

Barb: Welcome back to #SistersInLaw with Kimberly Atkins-Stor, Jill Winebanks, and me, Barb McQuade. Joyce will be back soon. To start, we want to remind you about some exciting news, #SistersInLaw will be doing a live show at the 92nd Street Y in New York City on September 20th. You can get tickets at politicon.com/tour. We can't wait to see you there. In other news, the new T-shirt is at the merch store. It's the perfect vibe for any season. Just go to politicon.com/merch. And finally, if you haven't heard our very own Kimberly Atkins-Stor recently launched a new Politicon podcast called Justice by Design. Justice doesn't just happen on its own, and she's there to introduce you to the people, applying it to the most challenging issues facing our country. You can find Justice by Design wherever you get your podcasts or watch it on the Politicon YouTube channel. You have to check it out. You can find all of these links in the show notes.

And now let's get onto the show where we'll be discussing Trump legal news of the week, voting rights, and our latest installment in Project 2025. But first, sisters, it's Labor Day weekend, sort of the symbolic end of summer, but one last hurrah. You guys have any good plans for the Labor Day weekend? How about you, Kim?

Kim: Well, for me, I'm probably sadly going to be working for part of it, which probably defeats the purpose. It definitely defeats the purpose of what Labor Day is supposed to be about, but I will take some time, which I like to do, to think about what the holiday really means. It means a recognition of those who have fought to ensure that the working class in our nation are able to be paid enough to live a good life and to have a good retirement, and to be taken care of by their employers. And so I will spend some time, particularly thinking about my dad who I lost earlier this month. He was a union official for over 25 years after being a laborer and building trades.

He was a cement mason. So many of the streets in the Detroit metro area and the buildings that were up, he planted those bricks and spread that concrete. And then he spent the rest of his career fighting for the rights of the union members who did that work. And it was really important. And because of him, they were able to live better lives, they were able to have good pensions, and live the American dream. So I'm going to spend a little bit of this Labor Day... And it's also funny. In Detroit, every year there's a Labor Day parade and-

Barb: Yeah, you bet.

Kim: ... we to march in it. I was a kid, he would always be marching in his suit and dress shoes. I always thought that that was my dad was a suave guy.

Barb: That's it.

Kim: And I would go as a kid and march down Woodward Avenue with him.

Barb: Yes.

Kim: So that's a really great memory that I have of him. So I'll be thinking of him this weekend.

Barb: Yeah, that's a big deal. My dad was a member of the UAW, so I too am a daughter of the labor movement. And as Joe Biden often said, Detroit and labor unions are what built the middle class, which is absolutely right. I think you and I are living examples of how-

Kim: Yes.

Barb: A family can make a better life for their children through organized labor, and we're not going back. So I am all with you on recognizing Labor Day. How about you, Jill? You got any good plans for the Labor Day weekend?

Jill: Well, now I feel like Barack Obama speaking after Michelle, because you guys have set the bar so high, and especially because referring especially to Detroit, I was in the organized crime and labor racketeering section, and so I prosecuted a lot of labor racketeers.

Barb: Yes.

Jill: So let's hear-

Barb: Well, that's important.

Jill: Okay. Thank you.

Kim: Yes.

Jill: Thank you. Thank you.

Barb: That's important to protecting the rank and file union members-

Kim: Absolutely.

Barb: ... who are being victimized by corrupt leaders. So I did some of that work too. That's important.

Jill: Great. And I agree with that. But in terms of plans, I unfortunately have something due for the American Bar Association Litigation Section magazine. And so unfortunately, I will be working to finish that over the weekend, but I plan to do that in my normal late hour evening work time, and to go swimming and maybe play golf if we can get a tea time on the weekend because my husband, of course, will be off, and it'll be fun to just be together, and we're having dinner with friends. So it's going to be a wonderful weekend.

Barb: Yeah. Well, for me, we're all doing a little work. I've got to do some prep for class. We're back to school at Michigan Law School, but I'm also looking forward to a lot of football this weekend. College football kicks off. Michigan's got its first game, so this is a fun time of year for me. So looking forward to watching some great football. So hope you all have wonderful Labor Days, whatever it is you're doing.

Jill: Hey Kim, I need some help because all of this double stuff and multitasking is really making me nervous.

Kim: Yeah, I hear you, Jill. I feel like my schedule is just out of control and I barely have time to record even this podcast. But you know what? When there is a lot of turmoil in the world and it feels especially stressful and even hopeless, and when things are outside of our control, we can turn to the power of meditation. And there's no better way to do that than with the Calm app. Calm can help you restore your sense of balance and peace when you're surrounded by chaos. Since I've started using it, I have really found that it has helped me keep my cool a little more. I find my center, which is much easier, and it makes dealing with challenges a lot less stressful, and feel like things that are manageable instead of massive obstacles.

Jill: That sounds so calming to hear you say that. And the problem for me is I forget to do it when I'm got a schedule that's out of control. But you are right, and Calm is the number one app for sleep and meditation, giving you the power to calm your mind and change your life. Calm knows that everyone faces unique challenges in their daily lives, and mental health isn't about a one-size-fits-all solution. That's why Calm offers a wide range of content to help you navigate life's ups and downs with programs like meditations that are designed to help you work through anxiety and stress, boost your focus, build healthier habits, and take better care of your physical wellbeing. There are also sleep stories, sleep meditations, and calming music that will help you drift off to restful sleep quickly and naturally, along with grounding exercises for when you are feeling overwhelmed, as we all are right now. These short guided sessions use sensation, movement and breath work to help you relax and reset. Calm even has powerful expert-led talks designed to help you handle grief, improve self-esteem, care for your relationships, and more.

Barb: I don't want to talk out of school, but speaking of multitasking, as we record this, Kim is actually steaming her jacket for her next TV appearance. I'm just saying, that's why we need calm, because Calm puts the tools you need right in your pocket and can help you dedicate just a few minutes each day to live a happier, healthier life. Stress less, sleep more, and live better with Calm. For listeners of our show, Calm is offering an exclusive offer of 40% off a Calm premium subscription at calm.com/sisters. That's not easy to say. Go to C-A-L-M.com/sisters for 40% off unlimited access to Calm's entire library. Again, that's calm.com/sisters. You can also find the link in our show notes.

Jill: The conventions are over, and we are returning from a week of nonstop political news to a torrent of big legal news this week. I counted over a dozen topics that I wanted the Sisters In Law to discuss this week. And that doesn't count things like the violation of the law, federal law and the rules at Arlington National Cemetery by Trump's campaign, who filmed him and used it on social media for political purposes against all the rules, and despite Trump and his staff ignoring what they knew to be the law. But let's go to two issues that I thought were really important. Two Trump legal issues really stood out as essential for us to discuss this week. And a third one happened yesterday, so I'm not going to cover it because we haven't studied it in depth yet. And that had to do with another removal request to get to federal court and to stop the sentencing from happening this September as it is planned.

And the first of the two that I want us to cover is the superseding indictment that Special Council Smith filed against Donald Trump in the federal election interference conspiracy case that's pending in the District of Columbia after the Supreme Court sent it back to Judge Chutkan for analysis of their, what I would consider, ridiculous and overly

expansive immunity decision. She was tasked with deciding which category of immunity each allegation in the indictment fell into. And what that meant was her having to decide whether things fell into the absolutely immune because it's a core responsibility of the presidency, or whether it was a rebuttable presumption of immunity, or whether it was totally personal, and therefore not immune at all. So let's look at what happened in response to that. Just as it got sent back to Judge Chutkan for the analysis, instead of asking for a hearing on the facts of that, Smith filed a superseding indictment. And Kim, why did Smith file a superseding indictment? And did it preempt Judge Chutkan's evaluation of what is required to rebut a presumption of immunity?

Kim: Yeah, so it seems that the special counsel Jack Smith filed this superseding indictment, obviously in response to the Supreme Court decision on immunity in which the Supreme Court laid out some sort of ground rules about what might be immune and what could be presumptively immune, which means not necessarily, but maybe, and things that are not, right? So non-official conduct, not immune, official conduct immune. And then there are other things that have a presumption of immunity, but that can be rebutted. So on the immune side, anything having to do with the DOJ and the communications with the DOJ. So all that is gone, all the references to Jeffrey Clark. He's not even called an indicted co-conspirator in between the lines. Nobody's named, but we could figure out it was him. He took all those things out, but he still has the four charges that were made and he just uses the evidence that he has to basically state overall, "I said what I said. I still think that I can prove all four of these charges against Donald Trump even without that DOJ evidence."

But he left in some other things that I found was interesting, and I'd love your take from you too prosecutors about why. He left in the part about Vice President Pence, the pressure that was put on Vice President Pence not to certify the election on January 6th, and even referred to Vice President Pence's notes. Now, the Supreme Court decision said there was a presumption that communications between White House officials would also be immune. And it's unclear, after this decision, whether you can even consider evidence from immune activities, but Jack Smith seems to be feeling kind of bullish and leaving that stuff in there. So that's where we are at this point.

Jill: So I have an answer to that question, that specific one, because he renamed Pence as not the vice president, but as the president of the Senate, showing that he was acting in a different role than as a White House official. But Barb, what do you think? And also in the way he reframed the issues for Judge Chutkan about what is presumptive and how he renamed things, leaving the charges the same. The four criminal allegations are exactly the same, but the allegations and evidence supporting it are different. So what do you think?

Barb: Well, they did remove, of course, all of those allegations pertaining to the Department of Justice. And I hate to see it go, but I agree that in light of the Supreme Court's decision they had to go. But as a former Justice Department employee, that, to me, was the most egregious conduct in there. It was the abuse of the Department of Justice with Jeffrey Clark allegedly trying to persuade states to submit alternate slates of electors. That is so wildly improper, and I thought illegal, that many Justice Department White House officials were prepared to resign over it. And now, nevermind. It can't be a crime because of immunity. So that's all out. But as you say, what Jack Smith did was say, "Okay,

anything that's an official act has to come out, but anything that is a campaign activity may stay in."

And so some things were removed, like all the Justice Department things. There were also some statements made from the Oval office or at the White House that were removed, but other things stayed in. For example, the speech at the ellipse on January 6th, it now clarifies that during that speech when Donald Trump said things like, "You have to fight for your country and you got to be strong," and all that sort of stuff, he was at a campaign event that was privately funded. That is now specified in there. So no suggestion, no argument that this is somehow official actions of the president. This was Donald Trump in his capacity as a candidate for president. In fact, the very first sentence of this indictment is interesting. The old indictment said, "Defendant Donald Trump was the 45th president of the United States." It now says, "Defendant Donald Trump was a candidate for president in 2020. He lost that election."

And then it goes on and it really discusses everything in terms of the campaign, which it always was. But just to clarify, this is what this is about. I think it helps tee it up for Judge Chutkan to decide what's in and what's out. And then with regard to the evidence question and the Mike Pence stuff, I agree that that's probably the most edgy of the allegations because I think the language of the Supreme Court, correct me if I'm wrong, it was something like this... Anytime you've got two executive branch officials meeting and talking with each other, it's presumptively immune, but the prosecution may rebut it. And the reason it's presumptively immune is I think the prosecutor has to show that it does not risk encroaching upon executive function. And I think that it's a little bit of a tall order, but I think it's a plausible argument, and I think it's one that they should make on behalf of the American people.

Jill: Yeah, I thought it was a very strong argument, and reframing it as he wasn't talking to the vice president. He was talking to a person who has a responsibility under the Constitution to act as the President of the Senate in counting the ballots and in confirming the count of the ballot. So I think it's a pretty good argument. We will have to see, of course. But did he have any other options? What else could he have done besides file a superseding indictment? Kim, you want to take that first?

Kim: I think the other thing he could have done was drop a charge, but clearly he didn't want to do that. He think he thinks that he could still get those four convictions on those four charges with the evidence that he has. And if so, a superseding indictment that reframes and narrows the focus of the charges, I think was the right way to go.

Jill: And Barb, do you agree, or was there a chance of having an evidentiary hearing where some of the evidence would've come out and then could have been ruled on?

Barb: Well, what I thought would happen next frankly would be for him to just amend the indictment to remove the Department of Justice allegations, and go on instead, Jack Smith presented it to a new grand jury.

Jill: Brilliant.

Barb: And what's interesting, what his spokesman said was, because you can do that. You can't add charges without a grand jury, but you can remove charges without a grand jury, just take away, make it narrower. So I think he could have done that. But I see two reasons. One is he amended the language as we're discussing. So I think if you're changing the framing like that, you probably do have to go back just to make it clean. But the main reason, and this is what the spokesperson said, is, "We didn't want there to be any concern that the grand jury was somehow tainted by these improper allegations that are no longer on the table, all the Justice Department stuff and some of the other acts that occurred in the White House and the Oval Office, to make sure that a fresh, clean grand jury heard only the evidence that is now not protected by immunity." And so I think that was probably the main reason they went back to a grand jury.

Kim: And can I say, not only was that a really, really smart move the way he convened an entire new grand jury and nobody heard a peep. It was just like when he dropped the new indictment, the superseding, everybody was like, "Wait, what?"

Barb: Yeah, that's good, isn't it?

Kim: That was amazing.

Jill: He's been very good about not having leaks, but this was a really big one when you have a grand jury coming into a courthouse, and nobody picked it up. It was amazing. And I do think he avoids a possible appellate issue by having done it this way. So I think it was pretty smart to have done this. And we've had some listener questions about, what's going to happen? Will this happen before the election? And I think we all agree that this case will not go to trial. Whether it had been an amended indictment or any other alternative that he might have tried, it's not going to get there. It's going to end up being appealed, whatever gets left in. And so it's not going to happen. And then the question is when reader asks whether he would pardon him himself if he gets reelected, and he won't need to pardon himself because it's not going to go to trial before, and he'll order his attorney general to dismiss the case. So he won't have to pardon himself, raising the question of whether a president can pardon himself.

But let's look at the second big case that came to our attention this week, and that is the Mar-a-Lago documents case. So just because it's sort of been out of the news for a while, Kim, do you want to briefly remind us why Judge Aileen Cannon dismissed the case and what argument Smith made about reinstating it, which is what happened this week with his filing of a brief?

Kim: Yes. So Judge Cannon ruled that the case had to be dismissed because the DOJ, the Attorney General did not have authority to appoint a special counsel. So Jack Smith, in his appeal, I think he used, I will say very measured language. I guess he realizes that this case, if he wins, the likelihood is that it could still very well be before Judge Cannon to decide this case. So you could tell that he's trying to use polite language to tell her that she was full of it with that ruling. But basically goes to US V. Nixon, Jill, a case you know very well, which establishes, per the Supreme Court, that the Attorney General has statutory authority, under federal law, to appoint a special prosecutor.

Now, it's not exactly the same as what the special counsel's powers are here, but from the language from the statute, specifically 28 USC sections, 509, 510, 515, and 533, when

you read them all together, it clearly vests within the Department of Justice and the Attorney General, the ability to either appoint or retain, whatever language you choose to use, and either would apply here, an official to carry out the duties of a special counsel. The fact that Judge Cannon kind of relied on things such as that distinction between appoint and retain, Jack Smith basically argues that they are synonymous in this case, and that whichever authority you're looking to, they actually both grant the Attorney General that authority, and also that this has happened time and time again since Watergate, that there have been a host of special counsels with the same power that he has had.

And the part that I liked the most was what Jack Smith wrote, "From before the creation of the Department of Justice until modern day, attorneys general have repeatedly appointed special and independent counsels to handle federal investigations, including the prosecution of Jefferson Davis' alleged corruption in federal agencies, including the DOJ itself, Watergate and beyond. So the district court erroneously disregarded this history as spotty or ad hoc," that she basically made a mistake. But he's doing it so nicely. It's just like "She doesn't know what she's talking about." That was basically his argument, as diplomatic as he made it.

Jill: So as you note, Kim, I'm very biased about the outcome here. As part of the team that briefed and argued US v. Nixon, I don't think there's any doubt that Smith, like Cox, and yes, even Ken Starr, who went way beyond his responsibilities-

Kim: And that was a different statute.

Jill: Yes, there have been a series.

Kim: That statute has expired.

Jill: This is actually a third statute. It's definitely-

Kim: Right.

Jill: This is not the same as Cox's, it's not the same as Starr's, but in effect it is because it is allowing the Attorney General to appoint, which Cox was appointed by the Attorney General. So it is the same in that regard, although the details are definitely different and the leeway that Starr had was revoked by the newer laws because that was ridiculous.

Kim: Right.

Jill: So Barb, just in terms of the history, and I will point out that we're talking about over 100 years, and we have a 400% increase since Cox in the appointment of... Cox is only the seventh, I can't remember now, seventh or eighth special counsel in the whole history of our country, and now we have 30 more in the last few years. So obviously there is something going on in America that's leading to all of these additional special councils. But just in terms of constitutional responsibilities, do you think the Attorney General has the responsibility and should have the responsibility to make sure that the work of the Department of Justice in prosecuting crimes gets carried out by whomever he appoints?

Barb: Yes. So the question is, you asked too, does he have the authority? Absolutely, yes. Should he have the authority? I'm not so sure. I'm not in love with the whole special counsel, independent counsel idea because I think it suggests that we shouldn't trust the Attorney General in other cases. Because he's appointed by the president, he is therefore suspect of doing the President's business. I think it leads to suspicion of partisan politics by the Justice Department, which it shouldn't. But no doubt, at this time, the Attorney General absolutely has authority. These statutes say that the Attorney General may delegate this power to another attorney to do his work, right? And that's exactly what he did here. And I will also note that... We talked about Jack Smith being very nice here, and I think Kim is right. The district court attached undue weight to several variations in historical practice, instead of saying, "She just got it wrong, she ignored the law." Because one thing they have refrained from doing here, I will note, is asking the 11th Circuit to remove Judge Cannon as the judge in this case.

And she's now been so profoundly wrong in two really big issues, this one, the validity of the special counsel, and then the other. Remember whether you could file a civil lawsuit to stop a search warrant? Both of those are just so far out of bounds that at some point, it is worth saying to the court, "This judge cannot be fair in this case because of these wrong-headed decisions that she keeps making." Now, I do appreciate the fact that if you ask for it and the court says no, now you still have the bad judge and she's really mad at you because you've publicly embarrassed her. But I do hope that the court does have the ability to take up on its own this question and that perhaps they will consider reassigning the case when they send it back after reversing this decision.

Jill: I hope so. Yeah. So one last question is the timing of the filing of the superseding indictment. Do you think it's because we're approaching 60 days before the election and the Office of Legal Counsel has said you should do nothing that would influence the outcome of an election from 60 days before the election? Is that why he filed it just now?

Kim: I think that's probably part of it, but I don't think it was necessary for that reason because this keeps the same docket number. This is still the same case even though it's a superseding indictment. So you can argue that this is just this case moving forward in the normal course. This is not a new indictment, but why mess with it? Why leave any T uncrossed and any I dotted? So I think he probably was mindful of the timing, although it could just be that the grand jury was done, they handed down the indictment, it was what it was, and so he had just filed it.

Barb: Well, yeah. And if anything, they've probably really been hustling to get it done, because remember Judge Chutkan originally set a deadline of August 6th to come in for a status conference

Kim: Right.

Barb: And Jack Smith said, "I'd like a little more time. Can we have a couple more weeks, just consulting with people internally at the Justice Department."

Kim: No reason. No reason.

Barb: Yeah. So I think they were hustling to get it done just to move the case forward, and the court obviously was putting some pressure on him to let's go. We want to see what's the next step here. So I think it was an obvious next step, and I think the... I agree with Kim, the criticism that this somehow violates the 60-day rule, which is a practice and not a law, or even a policy, by the way. So I think that is nonsense.

Jill: And that would actually only apply to the filing of a new case.

Barb: Right.

Jill: And as Kim points out, superseding is not a new case. So I think you're both right that there were multiple reasons for filing the superseding and doing it now.

Barb: I've been studying all week for my Helix mattress quiz, and I'm ready to go. That's because great sleep is critical to success, and there is nothing better for sleep than a Helix mattress. Join us and find your perfect mattress for the best sleep of your life when you take Helix's two-minute sleep quiz and match a mattress customized for your body type and preferences. When Joyce recently took the Helix quiz, she matched with the Helix Midnight Mattress. She liked it so much, she got Helix mattresses for the whole family. They all love them, and your sleep will be better than ever with Helix two, it's the first quiz I've ever looked forward to. I promise it's the easiest one I've ever taken. Try it and upgrade to a mattress tailored for just the way you sleep with Helix.

Kim: Yeah, I could have used a Helix quiz before I took the bar exam because at least I would've gotten a better sleep before I took them. The Helix lineup offers 20 unique mattresses, including the award-winning Luxe collection, the newly released Helix Elite Collection, mattresses designed for big and tall sleepers, and even a mattress made just for kids. There's something for everyone. Helix designs cradle your body for essential support in any sleeping position with enhanced cooling features to keep you from overheating. And if your spine needs a little extra TLC, they've got you. Every Helix mattress has a hybrid design, combining individually wrapped steel coils in the base with premium foam layers on top. It's the perfect combination of comfort and support. Helix knows there's no better way to test out a new mattress than by sleeping on it in your own home. That's why they come with a 10 to 15 year warranty and offer a 100 night trial to try out your new Helix mattress. The setup is fast and easy, and Helix mattresses get delivered in a box straight to your door for free.

Jill: And Helix has been awarded the number one mattress by GQ and Wired Magazine, and leading chiropractors and Doctors of Sleep Medicine use Helix as a go-to solution for improved sleep. Now, Helix is offering 25% off all mattress orders and two free pillows for our listeners. So listeners, go to helixsleep.com/sisters. That's helixsleep.com/sisters. This is their best offer yet, and it won't last long with Helix. Better sleep starts now. You can find the link in our show notes.

Kim: Well, it's an election year and the voting rights lawsuits are flying as we expected them to, and it's for good reason. Not only have more restrictive voting laws and rules been enacted in states in the last four years than in any other time in recent history, but particularly GOP officials have taken some extraordinary steps that seem aimed, to me, at intimidating some voters in their states from voting. A prime example, Texas Attorney General, Ken Paxton, I still can't believe this happened, authorized raids on several

members of Latino voting rights organizations within the state, as well as a candidate for the state legislature. Their homes were raided, their computers and laptops and phones and papers were taken. It's hard to believe Barb, but can you explain to us why these raids took place? And what alarm bells does it set off for you?

Barb: Yeah, so the Attorney General used search, so these were approved by a judge, but what he claims is that he is investigating voter fraud and ballot harvesting. This is this idea that some people gather up ballots for others, and then deposit them, which is permitted in some jurisdictions and not in others, but there are sometimes concerns that that means somehow the person who's collecting the ballots is changing them or that they lose their integrity in that way and that he did these raids in three counties, including the largest Latino civil rights organization in Texas, taking computers and phones and other things. And so I ordinarily I will give the benefit of the doubt to a court ordered search warrant, but in this case, Ken Paxton has proved himself to be such a sort of lawless Trump supporter.

Remember, he's the one who tried to file a lawsuit saying in the Supreme Court, suing the state of Pennsylvania, saying that they had violated voting rights with voter fraud in their state. So it just seems like such a political activist in that role that I think it is concerning that an Attorney General is interfering with efforts to help voters get organized and vote.

Kim: Yeah. And that's why I am using the term raid. Because usually when there's a lawfully executed search warrant, that's what I say because people who we've spoken about before on this podcast tend to use that word willy-nilly. But this, to me, sounds like a raid. When even a candidate for office is a part of this for trying to help people vote, it just seems very fishy to me, coupled with the fact that it's coming from Ken Paxton. So those who were raided, say they're considering legal action, even potentially exploring, filing charges against the Attorney General's office. What are their options if they are found... So far, there has been no evidence of any wrongdoing, no charges have been filed against any of these people. If this is all found to have been bogus, what are their options? And at this point, hasn't the damage already been done with the intimidation, which I think is the point here.

Jill: Let me start with your second part because I agree completely that this is done in part to intimidate. With all the voting changes that are going on. You both have access issues and suppression issues. So you have laws that will deny access to, for example, drop boxes or mail-in ballots, but then you also have suppression efforts where you're really trying to require extraordinary activity by a potential voter to be able to vote and to suppress. And part of suppression, of course, is to scare voters and to keep them from trying to vote. And this is sending a message to a community that you better be careful or we're going to go after you. And what's missing here, and the reason you're calling it a raid rather than an execution of a legitimate search warrant, as Mar-a-Lago was, although Trump calls it, "My house was raided."

Kim: It was not it.

Jill: It was not. That was a legitimate search warrant based on sufficient predicate facts. And here, there don't seem to be any predicate at all for this action. And so I think it was done to intimidate voters. And what can the people affected by this do? Of course, bringing a lawsuit cost money, even with volunteer support from civil rights voting advocates, and

takes time. So it won't affect the outcome of the November election. There's no way that any lawsuits are going to be resolved in time for that, although this is one of those emergency issues that a court might have to step in and say, "We're not allowing X or Y," whatever that is. So there is a possibility for stopping this behavior and going back to the old rules, and that might be an outcome that could benefit this election. It can obviously change the rules for future elections. But I think given the margins that we saw in the last presidential election, if you change 10,000 votes, you change the outcome of the election.

Kim: You can. Yeah.

Jill: And that's absolutely not to be permitted. So I think something needs to be done to make sure it doesn't continue along this path.

Kim: And another area we have seen a lot of action in are these citizenship requirements. So while it's true, you can only vote if you're a citizen, the constitution says that, this is not something that is ambiguous, but we're seeing a lot of states do sort of, in the name of guarding against voting, which I don't think is really a problem, are doing things that seem to be fishy. So for example, I saw an interview on television. And I wish I had a link to it. I went and searched for it and couldn't find it, but it was of a woman who just became a naturalized citizen earlier this year. She was so proud and happy and showed pictures from her ceremony, and she was really excited to vote in her very first election, only to find that she had been purged from the voter rolls. Why? Because officials in Arizona were going through the voter rolls and cross-checking them to people who have had a green card to say, "It's a non-citizen purged them."

Well, the thing is, everyone, everyone who is a naturalized citizen has had a green card because that's part of the process to becoming a citizen. So this woman, and who knows how many others, have been purged from the voter rolls when they are eligible to vote. Jill, make it make sense. And then why is this the Supreme Court's fault?

Jill: Well, you can't make it make sense because it doesn't. And the states are using decisions from the Supreme Court to evade what should have been covered by the Voting Rights Act. But because the Voting Rights Act has been basically disemboweled and you don't have to get prior approval for certain changes that you would've had to get had the Supreme Court not taken that right away. So that's why the Supreme Court is responsible. And you're right, if you had a green card, it doesn't mean you're not a citizen. You can't be a citizen unless you had a green card at one point. You don't necessarily become one, but it's not grounds for taking you off the voting rolls. And it's happening not in one state or two. It's happening in dozens of states. Kim, here's an example. The Supreme Court recently decided on looking at Arizona's attempt to suppress the vote by saying that unless you submitted proof of citizenship, that you could not vote.

There is a federal law that says that you fill out an application to vote and you affirm or swear that you are a citizen. That's it. You can vote in a federal election. The state says no, unless you provide proof of citizenship, you can't vote. And they were trying to make their state rule apply to federal elections. And the Supreme Court said, anyone who's registered ready, you can't do that. They get to vote. And they're let stay the one about new registrants. So all of the get out the vote efforts in Arizona where the margin was really, really thin, all of those efforts to get out the vote are going to be challenged unless

the person has proof of citizenship to register. And then they can vote in state and federal. But even if they don't, they can vote in federal.

If they swear an oath that they are a citizen, they can vote on the presidential level. The one question I had, and I researched this, and I haven't really been able to find it out, is how... You get a ballot, and it doesn't have just you vote for president and senator, which are federal elections, but you also vote for your state reps. And I don't know how... Once you hand someone a ballot, if they're only allowed, under Arizona rules, to vote in a federal election, do they somehow block out the state reps and other stuff like that? I don't know.

Kim: Yeah, my guess is that they would be flagged somehow and given a provisional ballot at the point of when their ballot is received, if they're going through it-

Jill: But then you'd have to look at that ballot and knowing... These are secret ballots and the only way you would know if they only voted for president and senator would be by looking at their ballot, and that would certainly be a violation. So the problem with changes like this at the last minute is you change the status quo like this, it's going to lead to confusion, and that will suppress the vote also.

Kim: Yeah, and just think about this. When folks are just like, "Oh, why not just show your citizen... Why don't just show your proof of citizenship? And why is this a big deal?" I think we've talked about this before. Some people don't have that. When my dad... After 9/11, when they imposed a passport requirement to cross from the United States to Canada, Michigan's a border state, and so before, you just needed your driver's license, so he needed to get a new copy. He didn't have a copy of his birth certificate, and he needed to get a new copy. And it was so hard to get. This is my dad, a union official who's been voting his whole life, who understands the importance of voting. And we had to go through... He needed a school record, and they were kept in a schoolhouse. And the schoolhouse burned down and we found a microfiche report card in a library in rural Arkansas somewhere and had to submit that to the Arkansas Secretary of State. And then they had to decide, and then they finally [inaudible 00:43:59]. This is after months

Barb: And you had resources, right?

Kim: Yes, a lot of resources.

Barb: [inaudible 00:44:03] to figure this stuff out

Kim: To finally get his birth certificate. So if it's a rule that wipes you off a role unless you produce a birth certificate... My dad who was born in Arkansas. His mother was born in Arkansas. My family has been born in the United States for many generations. They been kicked off the rolls. This happens to people all the time. This isn't just about, certainly not just about immigrants. It really can happen to anybody. So Barb, this is part of a broader effort to make voting harder, essentially. As I mentioned, there are all kinds of restrictive voting rules that are being challenged. And listen, there are also good things. There was a rule passed recently in California that prevents people from showing firearms near voting stations to prevent that from being intimidating, and other rules that are expanding access to voting and stopping suppression. But there are a lot of restrictive rules, and feel like

the good ones don't keep up with the bad ones. Which ones are the most concerning to you?

Barb: Yeah, and I write about this in my book. This is one of the real harms of disinformation, because the stop the steal movement in 2020, as we all know, was based on zero fact. It was all based on false claims. And yet we saw many states, and I will answer your question, as Georgia is the one I find to be the most egregious, because in response to these false claims of voter fraud, many states, including Georgia, pass laws making it more difficult to vote, even Governor Brian Kemp, who in 2020, was one of the heroes of the Stop the Steal movement. He stood up to Donald Trump and he said the Georgia election was fair and accurate, and yet he signed legislation in Georgia making it more difficult to vote. And when asked why, he said to stop all the fraud. But there was no fraud. You even said so yourselves.

So when you ask yourself, so why is it they're making it harder to vote if there really is no fraud? And the answer is because they want to suppress the vote among likely democratic voters. So if they can make it harder for certain people to vote, then their team can do better. But in Georgia, just recently, we saw the Georgia State Election Board, which is three fifths Republican. It has five members. Three of them are Republicans. And they just passed two rules, which I think are really concerning. One allows election officials to conduct "a reasonable inquiry" before certifying election results. Well, what's that? It's not defined. It's very vague, and I'm worried that a single official could say, "Well, I just want to conduct a reasonable inquiry," and hold up the results. The other thing that happens is that members of county election boards have the authority to investigate ballot counts, and a single member of an election board can do that.

So again, there's just, I think, room for some serious mischief there in the county based on these two new rules. And that layered upon this statute that got passed by the legislature there in 2021, the one I was referring to that Governor Brian Kemp signed, they called it the Election Integrity Act of 2021 in Georgia, and that's the one that made it more difficult to vote by mail, removed ballot boxes where people could submit them early, shrunk the period of time for absentee ballot, and to me, the most egregious of all, prohibiting people from providing food or water to voters waiting in long lines. And so what possible reason could you have for all of this, other than to make it more difficult for people to vote, which has a disparate impact on students, people of color, people who are poor, seniors, the disabled. And so it does seem to be simply a naked effort to reduce voter turnout among likely democratic voters.

Kim: Yeah, absolutely. Jill, what about you? What really grinds your gears?

Jill: Well, the Georgia ones certainly does, but there have been lawsuits brought by attorneys general of states that, not against their own state laws, but against other states, which really bothers me. You have a vote by mail new rules in North Carolina and requiring a photocopy of a photo ID and two witnesses before you can use a mail ballot. That's going to make voting by mail very hard in North Carolina. We've talked about the purging of voter rolls. The RNC has sued in Barbara's state of Michigan and in North Carolina. North Carolina was saying they weren't enforcing a law in the state that required county clerks to forward information to the election board whenever someone said they couldn't serve on a jury because they weren't a citizen. And they claim, and there's no particular evidence set forth to support this, that the county clerks weren't doing that, and therefore

they had to clean that mess up. The bottom line is over 20 states have changed their laws to be more restrictive since the 2020 election, many of them just in 2023 as they see what's happening.

And the case in Michigan, by the way, the RNC said that they hired, Michigan hired more democratic poll workers than Republicans. And there's a Michigan law that says you should hire an equal number of representatives of both parties. And it also says, as much as is reasonably possible. And I'm sure the answer's going to be, "we did everything we could." But again, that's going to create some chaos in the days before the election. Early voting is starting, and you have a real problem. But I don't want to end on such a negative note, because thanks to many of the voting rights advocacy groups and the Democracy Docket and Mark Elias, there are also some very expansive laws, laws expanding voter access and depressing suppression efforts passed in many, many states. So we have to look to those as models and maybe go back to civil rights enforcement that says you can't change your voting laws without getting pre-clearance if you have a history of discriminating.

That was a bad Supreme Court decision and has definitely impacted why we're seeing so many bad laws passed because they can without any review, although I will say during the Trump administration, it wouldn't have mattered. If they wanted to change them, the Department of Justice would've said, "Sure, go ahead."

Barb: Boy, Wildgrain has some of the best stuff. I impress my guests with my cooking abilities when I pull out some of their pasta or their breads, or even their chocolate chip cookies. It really takes meals to the next level. The artisanal Bavarian pretzel buns, if you've tried that, that is the perfect way to knock things off, especially if you're hosting a gathering or sitting down to watch a game. Their pasta and pastries taste amazing too. There's so much to choose from.

Jill: There really is a lot to choose from, and I love so much of it. And I'm not even really a bread lover, but when the fragrance comes out of my oven as I'm cooking this, I love it. The croissants are amazing. The pasta is in a whole different category from anything you've ever bought in the store. I love watching the color and flavor come alive when the strawberry rhubarb turnovers are heating up. Even better is the fragrance of fresh bread and pastries coming from the oven. Now, I never have to call Michael or company when the food is ready. As soon as the smell reaches them, they come running. Wildgrain items are delicious and so easy to make. It's the perfect combination. There's something for everyone, and you'll want to try it all.

Kim: Jill, I think you're right. I think the smells somehow make their way in other parts of the city and the world because my stepkids are always showing up at the door when I'm heating up the croissants. It's amazing how that happens. They really love them. Wildgrain is the first ever Bake from Frozen subscription box for sourdough bread, fresh pasta, and artisanal pastries. Every item bakes from frozen in 25 minutes or less, so no thawing is required. Plus, you can now fully customize your Wildgrain box. You can choose any combination of all of their breads, their pastas, their pastries, whatever you want. And we're especially excited to try the brand new Plant-based box launched by Wildgrain. It features a wide selection of plant-based pastries, bread, and hand cut pasta for the vegans in your life. We know you'll love everything they have to offer.

Barb: For a limited time. You can get \$30 off the first box, plus free croissants in every box when you go to wildgrain.com/sisters to start your subscription. You heard me. Free croissants in every box.

Jill: Hooray for free croissants.

Barb: Get \$30 off your first box when you go to wildgrain.com/sisters. That's wildgrain.com/sisters, or you can use Promo code sisters at checkout. Look for the link in the show notes.

Well, now comes the part in our show where we have our weekly update on Project 2025 where we look at some portion of the plan developed by the Heritage Foundation for policy for the next conservative administration. Of course, Donald Trump has been working hard to distance himself from this plan lately, but we know that the prior administrations, like the Reagan administration, adopted 60% of the policy proposals of the Heritage Foundation, and so certainly something that voters want to be educated about. Today, we wanted to look at Project 2025's thoughts about revising things of the FBI. Kim, what does Project 2025 say about the FBI?

Kim: Well, right there on page 552, for those who are reading along in the document in their printed copies, which I know you all have right next to you as you listen to this podcast, it would take away the FBI Director's 10 year term. Now, that 10 year term has been in place since after the Hoover administration of the FBI, and it's meant to increase accountability by making the FBI Director's appointment nonpolitical so that the director would span presidencies, right? So he's not appealing, he or she is not appealing to one master and is not feeling like a political appointee in that way. Project 2025 would also take the FBI out of the Department of Justice and make the FBI and its director directly accountable to the White House and under the supervision and control of all those enforcement professionals within the FBI under White House Control directly.

Barb: Yeah. So Jill, I noticed that Chris Ray was testifying this week before Congress. I think most particularly, he was there to talk about the Trump assassination attempt, but he was also asked about these proposals in Project 2025. What was his reaction to this proposal? This is the Trump appointed FBI Director, by the way.

Jill: I bet there's no one listening who will be surprised to say that Director Ray disagreed with both of those points. He was against removing the 10 year and making it accountable only to the president. Talk about trying to politicize an agency. That's exactly it. And they actually, in Project 2025, are pretty clear that the reason they want to do this is so that the director will be politically accountable to the president and answer to the president. And for the same way that the attorney general is not supposed to be subject to the president, even though he is a direct report to the president and is appointed by him as a political appointee, his decisions about what cases to pursue are not supposed to be cleared with the White House. Similarly, investigations should not be cleared or prompted by. The White House should not be in a position to say, "Please investigate this person. I don't like them. Find something." So he was very much against these two changes.

Barb: Yeah. And I guess I would be curious to imagine, what would this look like in practice? How would it change the current status quo and make it different from what we think of

the FBI right now? What's your worst case scenario if the president has more control over the FBI?

Jill: Clearly, this change makes it a political appointment that can be used by a president who wants to abuse his power to go after his enemies or political opponents, and that is something that the FBI should not be. I actually was around during the Hoover years. And J. Edgar Hoover, of course, is a legend in law enforcement, and mostly because it was whoever he wanted to go against. He kept files on Martin Luther King that were completely wrong against a US citizen, but he had that power. Now, he had been in office for like 40... I'm guessing the number of years, but it was long 30-

Kim: Long time.

Jill: Yeah, way more than a tenure term. And the tenure term was sort of a compromise of not every president gets to appoint one who will be loyal to that president who appoints him. They will serve multiple presidents in a tenure term, but they won't accrete so much power that they could act like J. Edgar Hoover acted because they would know they only have a tenure term. Now, we also know that President Trump did not abide by that and fired the director of the FBI. So there you have it, it can, even with a ten year rule, can be abused by a culprit president like Donald Trump.

Kim: Yeah, and I think that's an important point because Donald Trump firing James Comey... Now, I need everybody, for a minute, to put aside, I'm doing the same, put aside whatever feelings you have about James Comey for whatever other reason Donald Trump pressuring James Comey, which I believe he did. I believe James Comey, when he said, "I want you to stop looking into Michael Flynn and really trying to exert his pressure over the FBI," and then fired James Comey. That was atrocious. That was one of the first clear signs of his authoritarianism, that he wanted officials, including law enforcement who are supposed to be independent investigators, that are supposed to be independent because it's the job of the FBI, to potentially investigate everyone, including people in the White House, if they are breaking the law. So there cannot be that connection there. That violated that tenant. Now, imagine if there are no guardrails at all.

Not only are there no guardrails, but the FBI is under the control of the White House. For many presidents, things wouldn't be different. Barb, you're asking for the worst case scenario. But imagine the worst case scenario, which would be this president for which project 2025 is being crafted, Donald Trump having his own personal investigatory force with the imprimatur of the federal government using taxpayer money to go after his enemies. We have seen him on this campaign trail not talk about policy or values or priorities at all. He's just griping about his political enemies, and then he would have the FBI at his disposal to attack them. That would just be ghastly.

Jill: Can I add, Barb, that it's not just the two major points that Kim made in terms of what Project 2025 would do to the FBI, but they also have some specific things like the president would be able to terminate any investigation that they didn't like. It would not report, as Kim has pointed out, the way it does, but the whole FBI would have to be assigned more to the criminal division and the National Security Division, and that change would just happen. And it would make clear that they're under someone else's control because they're looking at probably the experience of J. Edgar Hoover, who was

kind of his own boss. They would limit investigations of dis and misinformation, I'm sure, Barb, that you feel very strongly about-

Barb: Yes.

Jill: ... that particular nuance of this project 2025, it would eliminate the Office of Legal counsel for the FBI and make only the Office of Legal Counsel for the Attorney General, for the Department of Justice, the lawyers who would inform them. And I'm sure that Andrew Weissmann has strong feelings about that since he was the person that would be affected by that. It would shrink headquarters and increase field offices. It would, by the way, for this 10-year term to end, it would have to get Congress involved. The president can't do it on his own. But so there are all these other things that would change the power, and even talks about changing the jurisdiction, eliminating the intelligence function of the FBI. And Barb, you may have some specific feelings about the intelligence function of the FBI versus the CIA, etc.

Barb: Yeah. In fact, the FBI has a large component that investigates, does counterintelligence. They investigate foreign adversaries who are inside the United States and collecting information, and they do their best to disrupt that. So this idea that they can't be involved in disinformation or misinformation, that's a very big part of what they do there. This frames that as censorship, which, of course, it's not. It is protecting the American people from PSYOPs and counterintelligence investigations with counterintelligence. Just so you know where this is coming from, it says that it refers to revelations regarding the FBI's role in the Russia hoax of 2016. It suggests that the FBI is completely out of control and that it needs to be reigned in to protect the Constitution and restore the FBI's reputation and integrity. So I think the audience of one that this is trying to reach. All right. Well, why don't we wrap it up there, and we'll have more on Project 2025 next week.

Now is the part of the show that really is our favorite, the part where we answer your questions. If you have a question for us, please email us at sistersinlaw@politicon.com, or tag us on social media using #SistersInLaw. If we don't get to your question during the show, keep an eye on our feeds throughout the week where we'll answer as many of your questions as we can. Our first question comes to us from [dirkvdberg68](#), who asks, "Now that he is practically immune, do you think Trump will pardon himself if reelected?" Jill, what do you think?

Jill: Well, here's what I think. I think that although he has some immunity that I don't think he deserves, he will still have liability for some of his acts that are clearly personal or that are rebuttable official acts. But he won't be able to pardon himself for two reasons. One is the only conviction standing right now is a New York State one, and he has no power to pardon himself of a state crime, and that would also apply if he is convicted in Georgia. And he won't need to pardon himself for either of the federal cases that I'm going to predict are not going to go to trial before the election, or even before the inauguration, because all he has to do is tell his attorney general dismiss those cases and his attorney general will. So the cases will either be dismissed if he is reelected, or he won't be able to act because they're state cases.

Barb: Kim, here's one for you. It comes from David in Long Beach, California, and David asks, "It's been speculated that in the event of a Trump loss, some GOP state election officials

plan to withhold certification of their state electors. Are there any checks or other guardrails to prevent such a compromise of the electoral college?"

Kim: Oh, that's a good question. And I have no doubt that they will try, but it will be much harder now than it was in on January 6th, 2021 because of the Electoral Count Reform Act that was passed in '22, which does a number of things, including requiring a single conclusive slate of electors. So it makes it a lot harder for officials to do some funny business, to have... They cannot have a separate slate of phony electors the way many did in 2021. It's a single slate that must be certified by Congress. It also identifies a single official to submit the slate. And unless there's some extraordinary reason, that official will be the governor, unless it's otherwise specifically laid out in a state's constitution before election day.

So it's one person responsible. You can't have various people in the mix of it. And it also provides for expedited judicial review in case there is any funny business, which includes direct appeal to the US Supreme Court to check it out. So there may be efforts, but it will be a lot more difficult because of that in some other provisions of this new electoral count act.

Barb: And our last question comes to us from Cheryl Vale who asks, "Can the 11th Circuit remove Judge Cannon without Jack Smith asking them to do so?" The answer is yes. And it's interesting, Cheryl. It may be that the Justice Department is sort of hoping for that result. I have been involved in some decisions where we wanted to remove the trial judge, and we really thought about what... We have to live with this judge going forward. If the answer is no, now, we still have to go forward with this case, and we've kind of insulted the judge.

And when you are a prosecutor who appears before that judge with some frequency, you have to think about that too. So even though Jack Smith, this is kind of a one time case for him, the US attorney's office in Florida has to deal with her on an ongoing basis. So they really have to think about that relationship there. But I still thought they might ask for it. They didn't. But yes, you are correct. There is nothing that would prevent the court from doing this on its own, even in the absence. And in fact, I've had it happen before where we didn't ask and the court removed the judge, and we were so thrilled because we said best case scenario. We didn't ask, but we got it anyway. So maybe we'll get that result here.

Thank you for listening to #SistersInLaw with Kimberly Atkins-Store, Jill Winebanks, and me, Barb McQuade. Remember to mark your calendars. #SistersInLaw will be doing a live show at the 92nd Street Y in New York City on September 20th. You can get your tickets at politicon.com/tour. We look forward to seeing you there. And please show some love to this week's Calm, Helix, and Wildgrain. Their links are in the show notes. Please support them 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 another episode, #SistersInLaw.

Jill: Simon hands me a microphone and says, "Do your first TikTok." And so I made my very first TikTok.

Barb: Wait, you did a TikTok? Who'd you do it with?

This transcript was exported on Aug 31, 2024 - view latest version [here](#).

Jill: I did it with Maya.

Barb: With Maya Wiley?

Jill: Yes.

Barb: Did you do a TikTok dance?

Jill: Oh gosh. I didn't know you're supposed to do a dance on TikTok. I need a lot more information, obviously. So if you're listening now, send me advice on doing a TikTok.