole cycle of radicalization that the FBI talks about the cycle of a terrorist act. Some people can look at this stuff and never go beyond anything, but there is a cycle where people see these things, they learn these things, and then some incident sparks them to action. Not everybody will take that action, but I worry that more and more, we are seeing people who are engaging in these kinds of things on their own. I don't think there's any easy answer to it.

Kim: Yeah. Just quickly before we wrap this topic, I mean, it's the guns. It's the guns. This was a high-powered firearm that was used in this. Listen, I'm not going to ask you to, again, recount as we've done so many times about the need for responsible common sense gun

control to keep weapons of war out of the hands of civilians, but... I don't know. Talk me off the ledge. I just don't see any change unless we change our culture, and talk me off the ledge as you think that anything can be done about gun laws in the wake of this.

Joyce: I'm not going to talk you off the ledge on this one. I mean, there was that whole eruption on social media yesterday where people were saying, "Guns don't kill people. People kill people," yet again and saying, "It's not the guns," which just ignores all of the data that suggests that we are the only country where this happens. So I'd love-

Kim: It's common sense. If this guy had a knife on the roof, he would not... Charlie Kirk would be alive.

Barb: Well, and the other thing may I add is the type of weapon this was. This is an automatic weapon or a semi-automatic assault weapon.

Kim: Hmm, yeah, on whole... Yeah.

Barb: So it can be shot from... It was what? 200 yards?

Jill: 200 yards.

Barb: What it was. It's a great distance, and I don't know if anybody's seen the very grisly video.

Kim: It's awful. It's awful.

Barb: I do not recommend anybody look at it, but it's clear this is not a simple bullet wound. This is an enormous gaping hole that makes it fatal. So the level of fatality with these assault weapons is much higher than any sort of traditional handgun. So even if we don't eradicate all guns where there's a Second Amendment right to guns, people want to use guns for hunting and for protection in their home. That's one thing, but assault weapons, Kim, you made this point, military grade weapons in the hands of civilians. There's just no reason for it.

Jill: I hate to make the argument that we've all heard, but I believe it to be true. The Second Amendment was written at a time when we had muskets, when you could load one every... I don't know how many minutes it took. We aren't in that phase anymore. So whatever guns were protected by the Second Amendment, I don't think they meant the kind of weapon that was used in this incident and that will be used again for mass shootings.

Barb: Game on you, originalists.

Jill: Exactly. Thank you, thank you, all you textualists and originalists. How come we don't mean that?

Barb: Yeah, textualists. The words well-regulated are in the Second Amendment, textualists.

Kim: That, too.

Joyce: Yeah. Unfortunately, Antonin Scalia, may he rest in peace, did not agree with that.

Kim: Yeah, he did not.

Joyce: But the Constitution is not supposed to be a suicide pack, and the way the Second Amendment has been interpreted, it damn near is.

If your sleep schedule has been all over the place recently, you're not alone. The shift into your post-summer routine can be the perfect time to reset your nights starting with Calm. Calm is the number one app for sleep and meditation. It gives you the power to calm your mind and change your life. Everyone faces unique challenges in their daily lives. That's why Calm offers a wide range of content and programs to help you navigate life's ups and downs.

Kim: No matter what it throws at you, Calm is perfect for every mood and moment. There's every type of program that you can imagine, like guided meditations designed to help you work through anxiety and stress, boost your focus, build healthier habits, or take better care of your physical wellbeing.

Barb: There are also sleep stories, sleep meditations, and calming music that will help you drift off to restful sleep quickly and naturally. It's so relaxing. Kim, I wish you would read my sleep stories. I think you have a calming and relaxing voice.

Kim: It's from my MPR days.

Barb: Yeah, yeah, I think so. But the voices on Calm are also very calming. It's the perfect end to a stressful day. But when you're feeling overwhelmed, we recommend you try their grounding exercises to help you relax and reset. Calm even has powerful expert-led talks designed to help you handle grief, improve self-esteem, care for relationships, and more.

Jill: Calm puts the tools you need right in your pocket so that stress and anxiety relief are always within reach. With over 2 million five-star reviews, Calm can help you stress less, sleep more, and live better. Right now, Calm has an exclusive offer just for listeners of our show. Get 40% off, yes, that's 40% off a Calm premium subscription. Go to calm.com/sisters. This is an amazing value, so go to calm, C-A-L-M, .com/sisters, boy, that's hard to say, "Calm," "Calm," for 40% off unlimited access to Calm's entire library. Again, calm.com/sisters. Don't forget to tell Calm you heard about them from us. Remember the link is in our show notes.

Barb: This week, the Supreme Court reversed a lower court's order blocking ICE agents from stopping and questioning people based solely on their appearance or their language, Spanish speakers or English speakers with a Spanish accent. Sure sounds like some profiling to me. Joyce, can you give us some background here about this case? What was the case about, and what was the decision in the lower court?

Joyce: Yeah. So this case is about the ability of federal agents to make immigration stops that the plaintiffs say are based on racial profiling. So back in July on the 11th, Judge Frimpong, who's a federal district judge in the Central District of California, entered an

order barring agents from making stops, unless they had developed reasonable suspicion that the person being stopped was in the United States illegally.

She gave the government very specific direction about what could not be used to find reasonable suspicion, writing that it can't be based solely on one or more of the following factors, factors that agents had been using. Apparent race or ethnicity, speaking in Spanish or in accented English, being present at a location where undocumented immigrants are "known to gather," that would be like pickup spots for day laborers, and also, working jobs like landscaping or construction that have heavy immigrant populations. So that's, in essence, what the lower court said, a very sensible ruling designed to protect people's rights on a temporary basis while the litigation was proceeding.

Barb: Yeah. Kim, what did the Supreme Court decide about this case? Joyce has given us a nice summary of what happened in the lower court. What was the court's reasoning?

Kim: Let me pull out the opinion and read it. Oh, wait, there isn't one. There was no explanation. It was an unsigned order. We're not even sure what the vote was, although I strongly suspect it was six-three. We at least know the three, but we all know.

Barb: Yeah.

Kim: Beats me.

Barb: Yep. The old shadow docket strikes again, right, about-

Kim: Mm.

Barb: We don't know, but what did the Supreme Court decide here, at least in its very minor one paragraph opinion?

Kim: Well, that this can continue, that ICE agents can continue to question people based on these factors. It allowed this practice to continue as the case makes its way through the court. So that means for the entirety of the time that this case is being decided on the merits at the trial level, appellate level, and if it gets back to the Supreme Court, on the merits, this will continue. It's racial profiling is happening on the streets, and it's authorized by, at least temporarily, the highest court in the land.

Barb: Yeah. It's really horrifying, because, Jill, it seems to fly in the face of... I teach criminal procedure among other classes, and one of the landmark cases of the Supreme Court on this issue is a case called US versus Brignoni-Ponce 1975. Didn't that case decide this very issue?

Jill: Well, that would mean precedent had to have something to do with what the court does going forward, and we know that it doesn't. Yeah, that case said that the Fourth Amendment would not allow the Border Patrol, so we're still talking about ICE, to stop a vehicle near the Mexican border and question its occupants about their citizenship when the only ground for doing so was suspicion that the occupants appear to be of Mexican ancestry.

Now, they did make an exception, which makes me wonder about how the court will now use this, except at the border and its functional equivalence, patrolling officers cannot stop only if they think it's because someone is Mexican. They have to have some specific articulable facts with a rational inference from those facts to warrant a reasonable suspicion that the vehicle contains aliens who may be illegally in the country. That was what the decision was.

So it limited their ability to act on racial profiling to a vehicle that was at or near the border. So I worry that there could be some argument here based on statistics and based on some language from Kavanaugh's concurrence, because although the courts just ordered that it continue, Kavanaugh wrote a lengthy concurrence, and the statistics are not great for either side, I would say, because it's like maybe 10% to 15% of people in certain career paths and certain jobs, landscaping, construction, agricultural workers, are, according to the statistics quoted, not documented aliens.

So maybe this is going to be the argument that it's like if you're at the border, you can do this, and if you're found working in landscaping, or agriculture, or construction, and you speak Spanish, maybe those factors are enough to statistically justify what would otherwise be a clear violation of the Fourth Amendment right to be safe from a unreasonable search and seizure. I mean, imagine if you were stopped. One of my good friends is a fluent Spanish speaker and often speaks Spanish. Now, she happens to be blonde, but what if she wasn't, and she was speaking Spanish and was stopped? Does she carry with her her passport to show she's a citizen?

Barb: Yeah.

Jill: No, she doesn't. So I think this case should govern, but precedent means less these days, and there is an exception that could be expanded.

Barb: Yeah, but of course, because, as Kim said, this is decided on the shadow docket. We don't get any of the reasoning.

Jill: Right.

Barb: Did they distinguish it? Did they overrule it? We don't even know. I just want our listeners to think about this for just a second. It's about your appearance.

Jill: Yeah.

Barb: So there have already been people we know detained, handcuffed, thrown to the ground, saying like, "Bro, I'm a citizen." "But hey, you got brown skin, so I'm allowed to do this till you satisfy me that you're not," or as you just said, speaking Spanish, or how about people who have certain kind of jobs? Are you kidding me? Everyone who works in construction is now under suspicion? Everybody who works in a hotel is now under suspicion? Everybody who works as a farm laborer is now under suspicion? That is not how America is supposed to work.

There's even one that says if you are in a certain location frequented by unlawful immigrants. So think about that like MacArthur Park right in LA where they had this big

raid a month or so ago. No doubt there are some undocumented immigrants there, but there are also plenty of US citizens. So everybody's going to get rounded up, and detained, and questioned because of their appearance and their presence in this park.

Jill: Insane.

Barb: So, to me, it's really repugnant.

Jill: Ugh.

Barb: Joyce, even though the court has tells us nothing about its decision, we do get a few tea leaves about the court's reasoning in the concurring opinion that was filed by Justice Brett Kavanaugh. He says so much that it's actually hard to figure out the basis of the court's decision. It almost makes it seem like he does find this is all reasonable. What did you make of his decision?

Joyce: Yeah. I felt like he was trying to respond to the inevitable criticism of the court for deciding a case like this on the emergency docket without an opinion. Yet, he's just one justice writing, so I don't know that what he says does anything helpful. But look, he raises a standing issue that I think is really troubling here, because if these plaintiffs don't have a right to sue, then the government can just send out what they're calling roving bands of agents whenever they want to, and they can harass people and, as y'all have been pointing out, not just people who are undocumented who should not be harassed anyhow, but also American citizens. I mean, we could essentially just be looking at roving bands of thugs on the streets, masked agents refusing to identify themselves. At that point, I don't really like the world that Brett Kavanaugh has signed off on and the rest of the justices. I think that it's just a world where the constitution is gone and it's open season.

Kim: I mean, I was gobsmacked by the part where he said relying on things like appearance and language is common sense. What? Hello? Where?

Joyce: What world does he live in that he thinks that's okay?

Kim: What? So if you are Latino in America, you are walking probable cause. No. What? Ugh.

Joyce: I mean, but seriously, Kim, you're making such an important point. In the Deep South, we used to call it the crime of driving while Black, right?

Kim: Yep.

Joyce: Before the Civil Rights Movement took hold, police would pull people over simply for that. I think now we're-

Kim: Ooh, not just then. I've been pulled over for a DWB more than once.

Joyce: Right. I mean, it's an ongoing issue, right? I mean, it used to happen to my first assistant who drove a really pricey car and was a young Black man and would get pulled over all the time. Now, we're going to do that same thing for Brown people and other people.

Kim: Yep. Yeah.

Joyce: The court is charged with making America a fair country, a country where the Constitution works for people. I fear that they have lost that context when Brett Kavanaugh can say, "It's just common sense."

Jill: One of our listeners asked, "Why is this different than the New York stop-and-frisk, which was not upheld?" You have to wonder, you can't just stop people randomly without having probable cause or a reasonable suspicion at least. Yeah, it is not common sense to say that this conglomeration of facts that the lower court judge said cannot be used in conjunction with each other or any one of them singly. It's not enough to have that kind of reasonable cause to stop someone. We need the Fourth Amendment to come back.

Barb: Yeah. There's some suggestion in the Kavanaugh opinion, although there may be a standing issue that was motivating some of the other justices, which would be less troubling, of course. But, of course, we don't know because they-

Kim: But it's still bad. But it's still really bad.

Jill: It's still bad.

Joyce: Yeah. The standing issue is terrifying, right?

Kim: Then, who can sue? If they can't sue-

Barb: Because then, who? Not they. Yeah.

Joyce: Yeah.

Kim: Who can challenge it?

Joyce: This just goes on and on forever, and nobody can sue because you can never say that you have a reasonable expectation that they'll violate your rights in the future the way Kavanaugh sets this out. I think it's terrifying.

Barb: Yeah. Yeah. Well, I guess someday we'll find out, but meanwhile, we also get a dissent from Justice Sotomayor who continues to be the conscience of the court.

Kim: Yeah.

Barb: Kim, what was her view, and how do you assess her take on this case?

Kim: So she did dissent, and she was joined by Justices Elena Kagan and Ketanji Brown Jackson. So we know that at least three people did not go along with this. Is it possible that a fourth also didn't but just didn't join this dissent? Yeah, but I mean, I don't know, but I will read a little bit of what Justice Sotomayor thinks about this ruling. I sense that she was also addressing Kavanaugh. She said, "We should not have to live in a country where the government can seize anyone who looks Latino, speaks Spanish, and appears

to work a low-wage job. Rather than stand idly by why our constitutional freedoms are lost, I dissent." There was no "respectfully" in there?

Barb: Yeah.

Kim: I mean, I could not agree more. I would urge our listeners to read both Kavanaugh's opinion and Sotomayor's dissent, because, first of all, this should not be on the shadow docket. This is so important, and it's one reason why just allowing this court to rule what they want to really have big consequential actions without having to explain themselves is just untenable. This has to stop, but who's going to stop them? That's the problem. It's really, really awful for the rule of law.

Barb: Yeah. Yeah, I agree with your assessment there, Kim. We'll put those opinions in our show notes. But I remember Justice Ruth Bader Ginsburg once said... Somebody said like, "What's the point of writing these dissents all the time? Aren't you tired of losing all the time and just writing these meaningless dissents?" She said, "When you write a dissent, you're writing for the future, and it will resonate with some people."

I was out somewhere and saw an older woman walking with a t-shirt that said, "With fear for our democracy, I dissent. Justice Sonia Sotomayor." That was an opinion she wrote a while back. So it resonates with people, and it also raises some alarm bells that this is not normal, this is not the way our democracy is supposed to run. So I think that when they write those words, they're important, and so we will put that in the show notes. Jill?

Jill: Let me just add to that, that Justice Sotomayor was on The Stephen Colbert Show, and she urged people to read the decision and her dissent, because it will make some people aware of the danger we are in as our rights are being taken away and will inform political action and voting. I think that's an important reason for these dissents to be understood and read.

Barb: Yeah. Absolutely. Well, Jill, I just wanted to wrap up by asking you. What's the practical consequence of a case like this? Does it mean we all have to carry our papers? Are we one step closer to a police state? It's just the emergency docket, so we shouldn't worry about it? I mean, what's the takeaway from a case like this?

Jill: So, Barb, when you asked the question, you said "we."

Barb: Yeah.

Jill: It depends on who you mean by "we."

Barb: Yeah. Okay.

Jill: I think anyone who speaks Spanish, speaks English with an accent, who looks possibly from Mexico or other Spanish-speaking country may have to start carrying their papers with them. I am appalled by that thought, but yes, it is possible that you need to protect yourself, because we have seen people who are released after they can prove that they are US citizens, but you've already been detained, and taken away, and subject... One person was slammed to the ground.

So if you happen to fit into this category that is now being allowed to be targeted by the Supreme Court's shadow docket ruling, you do need to do something to protect yourself. So it's shameful, it shouldn't happen, but I don't know that it's going to be undone in a merits ruling. Right now, we're not on a merits ruling, but will it be undone? Probably not.

Barb: Ugh. One step closer to the police state.

Kim: When you love a pet, they deserve the best. Until recently, I had no idea that cat food that most people rely on has questionable ingredients in it. That's why we are so glad this podcast is sponsored by Smalls. Smalls cat food protein-packed recipes are made with preservative-free ingredients you'll find in your fridge, and it's delivered right to your door. 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. What a great deal. Just head to smalls.com/sisters for a limited time only.

Jill: Kim, just like you, I am an avid pet lover. My furry friend, Brisby, is so much a part of my life, and I've never had a cat, but I frequently stay in New York with a very good friend who is a very fervent cat lover and who has let me help name her cats. So I was really interested to learn that Smalls is so good. 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 USA.

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 a checkout. You can give \$5 for flea and tick medications or \$7 for vaccines. But don't just listen to us. Smalls customers say the same thing. Jennifer M. said about her cat, "After every feeding of Smalls, he gets this burst of energy and starts running around the house. Now, his fur is softer and more vibrant with higher contrast. Honestly, I wouldn't recommend anything else."

Joyce: Yes. So I agree with Jennifer's assessment. We've got a number of cats, and I've seen a pretty crazy change in their energy levels now that they're enjoying real food from Smalls instead of that nasty sort of stinky kibble. I don't think we'll ever go back. One of the things that's great for cat lovers and that I love the most about Smalls is that you can even add other kitty cat favorites like amazing treats and snacks to your Smalls order, and then you can present your cat with the total feline feast that he or she deserves. So what are you waiting for? Give your cat the food that they deserve and order Smalls.

Barb: Wow. With all of that about Smalls, I'm tempted to eat some of it myself. But for a limited time only, because you are a SistersInLaw listener, you, our listener, can get 60% off your first Smalls order plus free shipping when you head to smalls.com/sisters. That 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: In addition to the case we've just been discussing, there are at least four SCOTUS cases that I want to discuss with my sisters today. They are important for our listeners to fully understand because I believe they all have implications for the future of our democracy. Will they open the path to Trump getting all the power he wants and that Project 2025 promised him? Will these SCOTUS cases make Trump the unitary executive that our

founders did not want? Will they end the balance of powers that now exist and create an immune ruler who can, as Trump said, "do anything I want. I'm President of the United States?"

Increasingly, it looks like the six-three majority of the court wants that too. So let's look at exactly what the majority has decided on its shadow docket in just this week and look at what we think the decisions mean on them. What does it predict for the merits decisions? Barb, the court agreed to expedite the hearing on Trump's tariffs. Take it away, Barb, and talk about what this means.

Barb: Yeah. Well, you may recall that we've had some lower courts invalidate the tariffs, at least in part and in most, saying that he might have some residual ability to impose tariffs, but that largely, tariffs are a power allocated to Congress under the Constitution. So, first, we had the Court of International Trade and then the Federal Circuit both agree that Trump overstepped his power in imposing these tariffs across the country. The Trump administration appealing on the emergency docket has asked to block those orders so that they can continue with these tariffs, arguing that it will create chaos in foreign trade if these tariffs cannot be imposed.

I have to chuckle a little bit at the idea that it's the order that's creating chaos in the tariffs in foreign trade and not the tariffs themselves. The Court of Appeals that decided this case did grant a stay to give President Trump an opportunity to appeal, and the Supreme Court has taken him up on this. They have said they will hear oral argument in this case in November, which is much faster than we would expect under ordinary circumstances where we wouldn't expect a case like this to be heard until at least the very end of this term. But because of the exigency requested by the Trump administration, the court is going to take it up quickly.

Jill: So, Joyce, there's another case that's really troubling me. Roberts, our Chief Justice, issued an order allowing Trump to fire a member of the Federal Trade Commission. I would point out that there, obviously, have been a lot of people fired. Some of them high-level like this. One, a federal governor of the Federal Reserve Board, and another, the Registrar of Copyrights. So there's a lot going on, but let's talk about what happened with the Federal Trade Commissioner.

Joyce: Yeah. I mean, this is one of those cases where the procedural aspect of the case is intricate and important because what Roberts did is he granted the government's request for an administrative state. That's a temporary pause of the lower court's order while the full court considers the substantive merits of the case, and there will be briefing, there will be oral argument, what we traditionally think of the Supreme Court doing.

But what Roberts' order means is that Trump can go ahead right now and fire Rebecca Slaughter. She was just reappointed to serve a second seven-year term last year. Now, she's out of a job. So the notion that she can be pushed off and then after the court decides the case, if they decide in her favor, she could be reinstated, that's a little bit sloppy and silly here.

I think Roberts doesn't provide any explanation for his order, but there is speculation that this is just part and parcel of the march towards a much more muscular version of the presidency, the unitary executive theory that we've talked about a lot and that Trump

clearly wants, and that there appear to be four solid votes for on the court with a couple more up in play. So this may give Donald Trump the ability to fire even appointed folks in the federal bureaucracy, which would simply allow him to move further towards having a loyalty court instead of experienced people with expertise who can serve the American people.

Jill: Yeah. When you say appointed, we should point out that they are appointed to statutorily guaranteed terms, so that, in most of these cases, you have to have some cause for firing someone from an appointed term. It's very troubling that he can have this happen. As you point out, she's out of a job, and there's a vacancy that will be filled, and someone else will be put in. The votes that that group does will be influenced in the interim, which will be lengthy because we know court cases take a long time. Right?

Joyce: Yeah. I mean, the point that you're making is part of the legal intricacy of this case, which has to do with overturning a 1935 Supreme Court decision. We've talked about it before. It's the Humphrey's Executor case, and that holds the law that says the president can't do this, that there has to be inefficiency or neglect of duty or malfeasance before he can fire somebody in Slaughter's position. But it seems very clear that the Supreme Court is on a path to overturn Humphrey's Executor.

Jill: Terrifying, terrifying. Kim, Roberts let Trump block foreign aid that Congress had allocated. Doesn't Congress have the power of the purse, and why isn't Congress doing anything to protect its power? What's happening now? The order does say, "For now, it can be blocked."

Kim: Yeah.

Jill: What does that mean?

Kim: So this one is interesting. It's actually the court that's blocking this \$4 billion at a lower court, said must be distributed in foreign aid to go to things like helping with HIV prevention and other life-saving stuff. While the parties file a brief and they are ordered to file their brief by today as we record this, which means Friday, the listeners will be hearing this episode one day after that deadline, to give the court a chance to decide whether they want to step in and weigh in on the issue quickly. So this is called an administrative stay. This is actually a fairly common and proper use of something like this. When something's happened, the court says, "Give us a minute. Parties, brief us, and let's see what we want to do." That's different from ordering that.

For now, Trump has the power to stop this. So it may seem semantic, but it's not. In it, there was a hint that Justice Roberts said about Congress to that other question that they are considering at this moment, reportedly, a pocket rescission, which is something that they can try to do to claw these funds back. It's an unusual, unorthodox attempt to try to do so, but it sounds to me that John Roberts may be thinking, "Okay, Congress. Let us off the hook. Go ahead, and do something, and then we can get challenges on that at some other time, but this is your wheelhouse, and maybe..." I don't think that's the proper way to do that, but that's where we are right now. I expect the court will probably just weigh in. I don't know if what... Congress is not really good at moving quickly, and it seems that the court wants to. So I think it's more likely than not that the court takes this up.

Jill: So, Kim, just to clarify, because you used the term "pocket rescission," and a lot of people won't know what that is, my understanding is that it's really playing with the timing. So you'd hold off spending the money until there's not 45 days left to the term, and then you get away with it because Congress can't undo it because they don't have the proper amount of time left to undo it. That just seems wrong.

Kim: That is true. It does seem wrong, and also, just by the way of the fact that the court ordered briefing by the date that we are recording this, makes me think that that's not the way it's going to go. I think that the court is going to weigh in one way or another in a way that could basically be doing what Joyce said, expanding the unitary executive and just giving Trump more power as opposed to waiting for Congress to try to sort it out.

Jill: Oh, terrifying, terrifying. All right. One last case that happened this week was out of South Carolina. It's South Carolina versus John Doe. I think it's important for many reasons. Joyce, let me start with you. It's another emergency shadow docket decision, and it raises the issue of what standards the Supreme Court says it uses in deciding whether or not to stay a lower court injunction. It's one page and of course, provides little insight because it's a shadow docket. So we don't really know the reasons behind the ruling.

Thomas, Alito, Gorsuch dissented, but didn't detail why. It's not a merits ruling, but it upholds an appellate court order permitting a transgender student in South Carolina to use the boys' bathroom during the appeal of that order based on what is called the standards applicable for obtaining emergency relief from the court, such as whether the state would be permanently harmed if the lower court's ruling were not put on hold. So can you describe that a little bit more, Joyce?

Joyce: Yeah. I mean, I think that's exactly what's going on here, right? I think we've got the three justices, Thomas, Alito, and Gorsuch, who say they would've granted the state's request and told the plaintiff that they could not use the bathroom while the case was pending. But apparently, there was a view among the remaining justices that the state failed to meet its burden of showing that it would be permanently harmed if that ruling was not put on hold, and so the court didn't.

Of course, as you've pointed out, this is all conjecture. The court could spell this out for us. It could tell the lower courts how it's ruling and why it's ruling that way, but we know that Brett Kavanaugh has recently commented, "Well, we can't do that because we're doing it so quickly. We might get it wrong if we put it down on paper," which I think just points out how ridiculous this overblown use of the emergency docket has become.

Kim: Imagine your students saying that during an exam, "No, this is too quick. I don't want to put this down on paper."

Joyce: I mean, yeah.

Kim: "I'm a need a gun."

Joyce: Did you not see him saying that and just think, "Do you even hear yourself?" You know?

Jill: So, okay. Kim, there's another reason I wanted to discuss this case because, of course, there are actually a lot of transgender cases coming to the Supreme Court. This one involved the use of a bathroom that aligned with... It was a requirement that you only use the bathroom that aligns with your biological sex as opposed to your identified sex. We're looking at things like military service and trans girls competing in sports, gay conversion therapy, gender-affirming care. So talk about those cases and maybe even describe what biological sex means in terms of this particular case.

Kim: Oh, goodness. I mean, it's all so silly. So, first of all, the Supreme Court has already ruled, unfortunately, on the issue of gender-affirming care when it upheld last term a Tennessee law banning therapies like puberty blockers and other things for trans kids. They did that by saying, "No, no, no, this is not about sex." Right? This is why I hesitate to answer your last question about what is biological sex.

Jill: Yeah.

Kim: They're like, "No, no. This law doesn't regulate sex. This law regulates medical care and age." It's like, "What? What? How does that comport with reality? It is targeting trans kids. Of course, it's about gender." So I think, A, the court does some sort of jujitsu and finds that... this law. It's like, "No, no, it's not about gender. It's about public buildings and urination." They're going to come to some ridiculous conclusion that this doesn't have to do with sex because they don't want to be the ones that come out and say that or at least some of them. I think it's hard maybe to get a majority of people who want to come out and say that. So there'll be some other nonsense.

I mean, when it comes to military service, there's much deference to the executive branch in terms of military readiness that they've been hanging their head on. Sports teams and girls, that's something different. That involves federal funding that prohibits gender-based discrimination to get that money. So I don't know how they get around that, but probably the same. This is about sports and weight... I think, my prediction is that they're going to come up with something nonsensical, and that is bad as saying... I mean, I was trying to think about this in a different context other than LGBTQ people, and it would be by forcing people to say, "Oh, it's your biological sex, which is what's written on your birth certificate." It's the only explanation I can think of or just how you look to people. Right?

Well, if that were the standard, what if I were an albino. Right? What if I had blonde hair, pale skin, blue eyes, born to the same parents, same heritage, and there were laws that would say, "Well, if you are Black, you are entitled to this, that, or the other," or protecting people on the basis more importantly, law is protecting me against racial discrimination, and I make a racial discrimination claim, and the court says, "Oh, no, no, no. That's only meant to protect Black people. Clearly, you're not a Black person. Apparently, to my eyes, you are pale-skinned and blonde-haired?"

That's the same way that they're deciding who is biologically this or that. It's dumb. It doesn't comport with reality. It's important to remember that all of this is an effort to control people. They're trying to control the same way they control with abortion laws, women, and their reproductive rights, and their bodies, really. They're trying to control the bodies of LGBTQ people because they see them as something that they don't want in a society. I don't often go to the politics of these laws in this, but I think you cannot separate it from that because that's what makes these legal distinctions just so ridiculous.

So that's what I think about this whole thing about biologicals. Maybe not the question you asked me, but good God, this is so-

Jill: But a good answer.

Barb: Good answer. Yes.

Jill: Definitely, a good answer. Okay. So, Barb and Joyce, let's go to some of the legal issues here. Barb, what was the legal basis for... The student is identified as John Doe to protect the identity.

Barb: Mm-hmm.

Jill: What was the basis for Doe's challenge to the South Carolina law?

Barb: Mm-hmm. One was equal protection. So the 14th Amendment's Equal Protection Clause says that everybody has equal rights under the law, and you can't be discriminated against on the basis of things like sex. What's interesting about this is I'll be curious to see how this argument flies because there's a case called Bostic that was decided by the Supreme Court a few terms ago by Justice Gorsuch, who is certainly a conservative, and they did find in a statute for employment discrimination that firing people who were gay did violate a statute that made it illegal to fire on the basis of sex.

There, Gorsuch went so far as to say, "Well, you are being fired on the basis of sex." They said, "No, we treat straight people the same way. If you're a man or you're a woman, you get to work here. You just can't work here if you're gay." What Gorsuch said in that case I thought was really interesting. He said, "It does discriminate, because if I were to go to a holiday party and say, 'This is my husband, Bob,' there'd be no problem if I'm a woman. But if I go to that same holiday party, and I introduced my husband Bob, and I'm a man, I could get fired for that." So he said, "That is discrimination based on sex." So that's very interesting, and I wonder if, now we're not looking at a statute, we're looking at the Equal Protection Clause, could that make a difference.

There is also a statutory claim here, and that's Title IX. Many of our listeners may be familiar with Title IX from the sports context because that's where we hear about it so much is equal opportunity in sports, but it's actually equal opportunity in all educational programming. So for a kid who is told, "You can't use the bathroom that matches your gender identity. You're not allowed in. In fact, not only are you not allowed in, you'll be punished, if not expelled, if you enter that room," that seems like a violation of the Title IX provisions that say you can't discriminate against students on the basis of sex.

Kim: So, remember, Barb, it won't be on the basis of sex. It will be on the basis of building on stalls.

Barb: Yeah. Yeah, yeah. Yeah. Right. That's right.

Kim: And age. And age.

Barb: Lighting, lighting, age. Yeah, yeah, yeah. Right, right. They'll find some reason.

Jill: Of course, that was the reason why the ERA was fought against was because we'd have to share bathrooms, but okay.

Barb: It's always the bathrooms, right? Everything-

Jill: It's always the bathrooms. Yeah, yeah. Yeah. All right.

Barb: Do any of you really... Wait. Can I just ask you? Do any of you really... Are you freaked out that transgender women might be in the bathroom? I just don't care.

Kim: No. Can I tell you? I used to-

Joyce: I really don't care at all.

Kim: So one of my favorite tricks when I would go to sporting events, and I did this all the time-

Jill: Where did you go next?

Kim: ... where there would be a big long line at the women's room and no line at the men's room, I would march right in and use... I don't care at what's going to happen to me. I need to pee. Everybody in here is doing the same thing. Who cares?

Jill: Yeah. Okay. So, Kim-

Barb: Wow.

Kim: Yeah, Kim Pioneer.

Joyce: Kimberly Atkins Stohr, I love it.

Jill: Kim, another question for you is, there's some suggestion this case covers only this one student in this one state. What's going on there?

Kim: Yeah. Well, that suggestion comes from the student. That was a tactical reason to make stronger the argument that the burden on the state in allowing the student to use the bathroom of his choice was not so great because it's not like it's forcing the state to allow all these hordes of trans boys to use the bathroom. In fact, they could not identify another trans student that this affected. So that was a way for the student to say, "No, no, you're not getting out of it that way. It's just me. Let's stipulate that it's just me." I thought that was really smart.

Jill: Okay. One last question, and this goes back to weighing the injury. Barb, is the injury to the state from the lower court order required to stay from the SCOTUS? What's their injury here and maybe in some of the other cases where they're getting away with getting this done?

Barb: Yeah. So you raise a really good point, because to get relief on this emergency basis from a lower court order, rather than just letting it stand while you work through the ordinary

process of litigation, maybe it'll be many months, but ultimately, you'll get your day in court. To get that switched by a court, the non-prevailing party in the court below has a burden of showing that they will face irreparable harm, unless they get relief immediately. So, here, the school just couldn't show that kind of immediate irreparable harm. Really, if you're going to let this kid use the bathroom for a few more months, it is going to cause irreparable harm to the school? No. So the court said that they did not make that showing.

What's interesting is that same showing is supposed to be made in all of these other cases. It means that the party that prevails in the lower court has a real leg up because the non-prevailing party has this burden. But we've seen the court in this Trump administration in this second term allowing the Trump administration to prevail, finding that there will be irreparable harm in cases like the termination of NLRB commissioners, FTC commissioners, that somehow it will cause irreparable harm to these agencies to allow these people to keep their jobs, which is, really, just preserving the status quo. So it seems like the court has been a little hit or miss on this topic.

Kim: You guys, I have been reorganizing my closet a bit, and putting the summer stuff away, and bringing out some of the fall things, and this is my time of year. I'm a fashion girlie. I am not into pumpkin spice lattes, but I do love my pumpkin spice corduroy pants that I cannot wait to wear. Fall is all about layering, and there's no better base layer than high-quality, comfortable shapewear when you're dressing up for weddings, a date night, or getting cozy in sweaters and boots. I love sweaters and boots. I cannot wait. The right shapewear makes everything look and feel better. Today's episode is brought to you by Honeylove, the brand redefining modern shapewear with real comfort and serious support.

Jill: Kim, I need you to come to my house to help me do the revision of my closet, but I agree with you about Honeylove because it is really great. Honeylove's targeted compression works with your body, not against it. It gives you sculpted support where it counts and easing up where you need flexibility. Even better, thanks to flexible boning hidden in the side seams, it actually stays put. That means no rolling, no adjusting, and no awkward tugging under your layers. No matter how much you move, whether you're slipping into a fall dress like Kim is now starting to do or just want to feel confident under your everyday favorites, Honeylove has you covered. Here's the best part. For a limited time, you can save 20% off your entire order with our exclusive link, honeylove.com/sisters. Support this show and elevate your fall wardrobe at honeylove.com/sisters.

Joyce: Honeylove is the perfect pairing for your exercise and outdoor activities. Their leggings are incredibly comfortable, and they've become my go-to for everything from Pilates, which I am addicted to, and also weightlifting and strength training. But best of all, their targeted compression technology means whether you love your exercise or whether you're like me, you'll never feel suffocated, and I know you'll love your Honeylove-inspired looks.

Barb: Treat yourself to the most comfortable shapewear on earth and save 20% off site-wide at honeylove.com/sisters. Use our exclusive link to get 20% off at honeylove.com/sisters. After you purchase, they'll ask you where you heard about them. Please support our show, and tell them we sent you. Experience the new standard in shapewear with Honeylove. The link is in our show notes.

Joyce: Well, now, it's time for our favorite part of the show where we get to answer our listener questions. If you've got a question for us, please email us at sistersinlaw@politicon.com or tag us on social media using #SistersInLaw. If we don't get to your question during the show, keep an eye on our feeds throughout the week where we'll answer as many of your questions as we can. First, we've got a question. Kim, this one is for you from Betty. Betty asks, "Is the Census accurate and legally binding? Why is Trump targeting it?"

Kim: This is a really good question. So the Constitution provides that every 10 years that in "actual enumeration" is taken of the entire population. In the '50s, Congress codified that by ordering the Census Bureau, empowering the Census Bureau to do not only a head count as best as they can of all people in the country, not just citizens, all people in the country, but also, to ask other information like all the things that you see on your Census form when you fill it out. Each year, the Census form goes before Congress to get approval.

So, each year, Donald Trump has been in office during a Census, he has tried to push questions on there that have seemed to be aimed, in my opinion, at targeting things like immigrants by asking people's citizenship for one. That went all the way to the Supreme Court. He actually lost that case because he didn't do it right under the APA, but really targeting people in a way that civil rights groups have feared, is meant to target them, put fear in them, and also, to cause undercounts in certain communities because the Census is the basis on which our congressional maps are drawn based on who is in each district.

If Latino people or people who make low wages or something else are undercounted, they lose political power literally in their vote. So that, in my opinion, is why he's targeting them, but that's the legal basis as to why the Census is taken. In terms of accuracy, Census Bureau takers, the people who work for the Census Bureau traditionally have been very, very earnest in trying to get as many people as they can. That's why if you don't fill out your form, someone comes knocking on your door. But yeah, the targeting is a choice.

Joyce: Barb, question for you from Maureen. She asks, "As a layman, I learned a lot about the judicial system, but I don't understand the circuit system. Can you explain how the country is divided into different circuits?"

Barb: Oh, yes, Maureen, this is such a great question. So the federal court system has, in every judicial district, and there are 94 of them, has our federal district courts. So here where I live, I live in the Eastern District of Michigan, and if I were to file a lawsuit, or be a defendant in a lawsuit, or be charged with a crime, that's where that case would happen, and the case would go through its normal process.

Then, when the time came to appeal, if I were dissatisfied with the outcome in my district court, I could then appeal it. The appeals court is smaller because they don't hear the same volume of cases as their district courts, and they're divided regionally. So I live in the Sixth Circuit Court of Appeals, which includes Michigan, Ohio, Kentucky, and Tennessee. They're arranged from east to west with a few catch-ups in between.

So the First Circuit is up in Maine and New England area. The Second Circuit comes down to New York. The third Circuit is down New Jersey and beyond that. Fourth, fifth. As we get across the Midwest, we got the sixth, the seventh, the eighth. Then,

interestingly enough, down where Joyce lives, there used to be the Fifth Circuit, and they divided it up because it got too big, and they added the 11th Circuit. There's also something called the DC Circuit and something called the Federal Circuit that handles specialized cases like patent trademark, international trade, and some other kinds of things.

Joyce: Our last question, Jill, this one's for you, comes from Margaret. Margaret asks, "How are federal grand juries selected, and is the process subject to that type of political corruption?"

Jill: So I love this question, Margaret, and we love when we get a chance to explain things that we take for granted, but that most people don't understand. You hear a lot about federal grand juries nowadays. Grand jurors at the federal level are selected at random from a fair cross-section of the community within the district. Barb was just describing what the Eastern District of Michigan is and then the Sixth Circuit, which encompasses many districts within Michigan and other states.

So we want to make sure that people are represented from the districts where the cases are happening. Usually, it's a voter list that is used to randomly select people. So people get questionnaires. If you meet the eligibility requirements, you have to be a US citizen, you have to live in the district, you have to be able to communicate in English, and you cannot be convicted of a felony, unless your civil rights have been restored.

So, for example, all those people who were pardoned by Donald Trump for invading the Capitol on January 6th, they have their civil rights restored because they were pardoned. So they could serve on a grand jury. They are selected from that group by the presiding judge of the district, 16 to 23 members, and they can serve for up to, actually, 36 months. Usually, it's 18. Now, they don't serve every day. They may come in only once a week, or once a month, or a couple times a week, except in special investigative grand juries like the Watergate Grand Jury, where they serve for multiple days every week.

So, basically, that's how they're chosen, and it is not by the lawyers as it is for a trial jury. It's by the judge. So you can get exempt if you're over a certain age, usually, above 70, or if you have a child who's too young and can't be left, or have any other kind of responsibilities for caring for someone else. Besides the grand jury, sometimes alternates are also added in case people drop out while a case is being heard so that they won't have to be undone. They basically hear the evidence that will establish whether a case can be indicted, whether a defendant can be indicted. They gather evidence through subpoenas and through witness testimony, and they have a duty of secrecy. So that's how we get to a grand jury who will then act on the evidence presented by a prosecutor.

Joyce: Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Jill Wine-Banks, and me, Joyce Vance. Follow #SistersInLaw wherever you listen, and please give us a five-star review. It really helps others find the show. Show some love to this week's sponsors: OneSkin, Calm, Smalls, and Honeylove. The links are in the show notes. Your support for them really helps to make this podcast possible. See you next week with another episode. #SistersInLaw.

Jill: Yeah, yeah. Sorry. Cat food is for cats only. Do not eat the cat.

Barb: Do not eat the cat?

Jill: Tuna. Yeah.

Barb: Who do you think you are, Donald Trump?

Jill: Yeah, that's right, Haitian immigrant.

Joyce: If you are-

Kim: They're eating the cat food.