

Jill Wine-Banks:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Joyce Vance and me, Jill Wine-Banks. Since the holiday season is approaching, it's time to order #SistersInLaw merch. Go to [politicon.com/merch](http://politicon.com/merch) where you can get yourself a sisters-in-law T-shirt, hoodie, water bottle, a pin, and another pin, and another pin, since I'm a big pin fan. And much, much more.

Today, we have a stress filled week of news and we're going to be discussing the newest ruling by the Supreme Court on the SB8 abortion law, gerrymandering, and the latest news about the January 6th committee. But before we get to those heavy duty topics, since it is a stressful week of news, let's talk about what we each do to relieve our own stress. How do you deal with when you can't really change the outcome of the news around you, what are you doing to take care of yourself? Joyce, why don't you start?

Joyce Vance:

Well, I was telling y'all before we got started today that this has just been the week where I think maybe it's okay to feel a little bit angry, a little bit stressed out by everything that's going on. I was actually so mad. I was listening to Bob Joel's funeral on the radio while I was driving to a lunch and I ended up pulling my car over and pulling out my phone and dictating an angry op-ed that I'll never publish.

It felt good to get it out and down on paper. I think sometimes we have to give voice to our feelings and be willing to sit with them a little bit, to give them some validity. Then we just have to remember, we have work to do and pick up and get going.

Jill Wine-Banks:

That seems like really good advice to give your self permission to vent. And one way is to write it down and then say I'm tearing it up and forgetting it. Excellent advice. What about you, Kim?

Kimberly Atkins Stohr:

Yeah, that is excellent advice. I tend to get angry, write it all down and then publish it in the Boston Globe and People. I get my inboxes flooded with responses. So I'll try it Joyce's way the next time.

Joyce Vance:

I don't know, Kim. I'm thinking maybe I'll be influenced by you this go round.

Kimberly Atkins Stohr:

But you know I do take self-care very seriously. I've talked on here and elsewhere about the real importance of taking care of one's mental and emotional and energetic health in every way that you can. I developed a meditation practice quite a while back. I don't practice yoga as frequently as I should, but I definitely try to meditate and take time just to be mindful, just to stop, just to take a breath and just to be in the moment that I'm in and something that small can make a big difference.

I am also a big fan of having a good therapist. I am very lucky that I have the means to do that, but there are also programs for people who don't have the means to seek out help and that has grown a great deal during the pandemic and is available online. I would suggest that too. I'm also really grateful to my husband, who since we got married in May often there are times that I just said can you give me a hug and tell me it's going to be okay? And he does. It makes such a difference. After living as an independent person for so long, I really, really value that.

Jill Wine-Banks:

Excellent. I hope our listeners will take that to heart. What about you, Barb?

Barb McQuade:

Yeah, that is all such good advice. Spending time with loved ones and also having some time to vent, I think is all really important, but I guess I share a couple of things. One is exercise. I like to run and it is a good outlet for my rage. If you're not a runner, you can walk. But I think getting rid of some of that extra energy and adrenaline can be very healthy. I also think this. I think there are times when I want to just lash out and sometimes if you go on social media and you see all these people lashing out, I think sometimes it contributes to this feeling that it's doom and gloom in the end of the world. And in some ways makes it worse.

So I think if you can find ways to do nice things for other people, it can really be helpful not only to them, but also to yourself. Just today, I was up at the law school doing some work and I went to my mailbox and I found a little package there that had been sent to me by a friend. And it was a pair of RBG socks. It was great. I mean, just a little gesture with a really nice note. She actually listens to the show. She knows I'm a fan. And that just really picked me up.

It was a with a little message about go get them carry on the legacy. We all have work to do. And that was such a great pick me up that it makes me want to do favors for other people. And I've also found, and I'm sure you have too that when you do favors for other people, you get a lift yourself. So doing nice things for other people. Oftentimes it's my kids or my husband, or family, because they're the nearest.

But that gesture that my friend gave me is such a nice pick me up that I need to pay it forward to somebody else now that she's done that for me. So lots of good ways. How about you, Jill? What do you like to do to try to impose some self-care?

Jill Wine-Banks:

Well, I agree with you completely, Barb about self-care in terms of paying it forward, whether it is mentoring someone or sending a small unexpected gift or email, or just calling someone to say, "Hi, how are you doing?" It could be taking a hot bubble bath. It could be going for a massage, taking a workout class that will make me particularly work through some of the stress and anxiety.

I try to do all of those things. Sometimes it's just escaping into television to some really silly show that will just divert me for a little while or reading a book that can take my mind away from it. There's also a former lawyer from... Actually, I don't know exactly where he's from. His name is Robert Hubbell and he does a nightly newsletter that comes out after midnight, which is when of course I'm still wide awake.

So I always see it when it first comes out, not the next morning. He's so optimistic and he always a happy spin. If news is, it could be the glass is half empty, he's always the glass is half full. He will see the good in all the things we're talking about today, the Supreme Court. It sometimes cheers me when I'm reading the Atlantic article about democracy is all over to read his take on why their statistics are wrong and why democracy isn't over. But I also do self-care by taking action.

I find that I can't just sit and listen to the bad news. I have to try to get out the vote. I have to try to speak to groups that could be motivated to help in solving the problems I think are facing our nation now. Then ultimately go back for a massage. I mean, I think those are the things I would do, which brings us to what are we going to say about all of the topics? Barb, you were going to lead us on our first subject. So why don't you take it away?

Barb McQuade:

Yeah. Thanks, Jill. Well, on Friday, the Supreme Court issued its opinion in one of the challenges to SB8, that is the Texas abortion law that bans most abortions after six weeks. Of course, the plaintiffs in that case, an organization called Whole Woman's Health had filed a lawsuit. And the tricky part of the case is not only does it seem to violate on its face Roe v. Wade, but it had this very unusual structure that made it appear difficult, if not impossible to find someone to Sue so that there could be judicial review of it. So today we got that opinion, and maybe Kim, let me ask you about what it is the court held today in the case brought by Whole Woman's Health, which were the private plaintiffs.

Kimberly Atkins Stohr:

So I can give y'all what will be an overgeneralized overview because the case... It's one of these Supreme Court cases that has an opinion, a majority opinion, a plurality opinion, a concurrences and dissents, and you really have to read the whole thing. It's about 40-pages long. A couple of times to really fully understand what happened. But basically what happened in this case, which is the challenge brought by the abortion providers was that the court held that they could not challenge. They could not list as defendants, state actors, folks like the attorney general, because they were precluded by sovereign immunity.

But they could bring cases against other individuals who help implement this law. A Reminder. We talked about this. This is this vigilante law that allows anybody to sue anyone either who provides abortion services or who helps any person get an abortion. The Uber driver, right? The Uber driver law. Anybody who aids and abets can also be sued for up to \$10,000 per charge. It's a vigilante law. And the court essentially held that the challengers can proceed against certain defendants that were named in this case, but not all of them.

But if you step back a bit, the big takeaway from this case and the most important one is the law itself was not enjoined. The court allowed this law to continue to remain in effect. I think one key point, there are lots of key points in all of these decisions that I'm sure we'll all dig into, but one point that I thought was important was from Chief Justice Robert who was with the three more liberal judges, overall different parts of the case have different number of people joining and not joining.

But overall the five-four force of it had the chief justice on the side with the liberal leaning justices. One point that he made aside from making clear his disdain for this attempt to work around judicial review in this case by leaving the state completely out of its implementation and making it very hard to challenge it constitutionally, he didn't like that at all.

But at one point he out and out stated that one reason that that was a clear problem is that this law, this Texas law, which bans abortion at... It's called the heartbeat bill, which is really incorrect because what it's measuring is anytime a fetal monitor can detect anything, resembling a heartbeat when it's six weeks, of course, it is not an actual heart beating, but if there's anything that shows up on the monitor, then at that point is when the ban takes place.

He said that it clearly violates the court's precedent. And when I said that, it stopped me in my tracks. I'm like, "Okay. You have the chief justice of the Supreme Court basically saying this law is against Roe and Casey." So it can't square with Roe and Casey. The fact that we had five justices that allowed it to continue, to remain in effect, I think tells you the ending of this game even if the current state of it means that the challengers have not lost yet.

Joyce Vance:

Isn't that what we've been saying all along, Kim? I mean, I know we've talked on the podcast repeatedly about this concern that we now have two laws in this country. One general jurisprudence and a separate body of law for abortion. I think what you said just highlights that.

Kimberly Atkins Stohr:

I think that's absolutely right. It's really, really troubling. The case is that, it comes out and you're trying to quickly read it and figure what it means. At first you see that, okay, the plaintiffs can proceed against some defendants, but then once you read through it and you realize what the next steps will be and what the end game is and the fact that you have five justices here pretty clearly if can't read between the lines a little bit who believe that this law is fine. So that tells you a lot. It's really troubling for people who believe that Roe and Casey were correctly decided.

Jill Wine-Banks:

This is where you get into that is the glass half full or half empty? And I'd have to say it's totally empty because at the end of the day.

Kimberly Atkins Stohr:

It's a hole in the bottom.

Jill Wine-Banks:

Exactly. At the end of the day, what this means, and I'm going to go ahead and talk about another abortion case, which was Dobbs, which was argued. I think you can predict the outcome of Dobbs based on this. If they aren't going to stop a six-week abortion ban, then they aren't going to stop a 15-week one which is what's at issue in Dobbs. So I think that we have to look to the underlying right of abortion. It's not just that you can't stop vigilantes and that's a whole different issue. Instead of SB8, let's start calling it the vigilante law.

Kimberly Atkins Stohr:

I like it.

Jill Wine-Banks:

Because that sounds a lot worse. So this vigilante law, if it's going to remain, it also could lead to other rights being taken away by vigilantes. So basically, the glass is totally empty.

Barb McQuade:

Well, and before we talk about what it portends for the future, Joyce, I did want to ask you about there's a companion case that came out on Friday. There's the whole women's health piece, which was the private plaintiff's case, but there was also a suit brought by the Department of Justice United States versus Texas that was heard the same day. Can you tell us about what happened in that case and what do you think it means?

Joyce Vance:

It's such an important question because we have to remember here that there are two different cases. There's the case by the private providers, their challenge to the law that Kim talks about, but DOJ also challenges the law on behalf of the United States. And here the Supreme Court declined to decide that

case. They said that they had improvidently granted certiorari and that's the language the Supreme Court uses when it doesn't want to decide a case or it decides that it's premature, they dismiss the case as improvidently granted. And it goes back to whatever court it was sitting in front of before then.

The thing about the decision in this case is unlike what Kim's talking about with the provider's case, where you have to parse the different parts of the opinion to try to figure out what's majority and what's plurality. Here, we don't get anything at all. We get a paragraph from the court and they say the writ of certiorari is dismissed as improvidently granted the application to vacate stay presented to Justice Alito and by him referred to the court is denied.

That's all that we get. So we have to guess. That's all that we know for certain. One thing that does happen as a result of this order is that the issue on stay is one that resolves in favor of keeping SBA in effect in Texas. When they say that they're denying the motion to vacate, that means to end the stay. What they're in essence doing is saying it's okay for SBA to continue on as the law in Texas depriving people of their right to abortion.

So that's the result, but the court doesn't really tell us what they're reasoning. It seems to stem from this notion that was explored a little bit in oral argument. Justice Barrett asked questions about this, that DOJ predicated its right to intervene in this matter, to bring a lawsuit on the notion that if DOJ couldn't sue, people's rights would go unprotected.

So there's this notion that if the private providers can carry their lawsuit forward, then DOJ isn't authorized to have any entry into this space. But I find that argument to be very unsatisfying and I'm really stunned that Justice Sotomayor was the only one who dissented from this. This was actually an eight-one decision. I have no idea why Kagan and Breyer didn't join her because there's no way that this very limited right to proceed that the private plaintiffs now have suing only some of the licensing agents in Texas, that that fully vindicates the variety of different rights that are identified in DOJ's lawsuits. And the government actually has some obligations in this area. So ultimately it's a problematic rationale, but this is the Supreme Court we have and this is the fate of abortion rights in this country.

Barb McQuade:

Yeah. I had the same thought because when you looked at that complaint that was filed by the justice department, what they alleged was harms to the United States as a party, not to the individuals whose rights are being violated every day that they're denied an abortion while Roe v. Wade is still on the books. But the United States has agencies in the State of Texas that perform abortion services. The Bureau of Prisons, the Department of Defense. They deal with Medicare and Medicaid that provides funding for some of these things.

They said while this law is in effect, they are in violation of their obligations and they're not able to do their jobs. So this is a cognizable harm that continues. So it seemed to me that it is a different harm, but nonetheless, I guess what happens is the stay is off. The law is in effect, but I did notice Justice Sotomayor in her dissent said, "I trust the district court will act expeditiously to enter much needed relief."

I mean that strikes me as a hint directly to our friend, Judge Robert Pitman in the district court to go back now and enter an injunction. Can he do that, you think Joyce? Can he go enjoin enforcement now, like today?

Joyce Vance:

Well, first let me say you're absolutely right, Justice McQuade in your analysis of why DOJ's case should have been permitted to go forward and we need you on the Supreme Court.

Barb McQuade:

Thank you. That's wonderful.

Joyce Vance:

The interesting implication of that is what happens if the Fifth Circuit slaps the providers down again and says, "You guys can't bring your lawsuit. Does DOJ get to go back and say, "Well, I guess we are back in business. If the providers can't bring forward their lawsuit, then Supreme Court, you have to let us. It's really a mess. I think your question about Judge Pitman is a very interesting one. I think you're absolutely right that this case now, the private plaintiff's case returns to his jurisdiction and that they could seek a new injunction of a stay. The problem is that order any order he enters will go back up to the Fifth Circuit. And I confess that my faith in that court has come to an end.

Kimberly Atkins Stohr:

Another big problem with that is in the private plaintiff's case, they can go back and seek injunctions as to these defendants, not necessarily more broadly. And that relief in itself certainly might not stop this law going into effect.

Joyce Vance:

That's interesting.

Kimberly Atkins Stohr:

And it will go back up. The second problem of course is that it sends it back up the chain where it gets to the Supreme Court. No matter how that case is handled, it gets to the Supreme Court. It seems to me there are five votes to overturn Roe and Casey in order to protect this law, which makes me back to Barb's point, I think the only game left is the DOJ challenge. I'm not sure that would end any differently, but I mean, at least at this point, it's saying, "Look, this is a broader issue than just whether you like this law. This is a broader issue where you have to state once and for all exactly where this privacy, right, that emanates from the constitution stands.

Jill Wine-Banks:

I think the DOJ action, I agree with Barb, that it has much more issues than are ever raised by the private plaintiffs. It raises the fundamental questions of constitutional rights and that it should have been allowed to go forward and that it shouldn't have to wait a failure of the other. But I also agree with you, Kim, that I'm not optimistic that even if it had proceeded that ultimately the Supreme Court would've done with it, what I think it's going to do in Dobbs.

This is entering a new era that is back to when I was in college and it's not at a pretty picture. It's a danger to all men and women in this country because men are the fathers of those children. It's just an awful situation.

Joyce Vance:

And Jill, to that point that you make about restricting challenges. I think that there's a concern here that this could go beyond abortion. For instance, when I challenged Alabama's immigration law, we used essentially this same theory that DOJ is using here. It seems like this no opinion, opinion something that's worthy of the shadow docket could actually be used in other cases to tell DOJ, "No, sorry. You can't bring lawsuits to vindicate rights here. So I think we're in a very treacherous place."

Barb McQuade:

Let me see if there's a nugget of hope, a drop of anything for Jill's empty glass. Kim, what about the state? Isn't there a case proceeding where there's a little more optimism?

Kimberly Atkins Stohr:

Yeah. So this is one of many other challenges that aren't a part of the Supreme Court case, but other folks who are challenging this law, and one thing that Justice Gorsuch mentions in the main opinion is that well just yesterday, some challengers won a summary judgment in declaring this law unconstitutional. And I said, "What?" So I went and I grabbed and I downloaded this decision and looked at it. And it turns out that the way that this law is written, yes, people can challenge it on constitutional grounds, but only individually one individual at a time.

So these plaintiffs won that declaration only as to the specific defendants in that case. It does not apply wider. So how can you protect constitutional rights on a one-to-one... That's like rendering it to... Remember the people court where people would go and Judge Wapner would decide one side wins or another. You can't protect constitutional rights to privacy that way, but the way this Texas lawsuit is written that's the only way you can do it. So I thought that that was pretty disingenuous by Justice Gorsuch to try to say, "Oh, look. People win these challenges. It's fine."

Barb McQuade:

It's right up there with them.

Kimberly Atkins Stohr:

No, it's not and they not it.

Joyce Vance:

It would serve Texas, right? If thousands of lawyers from across the country went and filed these lawsuits and flooded their courts, it would be the next level of legal activism to just flood their courts because of this stupidity.

Barb McQuade:

Well, Jill, let me just ask you sort of big picture about the repercussions of this. There was this argument that we heard during the oral argument of this case about even aside from abortion rights, the way the structure of this statute now could be a roadmap for others to try to eviscerate other kinds of rights. If you can't get judicial review of an unconstitutional statute, what is to prevent people from enacting legislation that undermines other constitutional rights? Could we do it for example, to say it is illegal possess any gun, period. It is illegal to speak out against the government, period. It is illegal to practice any religion other than Sharia Law, whatever it is. Is there any way to stop that in light of this case?

Jill Wine-Banks:

In one word? No. I think it could be expanded to those. Although there was some implications in the opinion that this was a unique thing, that abortion is different, but that's not true. I don't see any logical way that you could say that this way of vigilante enforcement couldn't be applied to other things that a different state and it could be used by the blue states to stop things that blue states don't like as well as for red states to stop other things. There's been a lot going on in the Supreme Court. The decision in this case, I think forebodes bad things to come.

Barb McQuade:

Yeah. Well, we'll leave it there. I guess my only drop, I'll put in your glass, Jill, to give you your empty glass a little bit of hope is... I know Kim disagrees with me on this, but I wonder about the political backlash that could come from this. If we see a loss of the right to reproductive rights in this country, I have to imagine that that... Or you should see the eye-rolling that I'm getting from Kim right now. It would mobilize women in favor of the Democratic Party and against the Republican Party. I can hear your eyes rolling from here, Kim.

Kimberly Atkins Stohr:

There's a hole in bottom of that glass, Barb.

Barb McQuade:

Well, I'm going to-

Jill Wine-Banks:

I hope you're right, Barb. I hope you're right.

Barb McQuade:

I'm going to grab on to that because that's the only drop I've got in that glass.

Jill Wine-Banks:

All right. We'll leave there and I'm sure we'll be talking about this topic again.

Well, I'm not going to talk about this. So Joyce, why don't you talk about ThirdLove.

Joyce Vance:

I love ThirdLove bras. Unlike you, Barb, I have just no compunction talking about it. I've been back into wearing hard clothes the last couple weeks. I've actually had to go out to the real world.

Barb McQuade:

Hard clothes. What is it like armor, suit of armor?

Joyce Vance:

Clothes that aren't sweatpants and T-shirts. I always think about hard pants as pants with a zipper and a waistband. I resent them, but what I don't resent are my bras. ThirdLove bras are comfortable all day long. What about you, Jill?

Jill Wine-Banks:

Absolutely. They are amazingly comfortable and supportive, and they're attractive. So they're really a terrific combination of everything that you could possibly want. Kim?

Kimberly Atkins Stohr:

Yeah, I agree. I mean, I'm sort of in between Barb and the rest of y'all about talking about this. But for me, the best thing is when you don't have to think about it, when you don't have to talk about it



because you're comfortable. Comfort is primarily my concern. And also you want your clothes to look good. And one thing that I think people don't think about is the fact that when your supportive garments look good, then that makes what you're wearing outside look good. You don't have the lines or other things that draw unwanted attention.

Joyce Vance:

So look, it's clear. We've got, y'all covered for Christmas. Good gifter is easy this holiday season. Even if it's just for you. So give the gift of comfort with ThirdLove your one stop shop for women in your life whether it's UltraSoft loungewear for mom, fun sleepwear sets for your sister, premium active wear for friends and Lax intimate sets for someone special. Gifting ThirdLove brings joy and feel good all day wear that hugs better holds, stronger, supports longer and, as Kim says, will make you look great.

Kimberly Atkins Stohr:

I am also all about high quality. The 90,005 star reviews don't lie with sizes from extra small, through 3X, we know you'll find your fit. If you don't love it exchanges and returns are free for 60 days. ThirdLove even gives gently used return bras to women in need with over \$40 million worth of them donated so far. And that's really important to me too. So take the easy fitting room quiz to focus your fit on size, shape, current issues and your style to deliver clothes perfect for you. So far, their stylist on standby have millions of women find their perfect fit.

Joyce Vance:

I love ThirdLove's washable silk PJs with a soft like a peach touch. It's machine washable luxury. Feeling is believing. Upgrade to everyday pieces that love your body as much as you do. And right now you can get 20% off your first order at [thirdlove.com/sistersinlaw](https://thirdlove.com/sistersinlaw). That's 20% off at [thirdlove.com/sistersinlaw](https://thirdlove.com/sistersinlaw).

Gerrymandering is a big topic and it can be technically difficult and a little bit confusing. There's a lot going on in this area because right now we're in that time period post-release of the decennial census data where states are drawing new maps and those maps are being challenged in court. So when I thought about how we should discuss this topic, I reached out to y'all yesterday and asked where you thought I should dive right in.

And the consensus was that I should cut straight to the chase, which is we're doomed and we're all going to die. It's sort of bad, but it's actually in some ways not quite that bad. So maybe we can add a few more drops of water to Jill's glass here, because there's a lot of litigation underway. We should start with Texas. We seem to be talking about Texas an awful lot lately. Bad things coming that direction, but there's actually some good news this week. So Jill, why don't we start by talking about DOJ's new lawsuit and what's going on.

Jill Wine-Banks:

So DOJ filed a suit against the state to protect voting rights, and it's getting harder and harder for DOJ to do that because the laws have been changed dramatically. But in this case, Merrick Garland and the assistant attorney general for the civil rights division, Kristin Clark have said that laws that impair eligible citizens access to the ballot box have no place in our democracy.

So they are trying to undo those laws without having the new voting rights bills that are pending in Congress passed. That's what we clearly need to do rather than just challenging under the limited method that we have right now.

Joyce Vance:

Barb, how do you assess DOJ's chances? Is it easy for DOJ to litigate in this space?

Barb McQuade:

This pre-clearance requirement, the pre-clearance requirement required states to first take any change they wanted to make in their voting rights, their voting laws to the Department of Justice for pre-clearance to review it and make sure that it complied with a law and wasn't discriminatory, particularly with regard to race. The Shelby County case gutted that. That's the one where Supreme Court Justice Ruth Bader Ginsburg gave her famous dissent. One of the greatest lines I thought ever was, "It's working. You don't throw your umbrella in a rainstorm just because you're not getting wet."

And she predicted that when this was gone, states would revert right back to enacting discriminatory laws. And sure enough, that happened. Then we got another case last term out of Arizona called Brnovich that made it harder to bring cases under section two of the Voting Rights Act. That's the section that says it is unlawful for a state to enact a law that results in a denial or abridgment of the right of any citizen of the United States to vote on account of race, which is designed to be a pretty broad language.

But we had Justice Alito in that case ignore the plain text of that statute and instead say, "As long as the political process is equally open to all voters of all color, then it's okay." So they kind of punted there and have really now allowed any sort of pre-textual law, like a law that's on the books for the purpose of protecting against voter fraud for example.

As long as people of color still have the right to vote, no matter how hard it might be, then that is going to pass monster. So what we've seen is the court really narrow the ability of DOJ to bring any sort of a suit that challenges voting rights.

Joyce Vance:

So Kim in light of what Barb has just explained, you're our Supreme court expert. There is more history here involving the types of gerrymanders the courts is willing to address. Can you talk about how that plays out and what the lay of the land is for gerrymandering litigation?

Kimberly Atkins Stohr:

Yeah, I absolutely can. Where we stand right now is what I've been worried about actually for a couple of years now. So just as background, the Supreme Court has held that racial gerrymandering is unconstitutional. And when it happens, when people bring claims of racial gerrymandering, it has to meet the highest constitutional standard that the reason that the state is drawing these lines is because it's the least restrictive means to do so.

It's the highest constitutional standard. Obviously, that's important because racial gerrymandering has been taking place in this country since people of color have been granted the ability to vote. It was a very effective measure to reduce and nullify the voting power of black folks in America. And it's important to state as a constitutional principle that that is not allowed constitutionally and certainly not under the Voting Rights Act.

Well, a couple of years ago, there was a case that went before the US Supreme Court called Rucho v. Common Cause. What that claimed, it was basically, a racial gerrymandering claim. But what the state came back and said was, "No, no, no, no. We're not drawing these lines based on race, we're drawing these lines based on political affiliations." It's partisan gerrymandering. We want to create very strong democratic districts and very strong Republican districts. And the Supreme Court looked at this

and said, "You know what? Claims of partisan gerrymandering, that's out of our hands. That's a political question. That should be left up to state legislatures. There is no place in the court for us to intervene and rule that these things are impermissible."

So not only did they say that it's okay for the states to do this, they said the courts have no role in determining that at all. Now, of course, very often, if you take a Venn diagram of a racial gerrymander and a partisan gerrymander, it's a circle. It's the same thing. And my big fear was after this, what we're going to see is racial gerrymandering that is disguised in partisan gerrymandering clothing.

So what I'm watching in this Texas suit and in other suits that are being brought is this defense is saying, "No, no, no, this is political gerrymandering. That's totally fine." And that's what worries me a lot.

Joyce Vance:

Yeah. Perish the thought that a political gerrymanderer wouldn't have racial overtones.

Kimberly Atkins Stohr:

No.

Joyce Vance:

So Barb, I think that sort of begs the question, right? What's the reason Republicans are doing this. Why are they engaging in gerrymandering and what's their end game? Also, I phrased the question as why are Republicans doing this? That may not be entirely fair because it's not like the Democrats haven't been known to gerrymander a state or two as well. What's going on?

Barb McQuade:

They want to win. They want to win. If they can suppress the vote, if they can get people who are likely Democratic voters and people of color are likely Democratic voters to not vote, then they can win. Because one of the things I think they fear is the Browning of America. Most communities are seeing larger and larger populations of people who are black and brown, people who are voting in favor of democratic candidates. We have seen a majority now in the last several elections where the majority of voters have voted for the democratic candidate and yet because of the electoral college and the way of these maps are manipulated.

We see that this minority is still controlling the population, the vote. So I think we have a dying breed clinging to power. But as long as they do that, they are looking for ways to attack democracy. I think it is complete anathema to the way we consider one person, one vote in this country.

Joyce Vance:

I think it's right. It's amazing to me that it's the same states that 10 years ago were trying to pass these really rigid anti-immigration statutes, Arizona, Texas, Alabama, the states that were the most concerned about that demographic shift. And now they're the states where we're seeing the same stuff going on. I think you're dead on the money and we'll be talking about this a lot going further. Kim, do you have any predictions for what we should see coming ahead or stuff that we should be looking for?

Kimberly Atkins Stohr:

Yeah. I'm the pessimist of this group. So I predict for all the reasons that we have said before that it will be grim. I know some of y'all have been looking at some of the specific states a little more closely than I

have. Just as a former resident of Virginia, I'm dismay at what is happening there because just talking about the real life consequences, I remember, I believe it was the 2012 election waiting in line. I actually had to go work that day to cover the US Supreme Court, which the arguments begin at 10:00.

I got up at 6:00 AM to go vote in that presidential election and I was almost late to arguments because I waited in line for hours. Then the next time there was early... I tried to do early voting and I still waited in line for a good hour at the next presidential election, even with early voting and I went in on a Saturday. In 2020, I walked up to a voting Dropbox, drop my ballot in the Dropbox. It took 10 seconds. It was literally a 20 second walk for my home, and that was the last time I voted in Virginia.

That's the direction it's supposed to move and I fear that in many places in Virginia and beyond it's going to be moving in the opposite direction.

Joyce Vance:

Kim, we're going to have to have a #SistersInLaw T-shirt made that's you dressed up as Eeyore. But I think you're dead on the money. I'm right there with you, sis. Jill, last question is for you give us some historical perspective here. After Watergate, the Republican party seemed to want at least in the public's eyes to make amends for what had happened. But here the Republican Party following the abuses of the Trump administration, they've just doubled down. And my take on everything we talk about in the area of voting rights is that their goal is to make it legal to stage a coup, right? Who wants to have to storm the capital when the law now says that you can reverse the votes in some of these states? Give us some help here. Can we find our way back? Or are we too far gone?

Jill Wine-Banks:

We are pretty far gone, and I do worry about this. As I said, I am being sort of a hole in my glass this week way more than it's totally empty. It can't be filled. I'm looking for ways to fill it. It is true after Watergate, laws were passed to undo the damage in the past. For example, campaign finance laws were passed. So along with this decision saying that partisan gerrymandering is okay, I would put Citizens United, which undid the campaign contribution laws.

These are terrible decisions that have a very negative impact on democracy and how do you undo those? Well, we could pass the Voting Rights Act that would require at least in presidential elections that people have access to the ballot, including mail-in ballots and drop boxes, and that drop boxes be placed in places that are convenient to the people so that it's not that one gerrymandering district.

I'm not sure we've defined gerrymandering, which I don't want to run out of time on this, but it's really sitting down and deciding who gets to select the particular representative of a particular district, whether it's federal or state legislature. You look at what are the demographics of a group. As Kim said, there's an exact overlap. Democrats may equal a racial minority. So that you can put all of the minority in one district and they only get one representative, even though their number exceeds that of the white majority.

That's what's happening is the districts are being formed so that the legislators pick who will vote for them and they minimize the number of people who will represent minorities by doing that. That didn't happen back in those days. I think the Republican party isn't the Republican Party that was then. During Watergate, it was the most conservative member. Barry Goldwater was one of the three Republicans who went to Nixon and said, "if you don't resign, you will be convicted in the Senate." And Nixon said, "Well, I have at least your support." And allegedly Barry Goldwater said, "You don't even have my vote."

They cared about facts. We were in an era where facts mattered. And it doesn't anymore because people are living not only in silos of gerrymandered districts, but in silos of information where they get fake information from Fox News and OAN, et cetera. I think the silent coup in the future is going to be easier than it was before.

Kimberly Atkins Stohr:

Barb, I've been having trouble sleeping lately and I'm wondering if it's my mattress. Do you have any suggestions?

Barb McQuade:

Ah. Kim, you must take the Helix quiz. When you take the Helix quiz, they will match you to the perfect Helix mattress because there's nothing more important than a good night's sleep. Jill, can you tell us about your experience with the Helix quiz?

Jill Wine-Banks:

Absolutely. When I took the quiz, I matched with the Helix midnight mattress and it was exactly what I wanted, something just right for me. After all, why would anyone buy one made for someone else when you can take the quiz and get one matched to your needs?

Joyce Vance:

You can do what Jill did. Just go to [helixsleep.com/sisters](https://helixsleep.com/sisters) to take their two-minute sleep quiz to match with a customized mattress that will give you the best sleep of your life. From soft to firm plus size and cooling. They've got it all. Not to mention that Helix has gotten many doctor and chiropractor recommendations. Helix mattresses come with a 10-year warranty and you can try it out for 100 nights, risk-free. It gets delivered right to your door. They'll pick it up again if needed so you never have to go to a mattress store again.

Jill Wine-Banks:

It's a really amazing offer. And in these days when we all could use a better night's sleep and don't need any complications for going to sleep, using Helix is a great way. And Helix is offering up to \$200 off all mattress orders and two free pillows for our listeners at [helixsleep.com/sisters](https://helixsleep.com/sisters). That's [helixsleep.com/sisters](https://helixsleep.com/sisters) for up to \$200 off and two free pillows. And look for the link in our show notes. We thank Helix for sponsoring this episode and we thank you, our listeners for supporting Helix.

Kimberly Atkins Stohr:

All right. So there was a lot of news surrounding the January 6th committee and its work. It includes Mark Meadows trying to quash that subpoena right out of his hair. So Barb, let's start there. President Trump's former chief of staff had entered a so-called understanding to cooperate. Now, our listeners already know that that meant that he would neither cooperate or have any kind of understanding. And he made that official this week by deciding he wasn't going to play ball.

So the January 6th committee is moving forward with a criminal contempt referral to the DOJ, but this is a different situation than with Steve Bannon. Right, Barb? I mean, Steve Bannon didn't even answer the subpoena. He didn't even acknowledge it. And it was easy. Not easy, but he was a good example for a committee to use, to say, "Look, for other people who think they can ignore us and that this isn't serious, you two could face criminal charges."

So is the Mark Meadows situation different? He's provided some stuff to the committee, but he's still asserting this executive privilege and refusing to participate fully.

Barb McQuade:

Well, Mark Meadows, I think is in a very different posture from Steve Bannon because Mark Meadows was in fact, the chief of staff for Donald Trump. So I think he is arguably somebody who comes within the scope of the executive privilege as it is intended to be applied. That is someone who's a close aid, rendering advice to the president. And we want to protect that candor. As opposed to Steve Bannon, who is really just a former executive branch employee who is now just still a close associate of the president.

So I think for that reason, he is in a stronger stand on executive privilege than Bannon was. I don't think that means he's likely to prevail. I think that he still needs to assert the privilege on a question by question basis so that ultimately President Biden can decide whether the privilege ought to be waived in this case, just as he has with regard to the documents that have been sought by the national archives.

But we need to know what the questions are first so that president Biden can say, "And now I am waiving the privilege with regard to these things because I believe that there is a greater interest that the committee has in learning the facts about what happened on January 6th."

Kimberly Atkins Stohr:

I think you're right. I also think that it's different and that Meadows probably has more pertinent information to give like we saw what he did deliver includes that PowerPoint presentation on how to overturn a government. I'm not sure Steve Bannon would've provided anything, but clearly Meadows has something that the committee wants to say. So Jill Meadows responded by filing a lawsuit against Speaker Pelosi and several members of the committee seeking to have the subpoenas for his testimony and phone records quashed, which by the way, is one of my favorite legal terms. It's so satisfying. It's like a stumble, quashed. Anyway. Do you think this complaint he filed has any merit or do you think it's a stalling tactic?

Jill Wine-Banks:

It is clearly a stalling tactic. All of these things. Trump's lawsuit is a stalling tactic. But let's talk about this particular one by Meadows. First of all, because Trump filed suit claiming executive privilege for his documents and the court has now made very clear eviscerating every single argument that he made that he does not have executive privilege. And that president Biden is the one with the final call on that and that president Biden has waived privilege as to the documents at issue.

In the same way that Barb was saying now, Meadows has to come and answer and specifically claim privilege in response to questions so that President Biden can say, "No, the public interest outweighs this and I waive the privilege." So that's number one. Number two, I think there's no executive privilege because executive privilege covers only communications that relate to the job of the President January 6th.

In the events of January 6th are not the job of the president. They are a crime and that is clearly exempted from executive privilege. So that's another reason why he can't claim it. And thirdly, I'd say he's waived privilege anyway. Not so much by giving his documents, but he's written a book about these events. He appeared on Fox for a very lengthy interview about this. President Biden has basically waived privilege by saying he can testify.

So I think that not showing up is contempt, that claiming executive privilege is frivolous and that this lawsuit will end up being dismissed in similar language to the language used in dismissing President Trump's claim that he had documentary privilege. But I want to just add one little thing, which is, I think there's a good argument to be made that executive privilege can apply to a non-employee of the federal government, that if the president in the course of his job, doing his job calls in an expert, for example, for an opinion, for advice, that person should be able to be protected.

The president should be able to get advice without worrying about asking silly questions that might have to be revealed or getting silly advice. I think that we shouldn't distinguish Bannon so much on that ground and he probably has interesting information about his role and what he knows about the president.

We'll know that when we get the documents, which include phone records of any calls in and out of the White House. Was Bannon on the phone with the president? Then he has more interesting information. But anyway, I think Meadows suit is ridiculous.

Kimberly Atkins Stohr:

So meanwhile, Joyce, there's some bad news for Meadows and anyone from Trumpland who is claiming executive privilege. Late Thursday, there was a federal court ruling. What happened there and how might it matter?

Joyce Vance:

Well, here's the silver lining in this whole sad story, right? Because the DC circuit affirms the district judge who had ruled that national archives can turn over Trump's records to the January 6th committee. And the court did this because they believe that Trump is not entitled to executive privilege. That's potentially bad news for Meadows and his buddies because he's trying to avoid testifying for that exact same reason, right? He says he has executive privilege.

There's a little bit of a conundrum here from my judgment and I'm not sure if y'all would agree with me, but I think Meadow's assertion of executive privilege is in bad faith. He wasn't even using his government phone for some of these communications. And ultimately my sense of the world is that if you're planning a coup, you're probably not engaged in the legitimate business of the executive branch. But leave that aside.

There are office of legal council memos from inside of DOJ that suggest that a former official who asserts executive privilege, can't be prosecuted for obstruction of justice. So no matter how illegitimate I might think Meadow's assertion is, there is at least this suggestion that DOJ would hesitate to enforce if congress were to refer Meadows to them for prosecution. And that's troubling because it would mean he would get away with his wrongdoing.

So because those memos don't really contemplate the depths of depravity of the Trump administration and what they were willing to do, they could legitimately impede prosecution. So I think that this executive privilege ruling in the Trump case is a much cleaner path forward. It would mean that DOJ wouldn't have to consider these issues about whether or not Meadows was legitimately asserting executive privilege because a court presumably this ruling now goes up to the Supreme Court for a final say.

And to be honest, the law here is very clear. So I think even this Supreme Court will find that there's no executive privilege and that would knock out this argument Meadows is making. It would mean that he could no longer assert executive privilege as a bar to testifying. In fact, that was what his

lawyer said when he first declined to show up. They said we think the president's assertion of this needs to be litigated. And of course, we'll obey the decision of any court in this regard.

Well, if the Supreme Court comes along and says, "No executive privilege," then Meadows just like everybody else will be faced with the choice. Are you going to testify or are you going to try to satisfy that audience of one? I think he'll end up testifying.

Jill Wine-Banks:

Yeah. It's just a matter of timing, right?

Joyce Vance:

Well, you're right.

Jill Wine-Banks:

I mean, I think all of this is-

Joyce Vance:

I mean, that's the problem? Does the Supreme Court drag its feet past the midterms? Do the Republicans when the midterms and then shut this down? Or do thousands of American women led by Barb McQuade flood the streets and go straight to the ballot boxes to vote in a Democratic majority of the midterms, because they're outraged-

Barb McQuade:

Wearing our pink hats.

Joyce Vance:

... by what it does to abortion. We've come full circle. Right?

Kimberly Atkins Stohr:

That's right, that's right.

Jill Wine-Banks:

I also want to point out that the delay is not built into the system that the Supreme Court and all the courts below that can act rapidly. And in fact, if we look at the vigilante law decision, that happened pretty fast. They only had, what, a week to file briefs? They argued it just, what, a month ago? And it's already decided. In Watergate, we issued a subpoena in April and in July. The Supreme Court ruled and we got the tapes. There's no reason why this has to take long.

Barb McQuade:

To your point, Jill, this most recent decision just this week from the DC circuit on these documents, that all was filed in late October. So that all happened very quickly as well.

Joyce Vance:

And 14 days from argument to decision, courts can move fast. So my hope is that we'll get a shadow docket ruling from the Supreme Court as soon as Trump files his notice of appeal.



Kimberly Atkins Stohr:

That's a good use of the shadow docket. The shadow docket used for good.

Joyce Vance:

We would do a special episode of SistersInLaw just to talk about how much we love the shadow docket.

Jill Wine-Banks:

I am so totally in love with Magic Spoon. I have never, ever been a cereal eater. And although this is called cereal, it isn't really a cereal. It's really protein, and it's wonderful. What do you think about it, Joyce? Have you tried Magic Spoon?

Joyce Vance:

I have, and I like it and I had an interesting experience last week. I was away for a girl's week. It's why I missed the podcast. And while I was gone and visiting with my girlfriends, who I hadn't seen since before the pandemic, they literally all came up to me at different times and said, "I really love Magic Spoon." It was sort of affirming to hear that from all of them. Barb, what about you?

Barb McQuade:

Yeah. I love Magic Spoon. In fact, I went to visit Jill a few weeks ago at her home in the Chicago area and she tried to feed me Magic Spoon. As much as we love it, I said, "But it was breakfast time." And I said, "Jill, you should know it's far too early in the day for me to be having Magic Spoon. It is my go-to late night dinner item." And as Jill has said, it has zero grams of sugar, 13 to 14 grams of protein, four net grams of carbs and only 140 calories of serving. It's keto friendly, gluten-free, grain-free, soy-free and low carb.

You can build your own box and customize it with Magic Spoon's delicious cocoa, fruity, frosted, peanut butter, blueberry or cinnamon flavors. Is that all, Kim?

Kimberly Atkins Stohr:

It is not all. Well, first of all, you can mix and match your own. And I would suggest cocoa with peanut butter. It's good. Throw that over some yogurt. It's good stuff. But Magic Spoon also has brought back two fan favorite flavors, cookies and cream and maple waffle. They're back permanently and they are great. Indulgent and healthy. You've got to try them. So go to [magicspoon.com/sister](https://magicspoon.com/sister) to grab a custom bundle of cereal and try it today. Be sure to use our promo code sister at checkout to save \$5 off your order.

Barb McQuade:

Magic spoon is so confident in their product, it's backed with a 100% happiness guarantee. So if you don't like it for any reason, they'll refund your money, no questions asked. Remember get your next delicious bowl of guilt-free cereal at [magicspoon.com/sister](https://magicspoon.com/sister), and use the code sister to save \$5 off.

Jill Wine-Banks:

Well, it's time for us to answer listener questions. And I just want you all who are listening to know how much we love your questions. And this week, we got really so many great questions. We'll try to answer the ones we don't answer now by Twitter or other social media forms. So watch for answers there. But if

you have a question for us, for future episodes, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet using #SistersInLaw.

The first question this week that we're going to answer is from Laura. "I am at a loss on how to respond when a judge is clearly signaling that he is not taking me seriously because of either gender or perceived inexperience, just because I look young. I would love to hear your advice and I think this is an issue that needs to be raised by the bar.

Well, let me start by saying, it seems like gender may be something that is definitely played into, even at the Supreme Court. They've issued new rules because they felt that the female justices were interrupted more often than the male justices. But in terms of your answer of how to respond, let me have some of the others start and maybe I'll wrap that up. But Kim, do you want to start that one?

Kimberly Atkins Stohr:

Oh, I absolutely. I mean, when I started as a litigator, I was very lucky because straight out of law school at the firm I worked in Boston, I was given my own caseload. I was off to court, arguing motions. I was before judges almost immediately. But at that time and I'm sure still probably Boston is a place where the vast majority of other attorneys that I encountered or that judges encounters were white men. I was a 25-year-old black woman. And I looked probably younger even I think when I was that age, I probably looked like a teenager.

One thing I started doing was wearing high heels because I thought maybe that would just give me a little more presence in a courtroom. And it turned me into a stiletto addict. I still wear stilettos to this day just because I love them not because I'm trying to prove anything, but you just make... One thing that I did was make sure that my arguments were strong and on point and I learned how to deliver them with the same sort of authority that other people who were in the courtroom did. It's not easy. You face a lot of hurdles.

I had a couple of instances where it was pretty clear that a judge wasn't taking me seriously, particularly when one of my fellow attorneys from my law office was there because I was the only black attorney and I got the sense that the lawyer was looking at them asking, "Who is this? Is this the clerk? Is this the secretary?" Like, You just have to speak with your own authority, know that you know what you're doing and not let that get in your way.

I hope that it happens less often now. It's very difficult to hear that so many years after I stop practicing that people are coming across this, but I think make sure you have the goods. I think that's the case in a lot of different areas and a lot of different industries where you can face that really overt in your face discrimination that tries to undermine your legitimacy. Occupy the space you're occupying fully.

Jill Wine-Banks:

Barb?

Barb McQuade:

Yeah. I think there are judges who are bullies. They have a lot of power. They get very little criticism. They have very little transparency and oversight over their work and they can get away with it. It may be that there is sexism or ageism that plays into it. But I think sometimes judges are just bullies and they will belittle sometimes the lawyers who appear before them.

So it can be very challenging because you don't want to compromise your client's case because you want to stand up to the bully, which that's a very good instinct, but good for you. You may win the

battle of words in front of the judge, but he may rule against your client and that's not so good. So I think that you do need to make sure your argument is heard, and if a judge is disregarding you or disrespecting you, I think you need to make sure that you are putting on the record the arguments that you want to make on behalf of your client, that you're writing in the briefs the arguments that you want to make on behalf of your client.

Then if you continue to have problems, you may need to use proxies to get to the judge to let them know what's going on. But I think you need to do it away such that you do not compromise the interest of your client. I know in the eastern district of Michigan, we had something called an ombudsman because it dealt with this issue that sometimes litigants have a problem with a judge, but they don't want to complain directly to the judge because they don't want the judge to take it out on their client.

So sometimes you can communicate through the ombudsman to communicate to the judge about complaints that they are having. But I think it's a very real problem and I think the longer judges are on the bench, the more insulated they become. And it is perhaps even without realizing it, they can become very imperious. Now, if they're doing it to everybody and that's just the way they roll, I guess you observe that and you do what you need to do on behalf of your client.

Jill Wine-Banks:

That's great advice, Barb. And in places where judges are elected, it can be something that is used to not reelect one of those judges. Joyce?

Joyce Vance:

Well, I think the first thing, and this is something Kim and Barb have both said is to acknowledge that this is a real problem because sometimes what happens is there's a little bit of a sense of, "Oh, you're too sensitive or no, the judge isn't discriminating against you because you're young or a woman." I think that when you're in that position, you are entitled to own that space and also to demand that people around you function as allies. Sometimes that can help. And I've seen that situation work very well where in a courtroom where for instance the judge kept trying to look to the senior partner for questions, and that lawyer persistently referred the judge back to the junior woman whose case it was, that can really drive the point home.

But I'm going to disagree with Barb just a little bit here and say that I don't think that this is what you should do in every case, but in the extreme cases where it's serious or persistent or it's flagrant discrimination, then I think you can do one of two things. You can either go to the senior judge on the court, to the chief on that court and say, "Listen, this judge is treating me badly in the courtroom and I think it's because I'm a woman and here's why."

You can ask that judge to intercede and I've seen that happen here in both state and federal court. In one instance, we had a federal judge in Alabama who ultimately resigned because the issues were severe and they were persistent. So I'm sensitive to Barb's suggestion that you can't prejudice your client, but I do think that you can go to another more senior judge and ultimately I think that you can go to a judicial committee and file a complaint and ask... Judges aren't subjected to the bar rules that us mere lawyers are. They have their own judicial code of ethics and those are enforced in states and in the federal system by judicial inquiry commissions. And I think you can file a complaint and ask them to resolve it.

But the key point there is knowing when you're in the right situation for that treatment and when it's something that can be resolved at a lower level.

Kimberly Atkins Stohr:

Yeah. And the only thing I'll add to that is, especially if you were someone who is young, like I was, you can enlist the help of allies. I think that's really important. I mean, it wasn't a judge, but quite often when I was practicing, opposing counsel even would try to call directly my boss, the head attorney in my law office to get around me on cases that I was working on. And my boss, God, rest his soul would pick up the phone like, "Oh, hi, how you doing? Oh, hold on just a moment." And he'd put them on hold and he'd transfer them to my office and have them speak to me.

It was his way of saying, "She's the attorney on this case? You deal with her. Don't try to go around. I'm not going to let you do that." And he certainly would back me up with respect to any judge that was disrespecting me as well. So having those allies and using them when you can't, or you're afraid to do that on your own is super important.

Jill Wine-Banks:

Absolutely, agree with everything that's been said. Honestly, I could make a whole episode out of an answer to this question, but I'm going to try to just maybe do a few points. I'm feeling listening to this motivated to maybe write something about this because it is a continuing problem. I know from talking to law school now that it's still going on.

Now, Laura asked about being perceived differently because of inexperience or gender. The one thing about being young is you outgrow that. The thing about gender is you're going to be a woman for the rest of your life, and you're not going to outgrow that. So how you respond to inexperience and help that you might be offered in that regard or criticism is different than about gender. I think Barb is right. You have to keep in mind, what is your goal here? It's to win a case.

Sometimes the discrimination that's being sent your way may end up being very harmful to your client. Particularly, if it's a jury trial and the jury is witnessing the judge disrespecting you and therefore they go, "Well, I don't have to rely on her word." That's very dangerous. That's when you have to stop it. It is hard to take on the judge. I've had horrible experiences, including in Watergate where the national press was reporting it.

There's a limit to what you can do in responding to the judge who's doing it. But sometimes you may have to have a conversation directly with the judge or through an intermediary to stop bad behavior in the courtroom. Bar associations have organizations that could help you. The ABA has a commission on women in the practice of law that might be able to help.

I would say in terms of advice on just as basic premise, how you talk in the courtroom is important. You have to feel confident and use words that don't show any weakness. Never say, "I think, I believe," you assert a fact. You have to dress professionally. How you look will influence how authoritative you are perceived as. So I would say, it's still happening. Dress appropriately, speak strongly, and know that sometimes you may have to report the actions either to a judicial inquiry board, to the bar association, or maybe there's a way you can have a conversation directly with the judge. So don't ignore these things though, because ultimately you have to be treated as an equal.

So let's go to our next and last question, which comes from Sam Hendrix 10, who asks, "Where can we go to get info on those running for election as judges in state and local races? I can't recall seeing any info in the media or any active campaigning in Oregon." I hope I said that right. It's a hard state to say. "The quality of, and confidence in the judiciary seems to be eroding."

Let me start the answer to that one, which is there are usually bar associations that will publish information. In Chicago, we have the Chicago Council On Lawyers. We have the Chicago Bar Association,

the Illinois bar association and they all print reviews, newspapers, usually due to particularly if there is a judge who has been rated poorly who's been judged to be not qualified for election or reelection.

So it may take some looking. I personally pull out the information from multiple sources and try to triangulate it. It takes a lot of time, but it's the only way that I can be sure that I am voting to retain judges who deserve to be retained. It's really a question of looking. What about in other states? Barb, Kim, Joyce, anybody have some-

Barb McQuade:

I'll chime in but I bet Joyce knows a thing or two about judicial races in the state system. It's a great source, and they exist in every state, is the League of Women Voters. They're nonpartisan and they issue voter guides for most elections. And that can be a very helpful source. I love this question because I think it is very difficult for voters to get good information about judicial candidates. And I think those races are really important. But what we see is a huge drop off in the number of votes in judicial races, just because I think many voters say, "I don't know anything about these candidates, so I don't want to vote because I don't know who's good and who's not," which is a first step of responsibility.

But I think the second step of responsibility is, "Well, you should learn these candidates so that you can cast a vote." So I think League of Women Voters is one potential. If you know lawyers, that is another one. I can't tell you how many questions I get at election time from friends and neighbors who say, "Can you tell me who you might be voting for in this particular judicial race and why? And we'll talk about it." And so that is, but I know not everybody knows a lawyer in the community where they're voting. And so that's why I like League of Women Voters. There are also online resources that you can look to, to get their bios, to get candidate bios. But that is one good one. As Jill said, bar associations is also another good one.

Jill Wine-Banks:

Joyce, you have a husband who's been elected. So maybe you have some particular points of view.

Joyce Vance:

Well, I do. First off, don't vote for my husband. It's time for him to go back out in private practice so that I can quit working so hard. No, I'm kidding. He's actually a very good judge and I'm very proud of him, "Honey, if you're listening." I think Barb's advice is dead on the money. I really like the League of Women Voters as a source because they're neutral and nonpartisan. And like Barb, I spend a lot of time. I mean, sometimes we have like a stream of people coming into our house asking for advice about judges, which I think is really healthy.

We've talked a lot on the podcast about how important these state and local races are. These state court trial judges and appellate judges determine so much about the world we live in and our rights and how things are going to look. So I think it's important to do all of the above. And even you might want to just Google the judges' names in a race and look at the kinds of cases that they've decided and what their decisions have been.

I know that's an investment of time, but I live in a big county and even here we only have maybe 15 judges on a race at one time and that's in a heavy traffic year. Usually, it's a smaller, more manageable number of judges. I would really encourage you to do your due diligence, to do a little bit of digging around on Google, to look at what bars put out, but I would have a healthy... Take what the state bar association say about judges with a grain of salt, because they are not uninterested in those

matters and really do make a good decision about who you would want to have on the bench in front of you deciding a case that was very important to you in your personal life.

Jill Wine-Banks:

Sam, I think we've probably answered your question and I'm thinking it may have been motivated by the judge in the written house trial who was so resoundingly criticized for how he handled that trial. It is a real good example of how important the quality of judges can be in the outcome of a case. So it was a great question. It shows us how smart our audience is that they care about this and are willing to invest the time. All of the questions, show that. So thank you all for that.

We thank you for listening to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, Barb McQuade, and me Jill Wine-Banks. You can send in any additional questions for our next episode by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet them for next week's show using #SistersInLaw. And don't forget to go to [politicon.com/merch](http://politicon.com/merch) to buy some of our fun swag. We're looking forward to wearing it and having you see us in it somehow.

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Kimberly Atkins Stohr:

So I found out some interesting information this week about a previous career that Barb McQuade had. Barb, tell us what you used to be.

Barb McQuade:

Well, I had a chance to visit with Kim in Washington, DC this week, which was super great. We were out in search of a place where we could have some tea, which is not easy to find during the pandemic, but we did. And I shared with Kim, my brief career as a journalist. I was a sports writer between college and law school for a newspaper in Rochester, New York, the Rochester Democrat and Chronicle. So that was great fun.

Kimberly Atkins Stohr:

That's so awesome. [crosstalk 01:16:36]

Joyce Vance:

We should have all known that, right? Because I was listening to you last night on Rachel Maddow and your sports puns were so good. I don't know if you heard this. After you stopped, Rachel was like, "That's Barb McQuade, former US attorney from the great state of Michigan. And I should know that at this time of the year, I'm going to get nothing but football puns from her." It was brilliant.

Barb McQuade:

Yeah. Sometimes I can't help myself.

Joyce Vance:

You really stuck the landing.

Jill Wine-Banks:

You always have the best, but I have to say sports analogies are an anathema to me because I really... First of all, I don't follow sports. I remember taking golf lessons and the teacher was trying to teach me using analogies to, well, it's like if you were holding a baseball bat. Well, I don't remember how I ever held a baseball bat. They don't mean anything to me.

It also brings up the horrible times when I first started practicing law and coffee breaks always talk about sports. As the only woman, I didn't know what to say. So my former husband did one good thing for me in my life. He gave me a sports line of the day so that I could be part of the conversation. And I would say, "Wasn't Kareem Jabar great last night?" I really hate when it's sports analogies and I don't get them. Except for things like slam dunk.

Kimberly Atkins Stohr:

That's a great way to punt on the question though.

Barb McQuade:

No, I hear what you're saying, Jill. It can be excluding for people who are not. You'll hear people say, "Oh, sports ball," which is signaling their hostility to sports. I love sports, but I know what you mean. And it can be something that is isolating. So I will try to use them judiciously.

Jill Wine-Banks:

That was a three-pointer, Barb. And I got all of those. Yay.