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Joyce: Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Jill Wine-Banks, and me, Joyce Vance. We'll jump straight into the show today. It's the close to the end of the Supreme Court's term. Lots going on, and we have a lot to talk with you about, including Louisiana's new law that puts the Ten Commandments in every public school classroom, the Supreme Court's decision in Rahimi, the gun case Friday morning, and we also have a treat for you.

Our resident Supreme Court expert, Kim, is going to talk with us about inside details on how the court works. And finally, we'll take on a piece in the Wall Street Journal that argues Manhattan DA, Alvin Bragg, is actually helping Trump, because the case he convicted him in is legally unsound. So, that's where we'll head this week. But, before we get there, I wanted to note that Monday is an important anniversary. It's the second anniversary of Dobbs, the case that reversed Roe versus Wade. And just because I know that's going to be a tough day for everybody, I wanted to check in with you guys in advance and ask how you're going to handle that holiday. Jill, what about you?

Jill: Well, I won't be celebrating it, that's for sure.

Joyce: That's for sure.

Jill: And I'll be worrying about what is happening after Dobbs and the rights that are being taken away and threatened, and the things that they said, well, we're not deciding contraceptives now, and now they are. I worry about the expansion of the theory of Dobbs, and I think we're seeing more and more bad things that are very upsetting. The one good piece of news is that I do think that this will be a reminder before the November election that there's a lot at stake in who will be appointing the next Supreme Court justices, and that it will encourage everyone, because remember, Dobbs affects not just women, it affects the men who impregnated them. And I think that everybody should be concerned and worried and vote based on that.

Joyce: That makes a lot of sense to me too. Kim, what are you thinking about?

Kim: I'm thinking on the same lines of Jill, and one thing that I hope to do a better job of as a communicator is really impressing upon people that this goes so far beyond abortion. The implications of what Dobbs has wrought can go all the way to contraception and IVF things that we've talked about here, but also things like the standard of care, of emergency care. With Dobbs, especially in southern states, this is impacting the way medical care is taught in medical schools. It's affecting clinical programs and their ability to teach new doctors and other medical practitioners how to handle a situation if there's an emergency with somebody who is either pregnant or of reproductive age in order to protect their fertility and their health and their lives. We could be getting everyone, everyone can get worse care because of what this opinion is doing. So, it is important to vote. It is important to remember that even if you are in a blue state where Roe has been codified, that this still can impact you, and that there is still a lot of work to be done.

Joyce: I'm going to transcribe every word you just said and make myself a checklist, because one of the things I want to do is try to have conversations, especially with younger women. Increasingly I'm aware that we assume everybody knows this. I think that's not true. I think there are a lot of people who don't know. The New York Times had a recent poll that said 17% of Americans blame Joe Biden for losing abortion rights. So, we have a lot of education to do. I'm going to use the Kim Atkins Stohr checklist to get started. Barb, what you thinking about?

Barb: Well, first I'm thinking that now we have two years behind us to look at what Dobbs has wrought, and when the court said it is time for the court to get out of the business of abortion cases. As we said at the time, this is just going to open the floodgates, because different states are going to try different tests, the Comstock Act, and Mifepristone, and all these different kinds of things that are going on in all the states. So, it's going to be a mess. It's going to be chaos, and it's going to be years before all of that shakes out. But, I'm also reflecting that it's no coincidence that women's rights really took off in the early 1970s when finally there was availability of both the pill and abortion was legalized. It's no coincidence that we saw a convergence of women having career opportunities and making achievements once they had the ability to control their bodies.

And I've been reading that so much of this current movement is actually pushed by the religious right who thinks that we are seeing destruction of the family unit, because of women who are exceeding their traditional roles. That women are to blame for all of the woes in society. And if we could just take away women's reproductive rights, we could get everything back to the good old days like they were in the '50s and before. And to me, the right to abortion is just a fundamental right about controlling one's own destiny that is critically important for women in society.

Jill: Can I just add, Barb, that to what you said? As someone who was at the prime age to benefit from the early '70s opening of opportunities to women, I know how important these things are and it does scare me that there aren't more young women engaged in this fight and young men, because it will affect their lives. And the expansion of the concept into IVF and contraceptives is even more terrifying to me. But, this was all very predictable, because the conservative right wing religious viewpoint has spent all that time working to get to this exact moment. And honestly, we Democrats and liberals or independents have not done enough to build defenses to that. A friend of mine made a movie called Birthright a War Story years before Dobbs, which predicted all of these things, including as you were saying, people don't even know how to do abortions anymore. So, in an emergency situation, they're not learning that in medical school and couldn't help you. So, I think this is a really big problem and a big anniversary that should be a reminder for how to vote.

Joyce: This episode is brought to you by the ever fabulous Jennifer Aniston's award-winning haircare line, LolaVie. Between coloring, heat styling, stress, aging, and now the summer elements, hair has it tough. Jen got tired of damage and choosing between hair products that work and ones actually good for us. So, she created LolaVie using the finest natural and clinical ingredients that lets all of us replace sun damaged tangled hair with shine, strength and elegance. Imagine your hair feeling luxurious and free like a summer breeze and getting to look like Jennifer Aniston. It's the season to shine. Embrace it with LolaVie. For a limited time, get an exclusive 15% off your entire order@lolavie.com. Just use code, SIL, at checkout.

Jill: Listen to the woman behind the Rachel and harness the power of summer sunshine with a glossing detangler. It really works. It detangles, primes, enhances shine and improves manageability and protects your hair from damage. It's a summer proof must have in any routine. Think of LolaVie as your personal hair spa inspired by the tranquil atmospheres of your dream global retreat to give you an aroma infused escape from heat. The signature scent fuses zesty citrus, calming rose petals, vibrant lemongrass, cooling green tea, earthy woods, and a hint of subtle musk. Every time you begin your day wrapped in the invigorating aroma, your daily haircare routine becomes a slice of paradise.

Kim: My favorite product overall is the LolaVie Perfecting Leave-In. So, you put it in after you wash and conditioner and you leave it. You leave it where it is. You don't have to rinse it out. But, what it does is whether I'm wearing braids like I have now or whether I have my curls out, it really gives that extra little bit of conditioner that I need in my curls. Us curly haired people know that we need a little extra conditioner moisturization to keep our hair strong and healthy and it really does that. And it also has a thermal protectant. So, if you use heat products, blow dryers or flat irons or something, it gives you that little bit more of protection so that your hair doesn't fry and it stays looking really shiny and healthy.

Barb: You had me at leave it in, Kim.

Kim: It's easy.

Barb: I'm the world's laziest haircare routine person. You know how shampoo is like, shampoo, rinse, repeat. I can only shampoo once. I'm too lazy to repeat. But, you can leave it in with LolaVie. So, check out all LolaVie products at your local Ulta Beauty location to experience the luxurious scent for yourself, or head directly to their website at lolavie.com. As our loyal listeners, you'll get an exclusive 15% off your entire order when you use code, SIL, at checkout. That's 15% off your order at L-O-L-A-V-I-E.com with promo code, SIL. Please note you can only use one promo code per order, and discounts cannot be combined. After you purchased, they'll ask you where you heard about them. Please support our show and tell them we sent you. Your hair will thank you. You can find the link in the show notes.

Kim: Have you heard the commandment of thou shall not combine church and state? Well, neither have the folks in Louisiana. Because, a bill signed into law in that state this week makes it the only state to require that the Ten Commandments be displayed in every classroom in public schools and state funded colleges. The law requires a poster size display of the Ten Commandments in "Large, easily readable font" by next year. I'm going to wager a guess and say that the sisters are all in consensus that this law stinks to high constitutional heaven, see what I did there? And the ACLU is also suing, so we have a legal challenge on our hands. So, Jill, make it make sense. What does the Constitution say about something like religion in schools, and how strong do you think the ACLU, their argument is as this makes its way through the courts?

Jill: So, first let me say, I cannot make sense of the Louisiana law. The only thing that makes sense is the ACLU suing. And I also want to note for my sisters, you can see me, I'm wearing a separation of church and state pin.

Kim: Nice.

Jill: Which a wonderful jeweler had designed for me a long time ago without my knowing that Louisiana was going to do this. So, I think that he was prescient in sending this to me. But, in terms of the rest of this, it seems clear to me that the First Amendment says there shall be no establishment of religion by the government. And that was one of the reasons that the pilgrims came to America, was to escape enforced religion. So, it doesn't make sense that they could require a thing that is related to some religions but not all, and particularly in schools where you have I think more pressure in an environment where you're required to be there. Going to school is mandated, so it's not like you're free to come or go. You have to be there.

You don't have to be at a ball game singing or pledging allegiance for example, which I think we'll get to later about, under God being in the pledge, but to have to be reading the Ten Commandments, and there's also an issue about which version of the Ten Commandments. There are more than one in terms of the order and the phraseology. And this is not the first time this issue has come before the court, and they have been clear that you can't do it, that it is forcing people to do things that they shouldn't have to be forced to do, that it is the establishment of a religion, and that it violates the Constitution. So, I think that it should be struck down fast, but this is this supreme court where when they want something to happen, it doesn't go the way precedent would predict.

So, I think it's very scary, but I think the ACLU has obviously got precedent on its side. There's Stone versus Graham from 1980 and there's a Lemon case which set the test back in 1971. So, this is not a recent thing. This is more than 50 years old. And it seems to me that those cases set a precedent which this particular law cannot withstand, that there's no secular purpose. If they only publish something about you can't commit murder, you can't be a thief, those are civil things. But, adultery, worshiping God, observing the Sabbath, those are religious and they shouldn't be in a classroom.

Kim: Barb, Jill is absolutely on the money to borrow a phrase from Joyce on that, but we have seen recently the blurring of the lines between church and state in some recent Supreme Court rulings, we've talked about these. The court issued an opinion siding with a coach who wanted to pray on the sidelines before games, a public school coach, and students were welcomed and some argued that they felt compelled to join in on that. They ruled in favor of allowing public funds to be used as tuition reimbursements for religious schools. In my adopted hometown of Boston, there was a policy that allowed people to fly a flag. But, when the city tried to stop a religious flag from being flown, and it wasn't even Martha Ann, it was somebody else flying a religious flag, the city was not able to stop them. They said that that was religious discrimination. So, this law I think was made to end up at the SCOTUS. How do you think it'll do once it gets there?

Barb: You're right about some of these recent cases. The case of the praying coach, remember we talked about that one? I think the case was called, Kennedy, that it was a football coach who would take a knee on the 50 yard line after the game to pray. What it seems to me in those cases that we're talking about is, the court worked really hard to find ways to distinguish it from what is clearly unconstitutional. And that is the establishment of an official religion by government, which would include public schools. And so, in the Kennedy case, I thought it took a lot of work to get there, but the way they distinguished it was to say, this was a private act, a private prayer. It was not official, despite, although I disagree with their decision there. The Boston Flag case, what they said there was that city hall was allowing private groups to fly private flags of any kind they wanted.

And it wasn't really the city of Boston flying it, they just offered up their flagpole and to all comers, and they couldn't discriminate against religion if they were allowing everybody else to put their flag up there. Again, seemed like a real stretch. This one though is so on point with the Stone versus Graham case that Jill just talked about. Absolutely straight up case, in 1980 where the Supreme Court said you cannot post the Ten Commandments in public schools, because it sends this message of establishing Christianity as the premier religion. One of the things that the Louisiana law tries to do to make this a little different is they've got this statement of concept that has to be posted alongside of it. And I don't think it makes it better. I think it makes it worse, because what it says is, we are simply trying to teach our students the origins of all law. And so, it's important that they know that the origin of all law comes from Moses bringing them down from the mountain from God. You're like, no, wait a minute, that's worse. I think that's worse.

Joyce: Well, and though Barb, I think you're so right about that. And the one thing I just want to add is this. It's like they're appealing to this whole tradition and history rubric that the Supreme Court is using to make decisions, and they're going to point to that paragraph to say, this is part of the history and tradition of the United States.

Kim: My goodness. Are they actually going to put this up like where Western Civ is taught? Because, Hammurabi would like a word. But, Joyce, this gets us to comments that Sam Alito has been making over the past couple of years, especially since the Dobbs opinion. And I don't just mean the surreptitiously recorded conversations at a conservative cocktail party. He's been saying this out in the open at speeches in front of the Federalist Society, that crazy speech he gave right after Dobbs in Rome where, religious rights are under assault in this country. Clearly not. We just laid out a bunch of opinions where religious rights were very strongly protected by this court. But, he is openly embracing not just a pro religious view from the bench, but a pro Christian view from the bench, and that's apparent even in the Dobbs opinion. So, given his views, do cases like this making their way up to the court pose any ethics or conflict problem?

Joyce: For Sam Alito? No. They would for any right-thinking judge. We all know this isn't difficult stuff. This situation gives us context for understanding why judges shouldn't do what Sam Alito has done over these past years, aligning himself publicly with Christian nationalist views. And I think you're right, Kim, when you point out it's not just these recent surreptitious tapes we've heard. He just says this stuff openly and in public, and that's why he said it at the Supreme Court Historical Society dinner to a virtual stranger. He is entangled with this. This is who he is and he sees nothing wrong with it. And here's the problem. No matter how he votes in the Louisiana case, if it reaches the court, his vote will be suspect. Either he'll be seen as voting his personal views without regard to the merits of the case, or he'll be seen as taking a face-saving vote if he votes against it, and we are entitled to better from our judges. We are entitled to umpires who call the balls and the strikes, and that's not Sam Alito.

A former Alabama Supreme Court justice went a few steps further than Alito. He got a 2.5 ton sculpture of the Ten Commandments and had it placed in the court's rotunda, and then he refused to remove it. It was Roy Moore who some of you may remember. He ran against Doug Jones for the Senate and lost in a race where it was revealed that he had an interest in young girls. And so, Roy puts his sculpture of the Ten Commandments, which he calls the Rock in the rotunda, and two courts order him to remove it, and he refuses to.

He invokes God's law and says it's [inaudible 00:21:49]. Of course, ultimately it went, and so did Roy Moore, but this is what the Constitution is intended to prevent. All that history and tradition that Alito likes to refer to, the founding fathers were against the establishment of any one religion and really of any religion at all at the founding. So, while this should pose an ethical issue for Alito, as long as the justices operate in this accountability free zone with no ethics code, it just won't.

Kim: So, I want to handle, I want to ask you guys about all of the, but what about? But, what about? When we're talking about this, what about the fact that we say under God in the Pledge of Allegiance or the fact that the word God is on our money, or even when at each Supreme Court session you hear the crier say, oyez, oyez. All those having business between the Supreme, the Honorable Supreme Court, draw near so that you may be heard. God saved the United States and this honorable court. God's all over the place all over our government. So, how's that different than what's happening here, anybody?

Barb: Well, I think those cases, there have been challenges to those cases, and there is language in them about our Judeo-Christian origins at the founding. I think those cases are wrong. I also think those cases were decided at a time when the bulk of the population was Christian and Jewish. And I think that the multiculturalism of society, I think has to make room for the idea that we have people of many faiths and no faith. So, I do think though, Kim, that you raise a good point, which is there is language from prior Supreme Court precedent that could be used to uphold what they're doing today. But, just imagine, I saw this posted somewhere online that some school wanted to post the Quran as the Supreme law, Sharia law, all of these kinds of things. People go crazy over that. But, I suppose the argument comes back to the religion at the founding contains those traditions that we are permitted to continue today. But, I just don't see how you square that with the establishment clause.

Kim: It's really interesting. I believe some defenders of this say, well, you know what? There is history and tradition of using the Ten Commandments. Look at the Supreme Court building itself. Among its frieze and its marble in the courtroom there is an image of Jesus, which is true. But, the Supreme Court building was built in 1930 or 1932. It was not at the founding. That's the one point. Secondly, do you know what else is in there? Confucius. And actually, I know that there is an image of Muhammad in there, which is a big no-no in the Islamic religion. You're not supposed to make any actual physical images of Muhammad. And the Supreme Court had to explain itself saying, well, it was just meant to be an honor to all of the great thinkers of our history. So, you got a lot going on in there, but somehow I think if we passed a law somewhere that required the Quran to be displayed in the classroom, it wouldn't get the same treatment. What do you think, Jill?

Jill: Well, I think everybody knows my opinion, which is that I am offended enormously by particularly the Pledge of Allegiance, which added in 1954, under God. So, when I first went to school, it wasn't part of the pledge. And as far as I'm concerned, it still isn't. I will not say those words, and it has nothing to do with whether I believe or don't believe. I feel I'm free to believe or not believe. And so, it just offends me that under God is on our money, under God is in the Pledge of Allegiance. And I just think it's wrong. And I agree with Barb that, really, right-thinking Supreme Court would, and I don't mean right in that sense, a correct thinking Supreme Court would agree with us, and would agree that the Ten Commandments, once again, cannot be put in schools, because they did already

decide that once, and that they would agree that maybe our money should be printed without under God, and that our Pledge of Allegiance should have it taken out.

Joyce: And something we never think about here, but that I remember, I've talked about this before when Barb and I were U.S. attorneys, I hosted one of a series of religious roundtables that were held across the country. Mine was about the workplace, and one of the participants was a gentleman who was representing atheists. And when it was his turn to speak, he very gently said, I speak for the 20% of Americans who do not have the gift of faith. And it was sort of, I'm embarrassed in hindsight that it was astonishing to me the numbers of people involved. But, even if it was just two or 3% of the population, they're entitled to have their views appreciated and not to have religion crammed down their throats. And I just think that that's something that we often lose sight of.

Kim: Are you stressed out? Is there something that has you a little on edge these days? I don't know, maybe nine people that sit on a bench in D.C.? Well, luckily, when your brain is constantly racing in overdrive, Calm can give your mind a break from the noise. Calm is the number one app for sleep and meditation, and gives you the power to calm your mind and change your life. Calm recognizes that everyone faces unique challenges in their daily lives, that mental health needs differ from person to person, and that time for meditation may vary. Since self practices are so deeply personal, Calm strives to provide content that caters to your preferences and needs.

Jill: Their meditations range to fit your needs each day, and they are different. We know every day it can go from anxiety and stress, you might need relaxation and focus, or you might need to build new habits and take care of your physical wellbeing. There are also sleep stories with hundreds of titles to choose from, including sleep meditations and calming music that will have you drifting off to dreamland quickly and naturally. They even have an expert led talks on topics like tips for overcoming stress and anxiety, handling grief, improving self-esteem, caring for relationships and more.

Joyce: I sleep so much better when I incorporate their sleep stories into my routine. Daily practice just makes a huge difference when stress starts building up, and Calm can help you dedicate just a few minutes each day to reduce stress, improve your focus, and increase your overall wellbeing.

Barb: I used Calm last week, you guys. It was Father's Day. And so, we took my husband on a kayaking down the rapid strip, which I'll do on Father's Day, but it about kills me because it should go through rapids and bounce off rocks and stuff. So, I used the Calm calming app to get me in the right frame of mind. Thank God for the Calm app. It puts the tools you need to feel better in your back pocket. If you go to calm.com/sisters, you'll get a special offer of 40% off a calm premium subscription with new content added every week. Stress less, sleep more, and live better with Calm. For listeners of the show, Calm is offering an exclusive offer of 40% off a Calm premium subscription at calm.com/sisters. Go to C-A-L-M.com/sisters for 40% off unlimited access to Calm's entire library. That's calm.com/sisters. Look for the link in the show notes.

On Friday the Supreme Court issued five of its 18 remaining decisions, let's go Supreme Court, you can do it, in a case called U.S. versus Rahimi. This was one of the big cases we've been waiting for. It's a very important Second Amendment case. And Joyce, I believe this was the one way back in the beginning of the term, was the one you

identified as the one you were most watching, right? So, tee this one up for us. What's the case about, and how did it get to the Supreme Court?

Joyce: That was back in that kindler, gentler era before we knew that [inaudible 00:30:43] Donald Trump wasn't going to go to trial. [inaudible 00:30:47], but this is a really interesting and important case. Mr. Rahimi was indicted by federal prosecutors for violating 18 U.S.C. 922(g), look it up. It's a statute that makes it a felony violation for certain categories of people to possess firearms. So, this is a criminal case. Included in 922(g) are felons, aliens who don't have legal status, drug users like Hunter Biden, and as in this case, people under domestic violence restraining orders. Rahimi's conduct was particularly heinous. My father-in-law, who was a judge, used to call this the no good son of a (beep) rule, but literally that's what the judges would call it.

Jill: I put my hands over my ears [inaudible 00:31:29].

Joyce: This is the case where the facts are so bad that you don't want to give Mr. Rahimi a break. Nonetheless, he deserves the same careful consideration of every other defendant. But, Rahimi repeatedly fired shots at an ex-girlfriend and threatened her with more if she called the police, used a firearm in connection with other incidents. Fortunately, Mr. Rahimi's girlfriend was not intimidated and she did call the police. So, here's Rahimi's argument that got this case to the Supreme Court. He argued that after Justice Thomas's opinion in Bruen, it was unconstitutional to interfere with his right to possess a firearm. Justice Thomas wrote that no restrictions on gun rights were justified unless they were part of the history and tradition of our country at the founding. The Fifth Circuit agreed with Mr. Rahimi, and they reversed his conviction. And so, that's the issue that went up to the Supreme Court. Whether a person's gun rights can be restricted if a court issues a domestic violence restraining order against them.

Barb: So, history and tradition is what it's all about after Bruen. And so, Jill, on Friday we get the opinion, and what did the court hold in this case?

Jill: Well, luckily in an eight to one decision, which is rare these days-

Barb: You can only guess who the one was, right? Everybody-

Jill: Well, let's say it all together.

Barb: Ginni Thomas.

Jill: Ginni Thomas. [inaudible 00:32:54] I think that's the actual answer, but neither was on my bingo card for who did it but, anyway. Justice Thomas did have a very lengthy dissent, and there were multiple concurrences. So, this is a really hard answer to give in terms of what did the court hold, because you really have to go through all of the nuances. But, the bottom line is, they held that he could be barred from having a gun. He met all of the tests, they said, because he had a domestic violence restraining order issued against him with a finding that he was a danger to a either domestic partner or a child. And in this case to both, because the person who brought the complaint and got the restraining order was the mother of his child as well. And as Barb mentioned, or Joyce I guess mentioned, these were some of the most,

Barb: You're not confusing us, are you?

Jill: [inaudible 00:34:00] Oh God, so sorry. As Joyce mentioned, these were about the most egregious set of facts that you could possibly have, which made it really one of those perfect cases where the facts just scream for you have to do something about this. Because, he was not only threatening her, he was witnessed by someone who he shot at because he had witnessed it. And so, the facts were really strong. And they went through the history of what could be imposed, what had historically been imposed. And certainly, Justice Thomas, in his dissent went through and said, oh no, those aren't relevant. They aren't analogous. But, the court said they don't have to be identical. The Constitution is not frozen in amber. And I think one of the more interesting questions in this decision is, what does it mean in terms of originalist theory, in terms of how you interpret the Constitution, in terms of arguing that it only is law that can be put into place now, if it was law back then.

So, we're looking at laws about domestic violence. When women were chattel, we belonged to the men. No man could rape his wife. There was no EEOC. There was no women's rights at all when the constitution was founded. So, of course, you can't say how the court would've ruled about whether or not a person was eligible to have a gun. And there were some cases and some statutes that were talked about from England, which is the basis of our law, the common law, that did allow restrictions. And so, I think it's clear from this holding that the Second Amendment is not inviolable, that it does have some exceptions built into it, and that there's an interesting split in the court as to how you define what the history is and how much you allow of the changes. When you talk about a urban dangerous area, it's not the same as what we had when the Constitution became law. When the Second Amendment was passed we didn't have urban cities. We had very few people miles apart and we had muskets. And so, I think this makes clear*.

Kim: Well, no, Aaron Burr was kind of a menace. He was running around the streets.

Barb: That's right. With his one shot.

Jill: But, that's the point. He got one shot with a musket and couldn't reload. So, I think things are different now and that the civil violence that is now being dealt with by laws like the one involved here, should be guidance that not only can those with a domestic violence writ against them be disallowed, but that other people who present a danger to the public can also be denied the right to have a gun. And that it doesn't take a criminal conviction for assault to say that you're a convicted felon and can't have a gun, but that when you are a danger, you can be prohibited.

Barb: There's a part where Chief Justice Roberts, who writes this majority opinion, I think is working hard to have it, to squeeze out this compromise. Because, remember in the Heller case, one of to me the most egregious violations in cherry-picking examples of originalism and textualism and all that is where the government, that was the case where the Supreme Court held that the right to bear arms is a personal right. And regardless of this whole militia nonsense, right to a well-regulated militia, they said that when the government said, back at the founding, after all a gun was a one-shot musket. So, that's what they were talking about then. So, if we're going to engage in originalism, then these restrictions against more dangerous guns certainly don't apply, assault weapons, AK-47s, all that sort of stuff. And the court just waves it away like, oh, even though these guns

weren't invented at the time, the word arms should be used for any arms no matter what form that may take into the future, which is so different from what their normal originalism textualism is.

But, what he says today and then this opinion is, well, just as we have this expansive definition of what is an arm, we can also take an expansive definition of what the law was allowed to prohibit back at the founding. And since they were able to prohibit dangerous people from having guns, even if the danger wasn't about domestic violence, because we'll speak in general terms, then this is okay too. So, I don't know. I'm not sure I like that trade off, because I think the musket argument actually is more valid than they claim. Well, we've talked about where we've been, we've talked about where we are, and Kim, I want to ask more about where we're going and how this case might bode for future cases involving gun restrictions. And we get some interesting concurring opinions here that talk about the real life practicalities of these things. Hunter Biden is out there with an appeal of his conviction possessing a gun while using illegal drugs. What are your thoughts about going forward about how this case is going to shape the law going forward?

Kim: Search me. Essentially search me is the paraphrase of Justice Ketanji Brown Jackson's concurrence who points out, as Jill said, this is a eight-one opinion, but it really is when you look at it a 2, 2, 1, 1, 1, 1, 1 opinion, because everybody came at, it's like choose your own constitutional analysis, because everybody had a different... You can see now why this case, it was argued back in November. It should have been decided. And we were just like, where is Rahimi? Why is it taking so long? It seemed pretty clear from oral arguments that they were not going to rule in Rahimi's favor. The only question was how they were going to twist themselves into constitutional pretzels to say that you can actually have a law that restricts somebody very dangerous like him from having a handgun while he's under a protective order. And they did not find a standard for that. They found five different standards for that.

And Ketanji Brown Jackson said in her concurrence that I'll quote a little bit from it. She says, "The court should be mindful of how its legal standards are actually playing out in real life. We must remember that legislatures seeking to implement meaningful reform for their constituents while simultaneously respecting the Second Amendment are hobbled without a clear workable test for assessing the constitutionality of their proposals in courts, which are currently at sea when it comes to evaluating firearms legislation, need a clear, solid anchor for grounding their constitutional pronouncements. The public too deserves clarity when the court interprets our constitution." And basically she comes to the conclusion that this is about as clear as much. That Bruen was decided before she got here. So, it's like you all broke it already, and now you want us to try to interpret it so that other people can interpret it, and look what we did. We gave you a big gobble of mess.

And then, Justice Sotomayor is like, look at Clarence Thomas over there. This is where, if you take Bruen to its natural conclusion, you get that Clarence Thomas conclusion that says, the only thing you can do about a domestic abuser with a gun is surety laws, which just allows him to pay a fine and go about his way with his guns. It's crazy. So, this really leaves, it really does leave the nation at sea in trying to figure out what constitutes a reasonable gun regulation. We know that can happen sometimes, but when? Who knows?

Barb: I think it leaves no clarity. I do like your use there though of the choose your own adventure. It's like, mad libs Supreme Court opinion, right?

Kim: Second Amendment mad libs.

Barb: Fill in here your favorite history or tradition. Back in the Scalia days, fill in here your favorite disdainful adjective. Remember he'd [inaudible 00:42:46] like tiddly-widdly, [inaudible 00:42:46] what were some of those?

Kim: [inaudible 00:42:47].

Barb: He loved those kind of... All right, well, why don't we move on from this case, because one of the things that we thought might be useful today in our conversations and our text chains, so often we are trying to figure out what the court's going to do next. And we ask Kim, our resident Supreme Court expert about some of the behind the scenes workings of the Supreme Court, and we thought it might be useful to educate our listeners a little bit about how to be more educated court watchers. And so, Kim, we've got a round of questions for you, and help shed some light on how the court works, which will help us all be better court watchers. So, I'll ask the first one. The court has about a dozen cases remaining. Explain for us what the court's typical calendar is? When is school out for summer? Do they have free fishing trips they need to get to? Why are [inaudible 00:43:45]?

Kim: Well, they do tend to have plans in summer and they do like to get to them. Sometimes the justices will teach at colleges in far-flung areas of the world and do other things. But, typically the term ends when the court says it's over. That usually happens by the end of June. And then, they have one final cleanup conference right before they head off, and that is sometime before the July 4th holiday. So, generally speaking, I would've say by next Friday all the opinion should be released. But, as you said, not only are there about a dozen still pending, and there's only one announced opinion day so far next week, and they're all really big cases. My guess is this could go into the first part of July. That cleanup conference is scheduled for that Monday, July 1st, and I would not be surprised if that is also an opinion day. And that's very rare for that to happen, but the more bottlenecked these opinions get and they are getting more bottlenecked year after year after year, the more likely that this is spilling over a little longer than normally it does.

Joyce: So, I've got questions too. And it was funny, Kim, because I was flying this morning and I had horrible wifi, but I managed to get enough to see that there were four cases and I was like, we're done here and got off the plane, only to have you text me, no, Rahimi is there, there's a second one. And this is pretty interesting. Among my questions are, do the justices deliberately hold back some of the more politically charged cases for the end? Because, we seem to see that every year. Why isn't there a decision in the Trump immunity case yet?

Kim: This is a great question. This is maybe the number one thing I got asked on Threads this week is, is this the court trying to delay justice, slow walk it, or even to dump unpopular opinions off on a Friday, before they get out of town or at the end of the term? The answer is no. Listen, there are plenty of things that this court is doing that is all kinds of shenanigans involved in what they're doing and it's a lot of bad news, but let's focus on the things that the court is really doing badly. The truth is, this court doesn't have it

together enough to execute that kind of a political plan, and I will tell you why. And it is a reason that has to do with politics honestly.

So, for most of the time that I covered the court, regardless of the ideological bend of the court and the individual justices, there was a center of consensus builders on this court who would say, look, even if we don't agree on an issue, and particularly in very contentious cases, if there was any room for compromise or consensus, if our views, if the Venn diagram, for example, if our circles overlap at all, could we write a narrow opinion just in the part that overlaps, make it very focused, and then build a bigger consensus, and that way you don't have as many concurrences or dissents for sure. And that allows you to decide the case. Somebody writes the opinion, you circulate it faster, because you know you're starting from a basis of some consensus there. Even if you don't get to all of the issues or you don't issue as broad of an opinion as the litigants were asking you to, and then you get things done.

And those used to be made up of justices like Anthony Kennedy, Stephen Breyer, Elena Kagan was a big part of that at the time, and many times the Chief Justice John Roberts too. Even if they weren't in agreement, they could find consensus. That consensus building center is gone. It's gone. Elena Kagan is still there. She has from the bench expressed exasperation at the way this court is acting. She's been very honest about it. So, she seems to have given up. The chief is over there. I don't know what he's doing. But, what you end up with are opinions like Rahimi, where there are five different constitutional rationales for one opinion that should have been eight justices.

You could have narrowed in on something that people can agree upon, and then move on, and the opinion could have come out in April. But, because the court is so, everyone's on their own island with their own agenda because of the politicization of this court. Among other things, I think the Dobbs leak didn't help at all, that you see these justices basically working on their own, they're not playing well together, and that makes it so much longer to circulate an opinion. This was five concurrences, that's why it took so long, that each concurrence has to go around. Everybody reads it, everybody gets to say something, then in their own concurrences they can respond to the concurrence or the dissent, and then come back and make an appointment, that takes for freaking ever, and that is what is slowing down all these cases.

That tax case earlier this week, that should have taken 10 minutes, all of them take too long, and the most contentious cases take the longest. So, those are the ones that come at the end. So, as soon as we heard that the court granted cert on the immunity case, I knew it would probably be the last opinion issue in the term. Not because the court's trying to play politics, but just because the court is that dysfunctional.

Jill: Kim, that's a great answer. Thanks.

Kim: It's depressing, but it's the truth.

Jill: It is depressing. But, anyway, there are so many other questions that I keep getting from people on Twitter, X, and Threads. How do you find out which days will be opinion days? When does the court announce that? And how do you get the opinion quickly? Because, for most people, you go on Google and you ask for the opinion, you don't get it right away. It takes a long time for it to come out.

Kim: So, the same person in the court who announces, oyez, oyez, and calls the court to order, at the end says, the court is adjourned until. And when today, Friday, when they adjourned, he said the court is adjourned until Wednesday next, and that is going to be the next opinion day for the court. Sometimes the Office of Public Information lets the reporters who cover the court know, by the way, we're going to add a Thursday opinion day if the court isn't in session. So, that's all we know.

So, me personally, how I watch the court, because I am no longer, I used to work and be physically in the press room sometimes and you would see the number of boxes that come out. So, if it's two boxes we're like, oh, maybe that's two or three opinions, depending on how long they are, you're guessing. And then, you know because you can see when the last opinion is coming. But, now that I follow it remotely, I watch SCOTUS blog and I'm just like most of Americans who are SCOTUS nerds, who they have a wonderful live blog that tells you all the information you need to know whether there'll be another opinion coming, how many boxes there are, really puts you right there in the press room with the reporters. And so, I highly recommend that.

Barb: SCOTUS blog is great, but I wish the people who don't know anything would shut up. It's an open blog, so anybody can say anything. And so, the people [inaudible 00:50:57]

Kim: The moderators are identified, but yes.

Barb: So, opinion is coming. You're like, okay, let's go. And then, someone's like, I'm so nervous. You got to look through all the clutter.

Joyce: You can always join me in purist land, because I just go to the Supreme Court website and wait for the opinions page. But, the unsettling thing there is, you actually don't have to refresh that. They somehow just pop it in. So, you're staring at the screen and all of a sudden you're like, oh no, there's another case. How long has that been there for? But, at least you don't have to deal with the commentary from the [inaudible 00:51:32].

Kim: That's funny.

Barb: Well, I've got another question for you, Kim. Can you explain how the justices are assigned to author particular opinions?

Kim: Yes. So, in every opinion, if the chief justice is in the majority of the case, then he assigns the case to be written by someone in the majority, including, it could be, he could assign it to himself. He wrote the Rahimi decision, for example, the main opinion in that. If the chief justice is not in the majority, then the senior most justice in the majority assigns the case either to himself or herself or to another justice. And we talked a little bit about what factors go into that. The number one factor is often how many cases the justices already have. If everybody has four and somebody has two, highly more likely that the person who only has two will get that opinion. But, it could be any reason or no reason. That justice could have a particular thought. They could have made some sort of point in their conference that the chief or the most senior most justice in the majority found compelling. But, it's up to a justice, either the chief or another justice.

Joyce: So, Kim, most days, I think every day that I can remember recently, the court has issued more than one opinion. Can you talk about how you figure out once it's happening, how many decisions we're going to get, and talk about the whole box thing and R numbers?

Kim: I don't understand R numbers. So, my husband who has covered the Supreme Court for Bloomberg News for 25 years knows all the lingo, can look, can tell by the lighting in the room what's going to happen. I can't do that. So, that's why I watch SCOTUS blog, because it's a lot easier for me. But, basically what happens is a little R comes up when the last opinion of the day is being released. I don't know if it comes up on the website or if it's just internal. I don't know exactly how that works, so I'm the wrong person to ask. But, usually you get an idea from the number of boxes. If it's three boxes, I usually say it's like anywhere from three to six opinions, two boxes, two to three, one box, one or two, that sort of gives you an idea.

Joyce: Can I have a follow on? Can you talk about the order that they're offered in? Because, they come roughly 10 minutes apart, more or less. But, you [inaudible 00:53:54] first.

Kim: Not anymore. [inaudible 00:53:56] So, during the pandemic they were doing this 10 minute interval thing because the justices were remote and it just made it more convenient to do remotely. What happens now and what happens normally is, the justices show up and actually announce the opinion from the bench. And it goes in reverse order of seniority, with the chief justice being the most senior. So, if on one day, for example, you have opinions from Amy Coney Barrett, Clarence Thomas, and the chief, it will go in that order. Amy Coney Barrett, Clarence Thomas, and then the chief. They're announced in that order. They're not announced in the order of how big the case is. But, sometimes it can be, because Alito and the chief in this majority tend to write a lot of the big opinions. So, it seems that way, but that's not actually how it's done.

Jill: And so, Kim, one more question for you is, how does the court decide which cases it will take? It's not mandatory that they take appeals, and we have certainly questioned some of the ones they've taken and said, why did they do that? That's such an obvious outcome. They shouldn't have heard it. So, what do they take into account?

Kim: Well, there are some cases that are mandatory for the court to take, and those are cases of original jurisdiction. We actually got one of those opinions this week. Those are battles between states and they're usually over things like land or water rights. And the court takes those up as a matter of, they're compelled to hear those cases and they're heard like a trial. So, the court weighs evidence and does everything. It doesn't just weigh the law as they do with other appeals. But, aside from that, the court grants what is known as [inaudible 00:55:40], and I'm sure we all pronounce that differently, but that basically is the court deciding on itself, we are going to answer this case. They get untold requests every year, and lately the court has been granting maybe 50 to 60. When I covered the court in the beginning, they used to do 70 or 80. So, the numbers have really come down, even though they still can't manage to finish them all in a timely manner.

But, they usually take up a case either where there is a split among the circuits, which means the courts of appeals are coming to different opinions and that's not good for the rule of law and reliability, or it's a novel constitutional issue like, whether the president is immune from prosecution or something that needs clear clarification by the court. Again, they can do it for any or no reason, but that's usually, those are the cases that are most

likely to be taken up, and it takes four justices to agree to take up a case. So, they don't need a majority to agree, but four justices have to agree. That was exhausting. That was like mini law school.

Barb: Well done.

Joyce: You did great. I know we imposed on you to do this, but you're my go-to person, so I think you should be everyone's go-to person.

Kim: I'm happy to do it for you guys. You guys, I don't know what it's like where you are, but in D.C. it is steamy. The temperatures are in the 90s, and when you are cooking in this kind of summer heat, it's good to have One Skin's OS-01 face SPF to protect and repair, to fight back against sun damage, because it has been sunny here too. I haven't seen the rain I think in a week. And especially if you're traveling or you're heading into vacation season, it's good to know that your skin will be ready for anything that the elements will throw at you. One Skin's regimen works fast, and the formulas feel amazing when you apply them. Now, I never go anywhere without One Skin, and we know you are going to love it too.

Joyce: Kim, I've been booking a lot of time up in your town in Washington the last few weeks and it is horribly steamy. But, when I go home, I go to Alabama and we really take the cake down here for crummy summer weather. I have had One Skin with me and especially this fabulous new tube of lotion that's got SPF in it both away and at home, and I am totally in love with it. Something I've learned from One Skin is that your body starts accumulating senescent cells as early as your 20s, and I'm pretty far past that. They're also called zombie cells and they stop producing collagen and hyaluronic acid like they used to and secrete an inflammatory substance that makes nearby cells dysfunctional. Luckily there's a solution for zombie cells and it comes from our friends at One Skin.

Jill: I love that. And I also love that One Skin was founded by an all woman team of scientists. One Skin is the first and only skin longevity company to target a key hallmark of aging called cellular senescence using their proprietary OS-01 peptide. OS-01 is scientifically proven to decrease lines and wrinkles, boost hydration, and help with the thinning skin that often comes with age. I recently ran into a fan of our podcast and she asked a political question, but then she followed up with a more important one. She wanted to know if I really loved One Skin as much as I've said on this podcast. I told her, absolutely, but I also said, don't just take my word for it. One Skin has over 4,000 five star reviews for their full line of face, body, sun, and travel sized products.

Barb: For a limited time, you can try One Skin for 15% off using the code, sisters, when you check out at oneskin.co. With One Skin, your skin can stay healthy, strong, and hydrated at every age. One Skin is the world's first skin longevity company. By focusing on the cellular aspects of aging, One Skin keeps your skin looking and acting younger for longer. Get started today 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. You can also find the link in our show notes.

Jill: So, the Wall Street Journal this week had a very provocative opinion piece. It's not the first time the Wall Street Journal or any other Trump supporting media have assailed the New York State convictions resulting from DA Bragg's business records case. They have claimed from day one that the case is not justified and they're going to continue to make such claims. But, this Wall Street Journal article written by Michael McConnell was arguing that the convictions are actually helping Trump because the case is legally wrong. I want to focus on the legal arguments made here, not the political implications, because some of those legal arguments may actually sound reasonable to even smart and thoughtful attorneys.

A good friend of mine wrote me as soon as she read the article saying, what are the answers to these claims? Because, she really thought they sounded reasonable. So, I want to help my friend, Linda, and our audience understand why the arguments in this new hit piece or opinion piece are wrong, and why the case is legally correct. And Kim, so let's start with making sure that everybody listening knows what the piece claimed is illegal about Bragg's case. And then, if you would use your Supreme Court expertise some more today and put it in context by telling us about the history of how special counsels have been appointed and challenged.

Kim: So, well, I'm going to defy your question a little bit, Jill, and start with the politics, and then go to the law, because I think it's really important. Because, what this feels like to me, this piece was, remember during the Brett Kavanaugh confirmation when Dr. Christine Blasey Ford first came forward, and then she testified so eloquently about her recollection of her encounter with Kavanaugh. And then, all of a sudden I remember seeing online this conservative legal pundit named Ed Whelan float this idea of the doppelganger theory. Like, everything she said could be totally true, and she's completely believable, except, she got the wrong guy. Like, something about her brain made her forget and misremember who did this. And I was like, how disgusting, like how insulting that you're talking about a doctor, like somebody who experienced something. When I have experienced something traumatic, it is embedded in my brain forever. How dare you say.

But, all of a sudden, by the time the end of the confirmation process was done, all the senators on the Republican side, even Susan Collins were like, oh, I think that she went through something terrible, but I think she maybe misidentified. It just caught on. He floated this theory and it led the way and Brett Kavanaugh's on the court. So, that's what I think this McConnell guy is doing with this piece, trying to give Republicans something to rally around by floating a flimsy legal theory and who knows? It might work the same way it did with Kavanaugh. So, essentially what he's claiming is that this was a Democratic orchestrated act of lawfare committed against Donald Trump for political reasons that is unsupported by the law. He says that the charges in the New York case for which Trump was convicted were in his money bogus for a lot of reasons, hush money payments aren't illegal.

In order for it to even be potentially a crime, it needs to have had been filed within the statute of limitations, which ran out in 2019. Of course, that's not true. That was for the misdemeanor. If it was a felony done in furtherance of another crime, which we explained ad nauseum on this podcast, the statute of limitations had not run. He actually says that in here, but still he says, because there was no other crime enumerated then that doesn't work either. Of course, the prosecutors made clear that it was a violation of

campaign finance law to hide payments before an election, to keep that information from people. And that, he says, "Republicans, independents and fair-minded Democrats are therefore justified in regarding the New York case as an abuse of the system with the intention of affecting the 2024 election." Listen, Donald Trump can appeal this and make that argument. I think that it is bogus, but this is above all a political document meant to rally Republicans and use this as a rally and cry on the campaign trail. This is not a serious legal document.

Jill: So, Kim, you used the word lawfare, which now has a new definition. It was, when I testified before Congress before what used to be called the Weaponization Committee, it's now called the Lawfare Committee. And so, I had to look up what lawfare meant, and it does mean the abuse of government to punish people wrongly. And it's hard for me to believe that anybody thinks that's what's going on here. But, Barb, I want to go into some of the-

Kim: Oh, wait a minute. Before you do that, you asked me another question. Because, he also goes beyond the New York case and [inaudible 01:05:38] the other cases that Donald Trump is facing based on the use of special counsel and that special counsel is not justified here. Actually, there was a hearing today on that very point that the special counsel Jack Smith's appointment was unconstitutional. I mean, no, there is a long precedent of special counsels. I think there have been, how many have there been? Like eight or 10, and there have been previous challenges to special counsel. So, a special counsel is someone appointed by the attorney general under DOJ regulation in a case where it is determined that you need a more independent eye to make the decision about prosecution so that it cannot be tagged as being a politically motivated prosecution. That's why we've seen it happen when the classified documents case in the case of both Donald Trump and Joe Biden, when they had the classified documents. We saw that in Hunter Biden, because he was a son of a political figure.

I think that was a bit of a stretch, but we saw it. Merrick Garland made the decision to do it. And we see, of course, in two of Donald Trump's cases, there are special counsels there too. It is not unconstitutional. In fact, back when there was an independent counsel statute, remember Ken Starr? He was an independent counsel that was appointed under a federal statute that has since expired. One of the reasons that that statute was allowed to expire is because what that essentially did was set somebody up to be in power under no branch of the federal government. They were not an executive person, they were not under the judiciary, they were not under legislative control. They were just out there floating on their own. And I think if that was challenged constitutionally, that would be a problem. But, the special counsel clearly has executive authority under DOJ regulations that have been upheld, and all of these are Hail Mary's. But, I guess, it depends on which judge you pull in the appeal as to whether these arguments will hold any water.

Jill: Barb, I want to ask you, because you've written the book about dis and misinformation. You heard what Kim laid out as some of the arguments we made. Are these arguments in the Wall Street Journal article disinformation, or do they have any legal validity? And I just want to note that the author is a law professor. He's at Stanford. He was a judge on the Tenth Circuit, and he's now a senior fellow at the Hoover Institution, which is officially part of Stanford, but is privately funded and has really nothing to do with Stanford. It's described as conservative.

Barb: I see this is the absolute definition of disinformation, because he takes the germ of truth and states it without providing details or context in an effort to provoke outrage. So, he says things like the hush money payments to Stormy Daniels weren't illegal, period. Well, yeah, not standing alone. And then, he says it's the labeling of those payments as legal fees that constituted the crime. But, that's a misdemeanor in New York for which the statute of limitations ran out in 2019, all right. An awful lot going on there. That's because it wasn't a felony. It wasn't a misdemeanor. It becomes a felony which converts the statute of limitations to five years, which got hold because of COVID and because Donald Trump was absent from the jurisdiction in compliance with the law in New York. So, he says some things are true, but he doesn't tell you the whole thing to put it all together.

Another thing that he says, it becomes a felony if it's used to conceal another crime. Then he says, what was this other crime? The indictment didn't say, and each juror was allowed to choose from any of three theories. Well, again, true, but it misses a lot of important information. The indictment didn't say, but a bill of particulars was filed within a few months that did say, and the other crime was a state law that prohibits the promotion of prevention of the election of a candidate by illegal means. And so, it wasn't a crime, but it was the means that the jury was allowed to find without unanimity in compliance with the law. So, there's a lot of stuff in here.

When he talks about selective prosecution, he doesn't say it is, he says it has the whiff or the odor of selective prosecution, and he talks about different standards for Joe Biden and Donald Trump whose conduct was completely different. Donald Trump was not charged for accidentally bringing home some boxes of documents. He was charged because when he was asked about it, he refused to give them back for 18 months, and then move boxes around to make it more difficult to find them. So, I find this to be the definition of disinformation, saying a lot of things that are true, but without providing enough detail or context to give a full understanding that would be accurate.

Jill: Exactly. It seems to me that this is the definition of omission makes it untrue. And that you can say one thing, but if you don't fill in the second, it's a total lie. So, Joyce, going to this sort of expansion of his argument from, and I should say that this opinion is really about why Republicans are sticking with Trump, and it's because this was such a bad case. But, he points out that there are other bad cases, which is every single case against Trump in his view. So, they're arguing now that special counsel have to be Senate approved just like U.S. attorneys like you and Barb will have to be Senate confirmed. What's the argument there and what's the answer?

Joyce: I'll add on to what Kim was saying, because I think she said it pretty eloquently. It's an interesting argument. There are some good arguments on both sides. And down in Florida, judge Cannon should have considered Trump's argument for about 30 seconds before she dismissed the argument because that's how much merit it has. Instead, Friday afternoon, I think while we were taping the podcast, she was still in court hearing arguments from parties and even from amici on this, which is very interesting. But, the reason it's good to know that this is happening in Florida, and here's a real good, I think laying open of the hypocrisy that's going on here. One of the amici who is arguing down in Florida, the argument was made by Ed Meese, who was the U.S. attorney general in 1987 when he appointed Lawrence Walsh to serve as the Iran-Contra special counsel.

And Meese is now arguing that Attorney General Garland didn't have the legal power to do what he himself did.

So, in 1987 when Meese made that appointment, the Court of Appeals in the District of Columbia very quickly dismissed the argument. In fact, they said in their opinion, we have no difficulty concluding that the attorney general possessed the statutory authority to create the Office of the Independent Counsel. And like you said, Jill, this was under a different regulation. This was under the prior regulation, but it's based in the same statutory authority that's used here. It's the same statutory authority that was used when there were special counsel under Janet Reno. It's been in use ever since.

It's very ironic that Meese is taking the position that Garland can't do it. Judge Cannon, if she rules against the special counsel, at least Jack Smith will get his long awaited opportunity to go to Atlanta. But, this whole piece in the Wall Street Journal just smacks of apologia to me. I think they have to know that, a former Tenth Circuit judge way too smart to not appreciate what's going on in this piece. I think it's just a shameless exercise in trying to give people excuses for looking the other way when a former president, now a candidate to be president again has been convicted on 34 felony counts.

Group: Apologia.

That might be my new stage name.

That's a word, right? I like it, apologia.

You're making me think about Prince and Apollonia, right?

Barb: Yeah, it's cool, right? It'll be Apologia six. Can we be singing Purple Rain on the way out of the show today?

Joyce: I like it.

Kim: Oh, God.

Joyce: Apologia.

Barb: I'm going to serve that at my next picnic, apologia salad.

Joyce: Now, it's time for what's really become our favorite part of the podcast, answering our listeners' questions. Today we struggled to decide from among a lot of great questions for the three that we could answer. So, please make sure that if you have a question for us, email it to us at sistersinlawpoliticon.com. Tag us @SistersInLaw using the hashtag on Threads or tweet using the hashtag on Twitter. If we don't get to your question during the show, keep an eye on our Threads during the week because we will try to answer as many additional questions there as we can. But, this week, first, Jill, let me come to you. We've got a question from Michelle in Enschede in the Netherlands, is there no recourse on bump stocks? Can Congress limit these deadly devices? That's a great question.

Jill: It is a great question, and I love that it came from the Netherlands and that we have listeners there. And unfortunately this is a quick answer. There is no recourse at the court level because this is our highest court. Can Congress do something? They may do something, but they won't, because of the fact that there's no bipartisan agreement. The Democrats did try to do something, because the court had really made it clear that this was an issue that could be resolved by Congress. That this was statutory interpretation, and that the statute at issue just didn't hold up to what needed to be in the statutory language. So, it is up to Congress, and I think it's up to our listeners to make sure they contact their members of Congress to get them to pass a law that says what is obvious to all of us, that a bump stock makes a non-automatic weapon into a prohibited weapon.

Joyce: Justice Alito, even in his concurrence, invited Congress to act. I think that they should take him up on it. Kim, next question is for you, and it comes from Maggie. She asks, why is the Trump flag, his face on our American flag, both allowed and very visible? Isn't it desecration?

Kim: So, before this question, I was unaware of this flag, but I did look it up just because it was brought up and it indeed is a flag with Trump. I believe he has a thumbs up sign or something on it, and you're asking, is it desecration? Maybe. Desecration is in the eye of the beholder, I guess. But, I think the bigger point is, desecration is not unlawful, at least constitutionally in our country. You can do whatever you want to a flag. You can even burn it. There are some, I think there may be some old blue desecration laws still on the books in some states, but if they were ever enforced, they would quickly be struck down as violative of the First Amendment's protection of freedom of speech, because the Supreme Court has ruled very clearly that such actions fall squarely within that very strong protection. So, you can make a flag with your face on it if you like, but Donald Trump has the same right to do so.

Joyce: Barb, last one's for you from Leslie. President Biden has said that he will not pardon his son, Hunter. If Hunter gets jail time, can he commute the sentence? And what's the difference between a pardon and a commutation?

Barb: Very good question. And I think Joe Biden has now also said he will not commute Hunter Biden's sentence.

Joyce: Yes, that's correct.

Barb: So, both of these are two different categories of clemency. Clemency is the president's power to grant some sort of relief when someone is convicted of a crime. And so, a pardon is forgiveness. Usually under DOJ policy, a person has to serve their sentence first, and five years have to pass before they can apply for a pardon. And then, it is a show of mercy and forgiveness. You did this thing, but we're going to take it off your, I think it still shows up on your record that you were convicted, sentenced, and then pardoned. So, it is a showing of mercy for some reason, pardoning Nixon, pardoning people who went to Canada during Vietnam, all of those things. And a pardon could occur before someone is convicted of a crime as it was for President Nixon.

Commutation is, I'm going to prevent you from serving your sentence, or I'm going to cut it short. So, this is something that Donald Trump did for many of his cronies and other people who were serving sentences for public corruption crimes in particular, I believe in

an effort to normalize that crime. So, people like Rod Blagojevich and former Detroit Mayor, Kwame Kilpatrick, who were serving portions of lengthy sentences, Donald Trump said, you're free to go. I'm going to cut your sentences short. So, those are two different things, forgiveness and cutting short a sentence, and the president has the power to do both of those things under this broad umbrella of clemency.

Joyce: Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Jill Wine-Banks, and me, Joyce Vance. Please show some love to this week's sponsors HelloFresh, LolaVie, Calm and One Skin. Their links are in the show notes. Please support them, not only because we love them, but because they make this podcast possible. Follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five star review. It really helps others find the show. See you next week with a new episode, #SistersInLaw.

Jill: I looked up the history recently of how it got in, and it was a religious, conservative person who got President Eisenhower to do this. Sorry, musical accompaniment, sorry, you can...

Group: Bad to the bone.

That is so [inaudible 01:20:26].

I love it.

Kind of appropriate.

There is no better thing.

Jill: I used to have Deliverance as my answering song. That would've even better.

Kim: That was fantastic.