Speaker 1:

Mr. Chief Justice, may it please the Court. It's an old joke, but when a man argues against two beautiful ladies like this, they're going to have the last word.

Speaker 2:

She spoke, not elegantly, but with unmistakable clarity. She said, "I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks."

Leah Litman:

Hello and welcome to the most ambitious crossover event since Carole Baskin attempted to dance to Eye of the Tiger on the season premiere of Dancing with the Stars.

Melissa Murray:

Today we have the host of Strict Scrutiny, your podcast about the Supreme Court and the legal culture that surrounds it, together with the hosts of Common Law, your podcast about how the law shapes society, how we shape the law, and why we should all care. I'm Melissa Murray.

Leah Litman:

I'm Leah Litman.

Kate Shaw:

I'm Kate Shaw. And hey to our friends at Common Law and UVA, Dean Risa Goluboff, and Vice Dean Leslie Kendrick. It's so great to be here with you.

Risa Goluboff:

Hi, everyone. It's so great to have you all. We are just thrilled to be doing this together.

Leslie Kendrick:

Indeed, we're so excited.

Melissa Murray:

No one is more excited than me, I am so excited!

Risa Goluboff:

No, we're more excited!

Kate Shaw:

Melissa is always excited to be back at UVA virtually or

Risa Goluboff:

We love the Virginia sweatshirt. I still have an orange scarf that Melissa gave me to wear to football games. I love your UVA spirit, Melissa.

Melissa Murray:

Wahoowa.

Leah Litman:

She's been waiting to say that for over a year. She actually says that every episode we make Melody cut it, so finally found the occasion where we can use it.

Kate Shaw:

She'll say it a few more times I think before we're done here.

Leah Litman:

Don't worry.

Kate Shaw:

Let's get things started. So this is our last episode of Strict Scrutiny before the election. The next time we gather, we will maybe know the identity of the winner. But for now, we're going to be covering some Supreme Court news previewing the first week of the November sitting, and we'll end with a court culture segment that's going to talk about our two podcasts. So Melissa, you want to get things started?

Melissa Murray:

Sure. So we thought we would have a little lull between sittings, but the court has actually been very active over the last week and a half. We've had some grants, some shadow docket activity, and some developments related to cases from last term. So Kate, can you kick it off with some words about the grants?

Kate Shaw:

Okay, so a couple of significant grants. First, the Supreme Court granted the government's petition in Trump v. Sierra Club. That's the case challenging the President's reallocation of funds to the construction of his border wall. Lower courts have blocked the use of these funds, but the Supreme Court actually put those rulings on hold 5-4, you know, sending some kind of signal about the Court's likely receptivity to the Government's arguments in this case. If it actually reaches the merits of those arguments, there's a real question about whether this case could be mooted by the outcome of the election. But so that's, I think, big grant one. What else did we get?

Melissa Murray:

Well, there's sort of a related grant. So in Wolf v. Innovation Law Lab. This is the case challenging the administration's "Remain in Mexico" policy under which the government returns people to Mexico while or after they have applied for asylum in the United States. So, that petition was granted. And as you say, Kate, it is possible that these cases will be mooted by the time the Court decides them, or takes them up to be decided because there may have been a change in the administration. If that isn't the case, and these cases are not mooted, I imagine you and I will have to fly to Ann Arbor and scrape Leah off the bathroom floor because she will be in again, the metaphorical fetal position, some more.

Kate Shaw:

From where she's just emerged or briefly emerging for this podcast.

Leah Litman:

Exactly, for this occasion and no other. There have also been some developments on the shadow docket in particular, what I think we'll start calling the election shadow docket. There was a development in the Pennsylvania election case that we discussed in our most recent emergency episode. As we noted there on October 19th, the Court divided 4-4 over whether to stay a decision of the Pennsylvania Supreme Court that said as a matter of state law, mail-in ballots received three days after the election could be counted. As the Senate was hurdling toward confirming Justice Barrett, the Pennsylvania GOP filed a cert petition and motion to expedite consideration of the case, raising the same arguments as it did in the stay. And on Wednesday, October 28th, the Court declined to expedite the case with no noted dissents, but there were a few notable aspects to that ruling.

Leah Litman:

First was Justice Alito's statement in which Justice Gorsuch and Justice Thomas joined. And that statement spoke about the possibility of future Supreme Court intervention in the case, in the event that the mail-in ballots that are received after election day end up being outcome determinative. And since it is only the Republican Party asking the Cours to enjoin the ballot receipt deadline, that would mean there could be future intervention in the event that the mail-in ballots are outcome determinative for Democrats. Because of that possibility, Pennsylvania officials are currently segregating ballots that are received after election day from all other mail-in ballots. And they're doing so in part to guard against the possibility of a judicial order that could throw out the later received mail-in ballots, if such an order came. And if election officials didn't separate out the later received mail-in ballots, that could create a scary situation in which a state legislature could say, we have to throw out all the mail-in ballots and just appoint or select electors.

Kate Shaw:

So what do we think about this case? So one cheer or two cheers, three cheers. It was an ostensibly unanimous decision not to do anything to revisit this Pennsylvania Supreme Court decision. So on the bottom line, this seemed like good news, right?

Leah Litman:

As, well --

Melissa Murray:

I was just going to note Justice Alito's opinion or statement as it were, did seem like an invitation to dance again, if it were, so I mean, he was very clear. This is for now, there is also later and the possibility of post election activity, but Risa, Leslie, what did you think?

Risa Goluboff:

You go Leslie.

Leslie Kendrick:

Yeah so, I do think this is really interesting and that it does seem like there's nothing happening now, but there's a kind of clear indication there might be something happening later, right. We might kind of take

this up later and to me that seems pretty unusual, to put something to bed, but then say, but it might not stay there.

Leah Litman:

And I think at least for me, the specific possibility of the Court throwing out ballots that were validly cast under the rules in effect when the ballots were cast is a little bit troubling. Although I'm glad that the Court didn't, act on this petition now.

Kate Shaw:

A couple of other sort of noteworthy aspects of this ruling. So one, the order indicated that other opinions might follow and I haven't done any exhaustive research, but I remember when the opinion popped up on the Court's website, seeing that language and sort of thinking like, I can't actually remember the last time if ever, I've seen the Supreme Court say that. Federal courts do that, state courts do that, an opinion to follow if they're acting on some kind of emergency or expedited basis, opinion to follow, but more opinions might follow, more of us have thoughts and you might get to know them, which is just like such an odd sentence for the Supreme Court to included. And so far there have been no other statements, forthcoming. One other kind of substantive point to make was that the Kavanaugh was kind of conspicuously absent, right from the Alito statement, Gorsuch and Thomas both joined. So that was potentially I thought significant, doesn't mean he doesn't agree, but it did mean that he did not at least publicly note that agreement at this stage.

Melissa Murray:

There was also another interesting wrinkle here, the order noted that Justice Barrett did not participate in the case. This would have been her first case before the Court, she just joined on Monday. But then in a very, I think atypical move, the Court's Public Information Office released a statement explaining that she had not participated because she had not yet had time to review the filings before the Court decided that motion to expedite. So that was unusual because it was very clearly stating that her decision not to participate was not to be construed as a recusal, but simply I didn't do the reading yet. Maybe later I will be participating in this. So they are definitely preserving the possibility that in a later case, if one should come up, she may not recuse and in fact will participate in that.

Risa Goluboff:

So one thing that's really interesting historically is that, this happens fairly frequently. A new justice joins, and there are cases that are already teed up or emergency motions of various kinds, and the new justices don't participate because they hadn't participated before, and one of the things that's so interesting here is given that there's so much, I like the election's shadow docket. There's so much activity now that's fast moving, she can insert herself a lot more quickly than justices can when you're talking about the regular docket. So that's one thing. And the other is, there've been times in the past when full cases, I mean, Roe v. Wade is re-argued, they're following term because they're missing some justices. So it feels like her integration into the Court is going to be much faster, and she's going to start participating, not just in cases like this that are sensitive and raise the question of recusal, but more generally, it just seems she's hitting the ground really fast and they anticipate incorporating her in really quickly.

Kate Shaw:

Yeah. I think that's definitely right. We've noted just the breakneck speed at which everything surrounding the nomination and confirmation process occurred, and I think it's right her sort of getting up to speed and participating in the decisional processes of the court, is also going to happen on a much faster timeline than is typical. There were other cases also that she has not yet participated in anything. And this most recent decision out of North Carolina was similar. So, this is a case in which the Court released an order declining to stay a lower court order that upheld the North Carolina's, the Board of Elections, decision to count mail-in ballots that were received after election day.

Kate Shaw:

Here again, three justices noted their dissents. Justice Gorsuch wrote a dissent, Justice Alito joined. So we were talking about North Carolina now, but this is Gorsuch, essentially kind of remounting the argument that state legislatures alone have the power to set state election rules. And so, whether its federal courts in Wisconsin or state agencies here in North Carolina with state court blessings, either way, all of that is improper because the constitution assigns responsibility to state legislatures alone when it comes to the regulation of elections, and this at least seemed to suggest that for Gorsuch and Alito, at least, no matter what legislatures do, no matter what other sources of law, state constitutions, federal Constitution, etc., state legislative decisions may conflict with somehow, it is the state legislature alone that makes the rules of the road when it comes to elections, at least that was a suggestion.

Kate Shaw:

Justice Thomas noted his dissent, but didn't sign Gorsuch's dissent or write separately, and Kavanaugh again, did not join. Gorsuch maybe seems potentially significant. Here there were pretty clear reliance interests. So first of all, we're closer to an election. Second of all, this was an agreement that was in effect that had been the subject of a consent decree that a state court had blessed. Once again, Justice Barrett did not participate. So North Carolina here again, this decision leaves intact the lower, the both state agency and state court proceedings, and then the lower federal courts decisions that allowed the extended deadline for the counting of absentee ballots.

Leah Litman:

Election law scholars and court watchers are now trying to make sense of all the various state orders that we have in election related cases, and they're trying to figure out if there's a unifying principle that explains these decisions. It might predict what the Court might do in future cases. So for example, the Chief Justice has said, there's a difference between cases that come from federal court versus state court, that explains his vote in the Wisconsin and Pennsylvania cases. Perhaps there is also a difference between decisions coming from state courts versus decisions that come from state executive bodies, which might be exercising authority delegated to them by the state legislature. Maybe that explains the difference in the Pennsylvania/North Carolina cases. And of course, there's a reliance factor that Kate was alluding to. The closer we get to an election, the more voters have relied on existing rules to cast their ballots, the more difficult it is to change the rules now.

Melissa Murray:

Can I just note something? I know this may be painfully obvious for everyone listening at home, but Wisconsin, North Carolina, Pennsylvania, Minnesota. Why does anyone not care about absentee ballots from California or New York or any other state for that matter? I mean, you should know these are all swing states that are likely to be outcome determinative in the election, which is why all of the action is

here and we're not hearing about absentee ballots in California or in Alaska or somewhere where the outcome is already fore ordained.

Kate Shaw:

No, that's right. The litigation is obviously focused on states that look like they're close, and depending on how the electoral college map shakes out, that could really matter. You mentioned Melissa, Minnesota and that's not a Supreme Court decision, at least not yet. But last night, the night before we're recording, a divided panel of the Eighth Circuit ordered Minnesota to set aside a segregate absentee ballots received after election day. And this, I think to almost all kind of watchers of these matters felt the most egregious of the federal judicial interventions on questions of absentee ballot counting to date, in that everyone in the state of Minnesota including state officials, voters, basically everybody involved, had proceeded throughout this pre-election period on the assumption that as long as absentee ballots were mailed by election day, they would be counted, and not withstanding the State's acquiescence to that rule.

Kate Shaw:

A federal court right here, the Eighth Circuit, did not rule in a definitive way that those ballots that arrive after election day won't be counted, but ordered their segregation and strongly signaled that it would be inclined to find those votes invalid. Again, this felt like one of the most egregious and lawless interventions in a state's election proceedings of the season with a good amount of competition. But so, that's I think really saying something. I don't know whether there's a chance of Supreme Court review or correction, now or in the immediate pre-election period. I'm not sure. I don't think anyone's filed a request yet. It seems at least possible that someone will. So even though I thought we were done at least for a few days with big Supreme Court orders, I'm not sure.

Melissa Murray:

Well, related to the Eighth Circuit decision, one thing that you can glean from the Court's decisions on these election related disputes is that as these cases come up, the justices are actually doing more to explain themselves. So we're getting more of the rationale and I wonder, this is in contrast to the Alabama curbside voting case last week, where they reversed and offered no explanation, but now we're beginning to see some kind of rationale. And I wonder if that is because they are listening to the coverage, the criticism of some of these decisions, and they're trying to sort of be responsive and show there is a method to our madness and here's what the method is. I don't know, Leslie, Risa, do you think that they are trying to sort of... This is a kind of demosprudence with them engaging with the public about why doing what they're doing in the face of criticism.

Leslie Kendrick:

I think it's hard for me to know what their motives are, what their purposes are in doing it, but there has been a change and alternative possibilities or other things that could be motivating this. One, the more of these kind of last minute and emergency actions there are, and as they accrue and they have these different features in them, as you all have explained, they might feel just more of a judicial sense of obligation to explain what makes the difference to their determinations in these. It's state court, it's state agency, it's federal court, it's what have you.

Leslie Kendrick:

They're less in a sort of world where this is a one-off thing that's happening and we're going to get it done and move on. And there's a whole jurisprudence that's being populated here in a very rapid order. The other thing is just, I think generally judges give reasons, and particularly appellate judges, typically provide reasons for their decision. I would think that that's a pretty strong, norm or obligation that's in the background here, and yes, it might be overwritten in really emergency circumstances with regard to certain types of dispositions, but that's maybe playing a role too.

Kate Shaw:

Yeah. I think that's such a good point. It's so central to the judicial role, is reason giving. It distinguishes what judges do just from the raw exercise of political power. So to just shut down a state's processes and not explain at all the reasoning for that does just look like raw power as opposed to something more judicial. And so, I think the development seems positive. I think the potential on the flip side is as we discussed last week with the Wisconsin Kavanaugh opinion, haste does not give rise to the most carefully crafted judicial opinions. And so, we can see these potentially significant substantive, both legal and factual errors creep in when they're working so quickly.

Leslie Kendrick:

It's interesting to think about the relationship between this and that signal that future opinions might come out. There's a relationship between these. We were still moving fast, but we still feel like we need to say things.

Risa Goluboff:

I totally agree and I think they're also signaling. And one thing, they could be talking to each other through these opinions, the way they often do in oral argument, but also they're talking to those bringing the cases, and they're talking to the lower courts. And so, as these accrue, and there are more and more of them, it's all the more important for the parties and the lower courts to have signals from the Court about how they're going to be deciding the future cases.

Melissa Murray:

Didn't the Eighth Circuit cite the Kavanaugh opinion?

Leah Litman:

Yes.

Melissa Murray:

So yes.

Risa Goluboff:

Case in point. Right.

Melissa Murray:

All right. On that note, let's leave the election to the side for the moment and turn to the November sitting, which will begin on Monday, November 2nd. This is a pretty hot button sitting just because it's happening as the election is coming to a close and there are some real hot button cases that are on the docket. So, one of the first ones to be argued is one of the most closely watched cases of the term, and

it will be argued on November 4th, the day after the election, although maybe not the day that we actually have an outcome from the election. And that of course is Fulton v. City of Philadelphia. So Kate, can you give us a description of this case?

Kate Shaw:

Sure thing. So the Court will be sitting next week and let me just pause and say, it remains so ridiculous that the federal government transacts business on election day. As now in New York or where election day is a holiday, it's just wild that they sit and that the rest of us have to focus on things like the Supreme Court, when the election is ongoing. This election is different and many of us have already voted and things like that, but it should be a national holiday. But that's editorializing. Okay so, we'll talk briefly. We have previewed this case, before Melissa highlighted it on our term preview episode, because it's quite significant. One of the biggest cases I would say in the Court's fall docket. In many ways, this is a hybrid or sort of a follow on of two prior cases, both of which we've talked about at some length, Espinoza v. Montana, and then Masterpiece Cakeshop v. Colorado Civil Rights Commission.

Kate Shaw:

Espinoza, just last term, the case that held that states must fund private religious schools there through tax exemptions for scholarship funds, if they're going to fund other private schools. And then Masterpiece Cakeshop, which is a case that Leslie has written about and so we hope to bring you in on this, was a case that asked whether religious objectors were exempt from generally applicable non-discrimination provisions. It was teed up as a big case, presenting that question. The Court didn't ultimately decide that question, but instead sort of took an off-ramp, concluded that the Colorado Civil Rights Commission had discriminated against the baker, who had concluded violated the civil rights statutes because the commission in the course of adjudicating this dispute showed animus toward the baker's religion.

Melissa Murray:

So Fulton is a kind of hybrid between the two cases, Espinoza and Masterpiece Cakeshop. It involves the city of Philadelphia's administration of the foster care system. So the city contracts with private foster care agencies to determine whether individuals satisfy the state's requirements for becoming foster parents. But in order for a private foster care agency to get one of these contracts to certify and recruit foster parents, the agency must sign a non-discrimination requirement, which prohibits it from discriminating on the basis of certain protected categories, which includes sexual orientation when they are performing those duties for the city. So here, the private foster care agency wants a contract to recruit and certify foster parents, but it wants to be able to exclude same-sex couples from being selected as foster parents. So it wants the contract, but it wants an exemption from one condition for obtaining that contract, namely that it not discriminate against prospective foster parents.

Leah Litman:

Okay. So the case implicates two important questions about the future of Employment Division v. Smith. One is what makes a law generally applicable, and the second is potential constitutional distinctions between requirements on the one hand and conditions for benefits on the other. But in order to understand why those things are important, maybe a little bit of background about Employment Division v. Smith was the 1990 opinion by Justice Scalia.

Leah Litman:

And in that case, the Court held that a generally applicable law does not violate religious liberty, even if the law burdens an individual's religious practices. That is, as long as the law does not explicitly mention religion, and as long as the law was not enacted to target or discriminate against particular religions, it's constitutional for a law to burden some groups' or some individuals' religious practices. As Kate mentioned, Leslie, you wrote a piece in the Harvard Law Review with Professor Micah Schwartzman about Masterpiece Cakeshop and this problem of identifying animus toward religion called the Etiquette of Animus. Could you tell us about your argument in that piece, maybe to frame some of our discussion about whether this law or its enforcement is generally applicable?

Leslie Kendrick:

Yeah, absolutely. So the piece is called the Etiquette of Animus and I co-wrote it with Micah Schwartzman, who is my spouse. This is our one foray into co-authoring on a piece about marriage equality, and here we are. And I just have to point out.

Melissa Murray:

And you're still married?

Leslie Kendrick:

We made it. You made it.

Leslie Kendrick:

We made it through the co-authoring process. And Melissa and Micah went to undergrad together here at UVA. So, I think that's also a very important fact as I'm talking about Micah to bring into this Wahoowa podcast. And of course, Kate and I were co-clerks when we were clerking... When she was clerking for Justice Stevens, and I was clerk for Justice Souter. And Leah Litman and I are just generally friends who we continue to meet over zoom rather in person, I don't know why, that was true even before the virus, but it's just wonderful to see all of you. And I wish that we had more time just to gab and I hope that we can find time to do that sometime soon.

Melissa Murray:

Here here.

Leslie Kendrick:

Yeah absolutely.

Leah Litman:

Wahoowa.

Leslie Kendrick:

Wahoowa

Melissa Murray:

Stop saying it derisively.

Leah Litman:

I'm not. That was sincere, that was sincere

Leslie Kendrick:

I think that was sincere, it sounded very sincere Leah.

Melissa Murray:

I know her.

Leslie Kendrick:

All the roles there worked out so well among friends. So Etiquette of Animus dealt with two issues that are coming back in Fulton. So, one is this question of how do you determine when there's been animus on the part of the government official. And the other is just setting that aside, assuming that that's not the issue, what do you do about religious exemptions from laws like this type of law protect and generally speaking non-discrimination laws. So in Masterpiece Cakeshop, as you mentioned, there'd been sort of remarks by government officials that the Court concluded, meant that the application of this general non-discrimination rule to this baker had actually been motivated by animus because of these comments.

Leslie Kendrick:

And one thing that we just talked through is this raises much larger questions about when to impute animus to government actors. And the Court's approach in Masterpiece was quite different from what it has been in some other areas. In particular, think about Equal Protection and First Amendment speech doctrine. We are in a mixed motive case where one of the motives might be kind of an animus related. And the other is legitimate, Courts tend to say, "If there's a legitimate reason for this action, then the action itself is legitimate. We're going to treat it as legitimate."

Leslie Kendrick:

You can think also about employment discrimination cases and the burden shifting that goes on there. And Jessica Clarke at Vanderbilt, has written a piece about how at this point we have within employment discrimination and sort of stray remarks doctrine, where stray remarks that very much are explicitly discriminatory and go way beyond any of the types of remarks that are at issue in Masterpiece or there's some conversation in Fulton about...A conversation that different officials had about the issue... sort of goes far beyond that. And those are sidelined and excluded from evidence as just stray remarks that don't really manifest the reasons for government action.

Leslie Kendrick:

And then of course in the same term as Masterpiece was the travel ban where the issue of animus got handled very differently. So you know, what's the standard for determining when animus exists and when not only does it exist, but it has so infected the government action that it makes the government action illegitimate? It seems there's some inconsistency on that.

Leslie Kendrick:

The other question is just this about religious exemptions. And first we have Smith, which says that, the Free Exercise Clause doesn't require exemptions from neutral and generally applicable laws.That

principle was at issue in Masterpiece, it is at issue here. Both times the Court's getting invitations to overrule Smith, they didn't do that in Masterpiece, we'll see what happens here.

Leslie Kendrick:

And then, even if you were going to grant Free Exercise claims to some degree, what do you do about the fact that one person's Free Exercise claim could impose a harm on a third party? This was an issue in Masterpiece. It's coming up again here. If you have a system where lots of different actors are doing, the foster care work of the government, but some of them are going to deny services to some people and others won't. That's imposing harms on those folks who can't go to everybody, who's got the government contract and expect to get services.

Leslie Kendrick:

And the analogy to race and racial discrimination here is really clear. And in the civil rights era, the Supreme Court got similar types of arguments from commercial vendors saying, "We have a Free Exercise right to deny service to African Americans." And the Supreme Court just gave all those arguments at the back of his hands. Summarily rejected claims like that. So all of those same issues, they were there in Masterpiece and they're here in this case as well.

Leah Litman:

So the foster care agency, and the [inaudible 00:26:36] are arguing that here there is evidence of religious animus, or at least not general applicability in part because of statements that you alluded to Leslie, but also because the agency says the government has the ability to grant exemptions from these non-discrimination provisions, the city actually disputes this. And also as you noted, if the ability to grant exemptions with evidence of discrimination, perhaps the travel ban case might've come out differently. Also, the foster care agency makes an interesting argument that some of the agencies are allowed to focus on outreach to families in particular ethnicity.

Leah Litman:

So to specialize, for example, in serving or placing native American children, or in placing children with disabilities. I think that it is an interesting development in the law that these kinds of programs are framed as discrimination by the foster care agency with the support of the Federal Government. It's also interesting given that your federal law requires special consideration for placing native children with non native families. But this is some of the agency's evidence of alleged animus or non-general applicability.

Kate Shaw:

So the case also implicates, this potential difference between regulations and conditions that attach to the provision of benefits. So the city argues that Smith and the First Amendment applied differently when the government is outright regulating private individuals and its capacity as sovereign. It says, "Don't do this or there'll be these consequences." But that here it's different, if the government is composing a condition on contractors or employees. And so, I think there's a real question about whether they're going to get traction with sort of drawing that sharp distinction between the two.

Melissa Murray:

There are some other issues worth highlighting as well. So there is a kind of lurking state action question that would arise if the agency were to prevail here. And specifically, the question would be whether the

city's delegation of its authority over foster care certification to private agencies who then engage in discrimination for religious reasons violates the Equal Protection Clause and or the Establishment Clause.

Melissa Murray:

And so, the question generally is, imagine if the city were doing all of their foster care placements itself, it couldn't exclude certain people from the foster care program on the grounds that there is a requirement that we wants that it not engage in discrimination. But if you have in the context of this particular case, a delegation or the deputizing of a private agency to do that, does that then happen under the color of state law, if the agencies are allowed this exemption from the ambit of the anti-discrimination law? So again, does the deputization to private contractors undo the requirement, or does it create an opportunity for state action?

Melissa Murray:

There's also a compelled speech claim here that's worth noting. And this really, again, surfaces issues that were also surfaced in Masterpiece Cakeshop. The agency here argues that the non-discrimination provision requires it to quote unquote, "speak" in ways with which it does not agree. And again, in Masterpiece Cakeshop, the baker was arguing that, the anti-discrimination law, the Colorado anti-discrimination act prevented him from speaking the way that he would, because it required him to provide cakes to all comers, including for same-sex weddings, with which he had religious objections. So the Court never got to that question on Masterpiece Cakeshop again, because of the off ramp that was mentioned earlier. So this case potentially tease that up again.

Leah Litman:

This is also a case where we will be looking to see whether stare decisis is in fact for suckers and specifically we'll the justices who called for Smith to be overturned, pull the trigger in this case, or will this case instead be the first step on a path toward potentially overturning Smith. And in this case, narrowing it, and then potentially looking back on this case to say, Smith generates inconsistent or unpredictable results. Something I'm also watching for is whether Justice Barrett will use this case to stake out a different ground than the jurist with whom she aligned herself most closely, of course, Justice Scalia, the author of Smith.

Risa Goluboff:

So this is a hugely important case, and I'm going to put in a plug for a UVA event about it, that's coming up. Our new Family Law Center is having a conference on Fulton. It's called Fulton, Faith, Families and Foster Care. A lot of F's, on Friday, January 22nd. That's put together by Family Law Center, Director Naomi Cahn, and a Co-Director of Gregg Strauss, as well as the aforementioned Micah Schwartzman. So look out for that, it will be open to the public and we'll be talking some more about this case.

Kate Shaw:

Great. Okay. So let's segue to the next case we're going to talk about, which is another highly anticipated case. This is a criminal justice case involving juvenile defendants, Jones v. Mississippi. So this case will be argued on election day, and we also talked about this case over the summer when we did our special episode with the Appeal's President Josie Duffy Rice. When we highlighted a bunch of the criminal justice cases on the court's docket, and this is among the most important of them. So the

question here is whether the Eighth Amendment requires a sentencer to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.

Kate Shaw:

So the Court is not writing on a blank slate here. This case follows from two recent important Eighth Amendment decisions. The first is Miller v. Alabama, which invalidated a scheme of mandatory life without parole as applied to juveniles convicted of homicide. In that case, the court held that it was not constitutional to have a statute that basically says that juveniles must get life without parole. So a mandatory life without parole scheme for homicide convictions.

Kate Shaw:

So the second case is Montgomery v. Louisiana, which followed Miller and held that the rule announced in Miller applied retroactively because it was a substantive rule. So the doctrine here gets a little technical and kind of wonky, but it matters a lot in general and in the context of Jones. So, Leah, this is really in your wheelhouse. So do you want to walk us through retroactivity doctrine a little bit.

Leah Litman:

I thought you'd never asked. So most new rules of constitutional criminal procedure do not apply to cases that have become final. That is after your initial round of appeals, including to the Supreme Court, ends. So if the Supreme Court announces a new decision after your appeals are finished, too bad the decision generally does not apply to you, even if your conviction would be illegal under it. But new substantive rules do apply retroactively. So in figuring out what exactly Miller requires, you have to adopt an interpretation of Miller that would qualify as a substantive rule. Otherwise, Montgomery would not have said that Miller is retroactively applicable.

Melissa Murray:

So Jones who's, the defendant here is represented by the MacArthur Justice Center, and they are arguing that the Eighth Amendment requires a finding that a juvenile is permanently incorrigible because the Eighth Amendment prohibits the imposition of life without parole for all, but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. And they argue that in this case, no court has asked or answered that question with regard to Mr. Jones, nor have they made a particular finding about incorrigibility.

Kate Shaw:

So the state of Mississippi here, which is supported by the federal government is arguing that the decisions in Miller and Montgomery really only mean that sentencers have to be allowed to consider youth, or that maybe that they must consider circumstances unique to youth in sentencing. But they maintain the Eighth Amendment, doesn't require a particular procedure or a specific finding, or even a particular proceeding designed to answer or ask a particular question. It's a very narrow reading of what Miller and Montgomery actually require, which would give states and localities a tremendous amount of discretion in how they approach questions of juvenile sentencing.

Melissa Murray:

So some things to watch for with this case. One, the case was granted because an earlier case Malvo v. Mathena, which presented a question very similar to the one asked here in Jones, was actually before

the court last term. And it was ultimately mooted before the court could issue its decision. But based on the opinion assignments, it looked like either Justice Ginsburg or Justice Kavanaugh had been assigned the decision in Malvo because neither of them had opinions from that October sitting. It had also looked in Malvo itself, Justice Kavanaugh may have been pretty sympathetic to the defendant and that the defendant might have been likely to prevail there. But there was a difference in that case. At the time the sentences available to Malvo were death or life without parole. He was sentenced before Roper prohibited the death penalty for juvenile defendants. The sentencing in Malvo's case accord before Miller, whereas here, Mr. Jones was re-sentenced after Miller.

Leah Litman:

This is also another case where we will be watching to see whether stare decisis is in fact for suckers. The cases, obviously, in part about the reasoning of Montgomery and Miller and the disagreement between the parties calls to mind a debate that recently surfaced between the Justices in Torres v. Madrid about whether the reasoning of a decision versus its outcome is entitled to respect and starry decisis effect. So here, for example, there are statements in Montgomery that literally say the Eighth Amendment requires Courts to quote, do more than consider a juvenile offender's youth before imposing a life without parole sentence, yet that's what the state and the federal government are arguing for. But were those statements necessary to the outcome in Montgomery? The federal government and the state is saying, they're not.

Kate Shaw:

Leslie and Risa. I want to see if you guys have anything, any thoughts here. I mean, this is a question that students, I feel like pose a lot, which is how to make sense of the decisional processes the Justices use when they are sort of wrestling with what stare decisis effect to accord, to a prior decision. How seriously they feel compelled to take their prior cases, either with respect to this issue in Jones or kind of more generally? How do you answer those questions when your students pose them?

Leslie Kendrick:

I'm super interested in how you all do, because I'm sure you get the same questions, right. But I get these questions a lot, but it's interesting because I also teach torts. And there's a couple of famous torts cases, Goodman and Pakora, the Supreme Court decided like pre-Erie back when they were doing lots and lots of state tort cases. And it's about, whether someone was contributorily negligent to pull out in front of a train and Justice Holmes says, no, he should've stopped look and even gotten out of the vehicle if necessary to ascertain whether a train was coming. And just a few years later, he retires. Justice Holmes never learned how to drive by the way. So he comes up with this rule. He has no idea what he's talking about, but it's a unanimous decision and everyone sort of goes along with it.

Leslie Kendrick:

And then just a few years later, the court comes along and says, "No, no, Goodman was good. That's a good law for Goodman" But people don't have to get out of the car. They basically cut away everything from Goodman, except the holding of Goodman as applied to Goodman itself. And students say, "What are they doing?" And I say, you've got to watch them really carefully and read and try to figure out what they're doing. But they're preserving Goodman, but they're destroying Goodman at the same time, and you're going to have to look really carefully and try to figure out and there's not a rule. There's not a playbook that says, this is what they must do under these circumstances. So you have to watch really carefully.

Melissa Murray:

Where have we seen that before? The Court preserves something that ultimately destroys it.

Risa Goluboff:

I was about to say, there's the abortion context where that comes up the most in constitutional law, which I think is what you're talking about. And it's interesting though, one of the things I often tell the students is, they think that when they read a particular case, they're going to know what the case stands for going forward. And really, it's often really hard to know what the case stands for until the next case and the next case after that.

Risa Goluboff:

And we have very robust debates in my classes about the extent to which Roe has been eviscerated and the extent to which it does continue to do work and is meaningful. Part of it in talking about stare decisis, it's not only stare decisis, it's the whole enterprise of constitutional law that raises these questions about to what extent, and this is nothing new is what you talk about all the time. To what extent is the court doing politics? To what extent is it doing law?

Risa Goluboff:

And I think stare decisis is one of those places that puts that most intention, where were we desperate? I think people desperately want to see that there's reasoned decision-making on stare decisis, which will lend itself to the legitimacy of the Court doing law.

Kate Shaw:

Yeah. And I mean, I think sometimes cases like this, Ramos v. Louisiana last term was another case like this. That was not like a front page of the papers, kind of a high profile Supreme Court case really significant right about the requirement of unanimity and jury verdicts. But where there was just a really rich and important debate in the dueling opinions about the role and meaning of stare decisis and this Apodaca case. And I think it's possible that in this case, we will learn more about, or see more of the justices kind of wrestling with those competing imperatives. But I do think that they're going to have to say something about what Miller and Montgomery mean, and the competing sides are saying very different things about what those cases stand for. And so, I think we will learn something about this newly constituted court, because it's going to be a different court than even last term thinks about these questions.

Leah Litman:

And I just can't resist saying my own piece on this, which is if they say, all you have to do is consider youth, to my mind, that would effectively overturn Montgomery. Given there are all of the Court's prior retroactivity cases that say mere consideration of a factor is just a procedural rule. Those are Grand v. Collins and a bunch of other cases that say any decision that just tells the sentencer you have to consider this, that's a procedural rule that doesn't apply retroactivity.

Kate Shaw:

Oh, would this be a backdoor way to really expand retroactivity doctrine, even if that's not the intended effect.

Leslie Kendrick:

Right, right. So what would be the implication there? I mean, I assume it would not be to expand retroactivity doctrine, but what would be the substantive takeaway from Montgomery that would now be being applied?

Leah Litman:

The substance to takeaway is just no sentences under mandatory statutes, but any individualized sentencing proceedings that open up the possibility of any other sentences would be constitutional.

Kate Shaw:

So also being argued on election day is Borden v. United States. This is an Armed Career Criminal Act, ACCA, case also squarely in Leah's wheelhouse. So Leah, do you want to take us away on this one too?

Leah Litman:

Sure. So ACCA imposes a mandatory term of 15 years imprisonment for individuals convicted of firearm offenses, like possessing a firearm. If they were convicted of a felony, typically, the punishment for those offenses is up to 10 years imprisonment. But persons with three or more convictions for violent felonies are subject to the mandatory minimum.

Leah Litman:

ACCA defines a violent felony as something that has as an element, the use of force. And the question here is whether state law crimes with the mens rea of recklessness. You recklessly create a risk of harm or force qualify as violent felonies. This question has huge stakes for people sentences given the disparities in sentences under ACCA. And I should say I signed an amicus brief in support of the petitioner and had the good fortune to work with MoloLamken on the brief, including Jennifer Fischell.

Risa Goluboff:

I would add just another plug for UVA Law. ACCA is actually litigated frequently. There are so many different pieces that come up. And so, there was a case in 2019 Quarles v. United States that the UVA Law School Supreme Court Clinic was argued and lost. And the Court expanded the category of cases where someone was considered to be a felon under the definition. So you can't win them all, but it's good that we were there making the arguments.

Leah Litman:

Maybe your clinic will win the follow on case to corals, which is going to be whether trespass statutes with the mens rea negligence or recklessness also qualify as burglary.

Risa Goluboff:

There you go.

Kate Shaw:

I knew that too. There's so much that the Court could literally just like duke ACCA cases and fill its docket every single term it's incredible.

Leah Litman:

Court reform, the ACCA only Court.

Kate Shaw:

I feel like we could get behind that

Leah Litman:

I'll serve.

Kate Shaw:

Okay. A couple of other cases we don't have time to preview. On the first is United States Fish and Wildlife Service v. Sierra Club, which presents a question about the scope of exemption five to the Freedom of Information Act or FOIA, which is the statute that allows you to seek information that is in the government's possession. Exemption five is a hugely important exemption for anybody who's ever worked with or around FOIA protects against documents that fall under the deliberative process privilege among other things, that is documents that reflect agency decision making and deliberation.

Kate Shaw:

And the question here is whether that exemption prohibits or protects against disclosure draft documents that are prepared as part of a formal interagency consultation process under section seven of the Endangered Species Act. That might not sound that interesting to you, but it's really interesting to me. And there's just not a lot of substantive SCOTUS discussion of FOIA in general or the FOIA exemptions in particular. And section five really is where the action is and agencies and lower courts don't have tons of guidance about the kind of contours of an outer bounds of section five. So I actually think it's a pretty important case to keep an eye on.

Leah Litman:

I was going to say action in air quotes.

Kate Shaw:

Actual action.

Melissa Murray:

Don't make fun

Kate Shaw:

ACCA, FOIA, we all got our...

Melissa Murray:

We all have our-

Leah Litman:

Passions. Our passion projects.

Melissa Murray:

Also on tee for the November sitting is Salinas v. United States Railroad Retirement Board, which involves a question about whether the railroad retirement board's denial of a request to reopen a prior benefits administration is a quote unquote "final decision" subject to judicial review. All right, so in this episode's court culture. We were going to talk a little bit about ladies who like to podcast and how we actually got to the space where we try and get into your ear holes on a regular basis. So we will start by giving a little bit of the background on how Strict Scrutiny came to be, or as my son says, Strict Scrutiny's origin story. So Leah, do you want to kick us off?

Leah Litman:

Yeah. I think at least from my perspective got started by a feeling that the Supreme Court commentary space and Supreme Court bar is overwhelmingly male, overwhelmingly white. This is why we're looking ahead to the November sitting 3 of the 21 advocates, in that sitting are women, which is just a staggeringly poor statistic. So we wanted to kind of alter the look and feel about who were Supreme Court commentators. And from my perspective, I also wanted to change the norm about Supreme Court commentators are not supposed to have opinions, and the idea that I think often operates to the disservice and detriment of women and people of color, which is, if you have an opinion that somehow makes you less informed or less of an expert.

Leah Litman:

I think it's completely possible to do really great substantive analysis while also having strongly held views. And so, those were the two things that I really wanted to do a podcast that channeled and since we all followed the Supreme Court and are interested in it, that also seemed like a good subject matter.

Melissa Murray:

When we started there wasn't a podcast that really featured a lot of women. I think some podcasts had a couple of women. I think there was one other podcast, that might've been all women. And then, since we started, there have been a couple of new ones including a podcast with I think four female judges who are talking about the appellate process as well. But it was a wide open space weirdly. And we were happy to fill it.

Kate Shaw:

And is just a really fun to get to talk in a different register. So we'd be totally writing or review articles. And we actually, I think I'll really do enjoy that process parts of it more than others probably. But it is affirmatively really a pleasure to get a chance to sort of try kind of a lighter, faster take. And it also, I think just keeps us really connected to the Court's docket in a way that... I think I follow most of the Court does anyway. And I think we all do, and the Fish and Wildlife case I would be following probably anyway, but the AACA case, probably not. And so, I actually think that you inevitably see connections, but if you're reading outside of your narrow area of specialization or expertise in a way that does enrich your scholarship more broadly. And so, I think that's a benefit and it's also just... it's really fun to be in this kind of intellectual exchange with these great ladies that I get to talk to once a week, cathartic.

Risa Goluboff:

I see all of that. I mean, you all are fabulous and it's so much fun to talk to you and it's clear that you have fun talking to each other, and it's so much fun to talk to you and to be here and also to see just

your encyclopedic knowledge about the cases, about the Court. It's a pleasure. So we started from not dissimilar backgrounds, so I'm the first female Dean. Leslie's not the first female Vice Dean, but this is the first time we've had an all female leadership team on the academic side at the law school. And so, we were thinking about how to highlight that and what we want to do with that. And also just really excited about a lot of the UVA faculty scholarship on law. And so, we thought this is a really good medium to promote that and share information about that and and talk about law. Leslie, you want to add anything?

Leslie Kendrick:

Yeah, yeah. And ours is not a Court watching podcast and it's not focused on courts really at all, and especially not on the Supreme Court, although the Supreme Court comes into it, lots of different ways. And I think, some of that...that's intentional on our part that we want to be in a sort of a different part of the legal world. And Common Law is a title that I think tries to get at what it is that we want to talk about, which is the ways that law can be really pervasively important to people sometimes in the background and the culture shapes law and law shapes the culture. And that's something that we all have in common and it goes beyond whatever the nine justices are saying from on high to lots and lots of different spaces and lots of different directions.

Leslie Kendrick:

And our first season and when we were starting it, I think we're also thinking about what that first season was going to be like. And it was about the future of law and talking with people who are doing pieces, identifying interesting developing issues: blockchain, self-driving cars, things like that. And to me, it was like reading the science page of the New York Times in that hopeful way of... Here's someone who knows something about what's happening, they're trying to help it be as good as possible and I'm learning something and I feel optimistic for the future.

Leslie Kendrick:

And we've expanded from that to sort of history. And now we're talking about law and equity, which is about law and equality and equity in lots of different ways. So it's kind of expanded out from there, but it maintains this kind of feel that to me is like everything that's positive about faculty workshops and none of the negative things about faculty workshops. Sort of engaging with someone about their work. What are you about? What do you care about and how does law matter to you and to your projects? And I learn something new every time and it's an inspiring thing to be a part of and a very fun thing to get to do with Risa.

Risa Goluboff:

So I was just going to add, I think for us, like for you, we love having guests and we always learn from our guests, but I just end every episode amazed at Leslie Kendrick and how her brain works and the questions she asks and things she says. And so, it's so much fun. We have so much fun the two of us, and it's clear that the three of you have a blast too.

Leah Litman:

Something that you said Leslie sounded like in a similar register to something that we've talked about on this show, which is just democratizing the law for people. People might not understand how omnipresent, the law we focus on the Supreme Court. You are more generalist, but how significant the

law is to people's lives. And we want to give people more access to those dynamics and again, just kind of democratize information about it and make it more generally accessible.

Leslie Kendrick:

And to be clear, I think it's really important to do that, particularly, for the Supreme Court, that's not what we're doing, but I love that that's what you're doing both to have women's voices talking about the Supreme Court and voices that are translating what happens to the Supreme Court for a wider audience. Both of those things are incredibly important. And it's exciting to talk with other people who are doing this. So I would want to echo everything that Risa said about me. It's not about me but it's true about her. And.

Risa Goluboff:

It's true about all of you.

Leslie Kendrick:

Exactly, but podcasting is not a natural thing for me. I'm an introvert. And just the thought of talking to the void was very intimidating for me. It's still a growth area. And I wonder, do you all have any... Is there anything about it that has been a growth area or a source of stress or something that was unexpected and a challenge for you?

Kate Shaw:

I mean, it's all very much still a work in progress. I do think that speaking in kind of complete and accessible thoughts, I mean, we all have ticks when you listen to yourself on a podcast, you really hear those ticks. So I think that can be painful, but also you can sort of do better although obviously plenty of room to grow still. So then I think how difficult it is to listen to yourself, was even more of a signal of an obstacle than I, but now I can. I listened to the episode, I listened to places where I wish I had sounded better. I always think Melissa and Leah sound great. So yeah. You get technically better and you sort of worry less because you fundamentally believe that the product that you're putting out into the world does something valuable and something that you're happy to be part of.

Melissa Murray:

So I think one thing that is challenging is, you're opening yourself up to all kinds of criticism and some of it is substantive and really valid. There have been people who have chimed in to say, well, like when we did the Google and Oracle case, a couple of weeks ago, we're not IP lawyers, and that case is incredibly technical with regard to code. And I think we thought we were getting it right about what kind of code was at stake, and then, someone who was an IP lawyer was like, "No, it was a very different kind of code." And we're like, "Okay." We're trying, we're not IP specialists, but we're trying, and that was a helpful criticism and it will help us as we cover that case over the term.

Melissa Murray:

But then, some of the critique, I think is the kind of things that women and maybe women of color specifically routinely get when they are in public facing spaces, that it's not really about the substance at all, but about things that are really just unimportant.

Kate Shaw:

And I mean, we've all gotten plenty of our voices are wrong. We laugh too much. You sort of, it's true. You open yourself up to those kinds of critiques when you're, sort of producing something like this for the public. And I think you get your skin does thicken up but it doesn't ever not bother you at least somewhat.

Leslie Kendrick:

I think that's part of the reason why it's important to be out there to say, this is what a podcaster sounds like, this is what a lawyer podcaster or sounds like, this is what a woman podcast or sounds like. And you sort of adapt and change the boundaries of what people think of their conceptions by doing it, just by being out there and doing it.

Melissa Murray:

This is what a rabid UVA fan podcaster sounds like.

Leslie Kendrick:

Wahoowa.

Risa Goluboff:

We're just going to say it again.

Melissa Murray:

Wahoowa

Leah Litman:

So speaking of our podcasts, our podcasts are perfect, but we are not. We all make mistakes, but not everyone can rely on the talents of Melody Rowell to smooth over their blunders. And this is certainly true at the Court. And in recent days, there were some high profile with corrections at the Court that we wanted to highlight, Kate.

Kate Shaw:

Okay. So first, there was an update to Justice Kavanaugh's opinion in the Wisconsin case, as we noted on our episode about the case. The Vermont Secretary of State, very quickly after the opinion was issued asked Justice Kavanaugh to correct an error in his opinion. Justice Kavanaugh had mistakenly said that Vermont made no changes to its election rules in the wake of the pandemic. That was not true. It just did not extend its returned deadline for absentee ballots. Kavanaugh very quickly updated the opinion to say that Vermont had made no changes to the deadline for receiving ballots. Although the Vermont Secretary of State has now responded to it and has suggested that the revision is actually insufficient and that it should go further. So we'll see if there's further revision in the offing.

Kate Shaw:

We should see that this is actually not atypical for a law. A lot of people were sort of shocked that the Court corrected its opinion in this case. But it happens pretty routinely. It's just often under the radar. Although less under the radar, since Professor Richard Lazarus published an article a few years ago about the Court's revision practices.

Kate Shaw:

It turns out the court has been for many years, secretly and silently changing its opinions after the initial issuance of its slip opinions, including making pretty major substantive changes. In a few cases, that people will be familiar with the Justice O'Connor concurrence and Lawrence v. Texas underwent significant revisions after its initial slip opinion. And there's a five-year period between the initial decision and the actual publication in the US Reports. And during that period, opinions get changed. But since Lazarus published his article and the Court, I think sort of took heed of the criticism, it at least now publicly announces or at least posts on its website, the fact of these changes. They just don't usually get news coverage the way this Kavanaugh revision did.

Melissa Murray:

Well. One correction we perhaps can all relate to as lawyers occurred last term in a case called Thryv v. Click-to-Call Technologies, where Justice Gorsuch filed the dissenting opinion that he later had to correct. And the offending passage stated that nothing in the "statue" commands this results. As we know it's statute not statue. I always, whenever I taught legal writing for those two years at Columbia, I always told my students to do a search and find for statue just because it was one of those easy mistakes to make. We've all been there, Justice Gorsuch. Don't worry.

Leah Litman:

Just at the end, I did want to come back to you, Kate, the original correction that you noted at the beginning, and the fact that the Vermont Secretary of State was not satisfied on Twitter. They said are we satisfied in a word? No. And then in a longer statement, the Vermont Secretary of State said the opinion still misrepresents the significant changes we made here, and that the larger problem with Justice Kavanaugh's concurring opinion is not the absence of the word deadline, but the total lack of regard for voting rights of American citizens. And I was just curious to hear, if any of you thought that this pushback represented a possible new wave of resistance or challenges to the Court as an institution in light of it's perceived partisanship or perceived illegitimacy, in light of what has happened over the last few years or is this something that would have happened?

Melissa Murray:

The tweet was even, I think, more damning than what you offered. I mean, so the tweet says, are we satisfied in a word, no, we won't sit by while he uses mistruth about the Green Mountain State as covered to erode voter rights. So there's some big Vermont energy there. There's some big voting rights energy going on and I think real pushback. And so I think there are a lot of things going on. Would you have this kind of dialogue between the Court and a State in the absence of social media? I don't know that you would, I don't think it would have been picked up in quite same way in the absence of social media. But it does seem to be a kind of your move Justice, and in a kind of you want to take the fight to me, like Vermont is ready, there. The Green Mountain State is ready to go. So I think it's really interesting. I had never seen anything like this.

Leah Litman:

Yeah. This is something I'll be watching to see whether there are other statements similar to this. We saw, for example, Senator Amy Klobuchar, come out with a pretty negative statement after the Eighth Circuit decision. Kate, you mentioned ordering the state to segregate ballots. And I'm just going to be curious to see if there will be more of that.

Melissa Murray:

Who knew Vermont had this kind of fire. Did you know?

Risa Goluboff:

I feel like that was Vermont version of Wahoowa.

Melissa Murray:

The green mountain boys. I loved it, I loved it.

Melissa Murray:

All right. I think that's all we have time for. We are so grateful to all of you at UVA Law and especially, the UVA Law Chapter of the American Constitution Society for law and policy for hosting this crossover event with Common Law. Thank you to Wes Williams and Mary Wood for making this happen and happen so seamlessly. As always, we are grateful to our producer, Melody Rowell and to Eddie Cooper who makes our music. And we're grateful to all of you for listening.

Melissa Murray:

There's a reminder here that I would like to just put out there that you can support Strict Scrutiny by becoming a glow subscriber @glow.fm/strictscrutiny. And if you liked the show, please rate us on iTunes, but thank you so much for being here and Wahoowa.

Leslie Kendrick:

Wahoowa.

Melissa Murray:

Again and again and again.