## WHAT TRUMP CAN TEACH US ABOUT CON LAW

Smoot, Hawley, and Trump

**ROMAN MARS:** It is Tuesday, September 23rd, 10:40 AM, as we are recording this. What are we going to be talking about today?

**ELIZABETH JOH:** All right. Roman, today let's start with the opening lines of a novel. So here it goes. "Ours is essentially a tragic age, so we refuse to take it tragically. The cataclysm has happened, we are among the ruins, we start to build up new little habits, to have new little hopes." So, Roman, are you familiar with the novel Lady Chatterley's Lover?

ROMAN MARS: [LAUGHING] No.

**ELIZABETH JOH:** Okay. Well, if you've never read it, Lady Chatterley's Lover is a novel written by the British author David Herbert Lawrence in 1928.

ROMAN MARS: D. H. Lawrence.

**ELIZABETH JOH:** D. H. Lawrence. Right. And the plot revolves around an affair between an upper-class woman, Lady Chatterley, and a working-class man, Oliver Mellors, her gamekeeper. So, despite the abstract nature of the beginning of the novel, it's a very sexually explicit novel.

**ROMAN MARS:** Yeah. Of the things I know, that's what I know.

**ELIZABETH JOH:** And it's controversial for that explicitness. Lady Chatterley's Lover was subjected to bans in different countries for being indecent or obscene. And in fact, British readers could not actually buy the novel legally until 1960, at which point it became a bestseller and remains an influential work of literature. And it also became the subject of heated debate on the floor of the U.S. Senate in March of 1930. The question was how obscene was this book? And in the eyes of some senators, very. In fact, one Senator stood on the Senate floor and stated that Lady Chatterley's Lover was "so disgusting, so dirty, and vile that the reading of one page was enough for me." And the debate wasn't just about D. H. Lawrence's novel. The senator targeted all so-called "obscene" books. He said, "I want them all kept out. I want to say to the senators now that a father of a child would never want the child to see this obscene matter. They are disgusting. They are beastly--beastly."

You see, the Senate was debating a proposed change to existing law, and federal law at the time allowed customs officials to ban literature they considered indecent or obscene from entering the country. Senator Bronson Cutting from New Mexico supported an amendment to eliminate the censorship in the name of free speech. He argued that censors trampled on freedom of thought. And as Senator Cutting observed, you could buy plenty of racy literature at your local stores. He listed titles like Joy Stories, Paris Nights, Hot Dog, Hot Lines for Flaming Youth, Jim Jam Jems, and Whiz Bang. But Cutting's opponent wasn't having it. He said, "If I were a customs inspector, this obscene literature would only be admitted over my dead body. I'd rather have a child of mine use opium than read these books." The debate packed the Senate galleries and titillated journalists. And the attempt to lift the censorship of this obscene literature failed. Indecent literature imported into the country would continue to be seized. The winner of the debate--the Senator who said Lady Chatterley's Lover was beastly? His name was Reed

Smoot--Senator from Utah. And Smoot's performance was so widely covered that it generated headlines like Smoot Smites Smut. And in 1931, Ogden Nash mocked the senator with this poem. "Senator Smoot is an institute / Not to be bribed with pelf; / He guards our homes from erotic tomes / By reading them all himself. / Smite, Smoot, smite for Ut., / They're smuggling smut from Balt. to Butte! / Strongest and sternest / Of your sex / Scatter the scoundrels / From Can. to Mex.!"

The debate was a colorful highlight of an otherwise pretty boring subject. The censorship amendment was part of a larger bill that had started in the House Ways and Means Committee chaired by Representative Willis Hawley of Oregon. That bill, originally intended to help farmers, eventually levied tariffs on more than 20,000 imported goods by an average of 20%. Now economists generally agree that the bill signed into law by President Herbert Hoover in June of 1930 made the conditions of the Great Depression even worse. The law would come to be remembered not as the Tariff Act of 1930, but the Smoot-Hawley Act. You know, the question the teacher asked in the 1986 film Ferris Bueller's Day Off--you remember that?

ROMAN MARS: [LAUGHING] That's right. I do.

**ELIZABETH JOH:** Where he says, "Anyone? Anyone? Anyone? The tariff bill? Anyone?"

ROMAN MARS: "Raised are lowered? Raised tariffs?"

**ELIZABETH JOH:** "Anyone? Raised? Raised tariffs?" Well, Smoot-Hawley is back in the news because President Trump, like Senator Smoot, is very fond of tariffs. So Trump has decided to impose lots of them. But can Trump impose these tariffs in the same way? Is he allowed to do that? Time to find out.

ROMAN MARS: Let's do it.

## [THEME SONG]

**ROMAN MARS:** This is What Trump Can Teach Us About Con Law--an ongoing monthly series, where we look at smut, tariffs, and emergency powers and use them to examine our Constitution like we never have before. Our music is from Doomtree Records. Our professor and neighbor is Elizabeth Joh. And I'm your fellow student and host, Roman Mars.

**ROMAN MARS:** Yeah, that's a good question. What does the Constitution say about this?

**ELIZABETH JOH:** So, Roman, the word "tariff" is not in the Constitution. But remember, tariffs are taxes on imported goods. And Article I of the Constitution gives Congress the power to lay and collect taxes, duties, imposts, and excises. And Article I also gives Congress the power to regulate commerce with foreign nations. So, the framers were very explicit about giving Congress the specific power to impose tariffs, which are taxes, on goods. And that power was extremely important during the 18th and 19th centuries because tariffs were the main source of revenue for the federal government. But tariffs can be a kind of unpredictable source of federal funding. They go up. They go down. And if tariff revenues decline, that means fiscal instability for the Federal Government. And that's part of the reason why Congress imposed the first income tax in 1862. And it's the ratification of the 16th Amendment in 1913 that ultimately gives Congress the

constitutional power to impose a nationwide income tax. And from that point forward, it's income tax, not tariffs, that becomes the main basis of funding the Federal Government.

But tariffs didn't disappear completely. Like in 1930, when a Republican majority Congress tried to protect agricultural interests and then many other interests by passing the Smoot-Hawley Act. And of course, tariffs aren't just a means of raising revenue, right? They're also economic policy. And that's the main reason tariffs exist today--not to make money, but to be part of how the United States has trade relations with the rest of the world. And the Smoot-Hawley Act was just bad economic policy. It was an extremely protectionist law. As a result of the Smoot-Hawley Act, other countries imposed their own retaliatory tariffs on American goods. And by 1932, U.S. exports and imports fell by almost 70% and both Smoot and Hawley were voted out of office. Even though the Smoot-Hawley Act was a terrible policy, it was a straightforward use of Congress' power. The law passed a set of tariffs and specified tariffs in something like 95 pages of tariff schedules.

**ROMAN MARS:** So, if this is Congress' job, how is it the president gets involved in this? Like, that's what's happening right now.

**ELIZABETH JOH:** So there are two developments that are really useful to know its background. Since tariffs today really serve the purpose of global economic policy, that's a really complex job just for Congress to do. And one response is Congress creating things like the Nonpartisan International Trade Commission in 1916. Another response is to give some of its own authority through legislation to the president. So, what this means is that Congress is giving the president limited powers to impose or suspend tariffs through international agreements with other countries. Now, the second important development to understand is the use of emergency powers by the president. So, let's talk about the 1917 Trading with the Enemy Act, okay?

**ROMAN MARS:** Okay.

**ELIZABETH JOH:** That law allowed the president to decide whether to impose certain kinds of economic penalties on foreign transactions if the president declares that there's a national emergency. So this act--the Trading with the Enemy Act--is a significant expansion of presidential power. It was used by many presidents in the post-World War II era. So, for instance, President Truman relied on the act to impose economic sanctions on North Korea and China in 1950. But it was Nixon's use of the act in the 1970s that eventually causes a problem. It's always Nixon. We're always talking about Nixon, right? So, in 1972, Nixon used the law to impose a 10% tariff on all imported goods as part of a set of economic measures to fight inflation. It's the 1970s. There's high inflation. There's a potential currency crisis in the United States. And Nixon's use of the Trading with the Enemies Act to impose these tariffs is challenged in court but eventually upheld. But that raises a question. Who really has the tariff power? Is it the president or Congress? And it's that legal fight that leads Congress to reform the emergency powers available to the president. And one of the things Congress does is, in 1977, they pass a law called the International Emergency Economic Powers Act, also known as IEEPA. That's a terrible name, but I think we're going to have to use it.

**ROMAN MARS:** Okay. IEEPA. Okay, so what does IEEPA do?

**ELIZABETH JOH:** Well, with IEEPA, Congress is still granting some of its authority to the president. But the law says two things important to understand what's happening now. First, the law says that the president of the United States can use IEEPA to "deal with any

unusual and extraordinary threat" coming from outside of the country. And that can be a national security threat, a foreign policy threat, or even an economic threat, so long as the president declares a national emergency. The second thing to keep in mind is that, if the president declares a national emergency, one of the things the president is allowed to do under IEEPA is to regulate importation or exportation of goods. So, with IEEPA, Congress is trying to be much more specific and limiting in the kind of power it's giving to the president. Since 1977, presidents of both parties have relied on IEEPA dozens of times. And so, in the past, they've done things like ban transactions with a specific country or to freeze assets with a foreign entity because there's some declared national emergency. And so, even though IEEPA is considered an attempt by Congress to rein in presidential power, it's still an example of Congress trying to give the president some emergency authority. So part of the problem is that IEEPA doesn't really define what a national emergency is--or what an unusual and extraordinary threat to national security or foreign policy is. Well, one way to curb that is that federal law also allows Congress to terminate an emergency through a joint resolution, even if the president doesn't agree. But on the other hand, Congress has never once terminated an emergency declaration under IEEPA against the wishes of a president.

**ROMAN MARS:** So is Trump relying on IEEPA to do the tariffs that he's imposing right now?

**ELIZABETH JOH:** So a lot of the tariffs do fall under IEEPA. So, as soon as Trump started his second term, he issues a series of executive orders on tariffs--a lot of tariffs. You might've heard about tariffs on specific industries, like steel and aluminum, but we're going to put those aside for now. The ones we want to talk about today fall into two types. First, there are the so-called "trafficking tariffs." Trump announced these by executive order on February 1st. And these are tariffs imposed on products from Canada, Mexico, and China. And then there are the worldwide or reciprocal tariffs. This is a tariff of at least 10% on basically every country we trade with. These tariffs were imposed on April 2nd by executive order. And some of these tariffs are even higher, as high as 50% in some countries. And to make things even more confusing, certainly for me, many of these tariffs have been altered or changed or suspended temporarily several times. So it's really hard to figure out which tariffs are in place right now.

**ROMAN MARS:** So, why does Trump claim that he can use IEEPA to do, like, a worldwide reciprocal tariff on, like, the entire world? We can't be an emergency with the entire word, can we?

**ELIZABETH JOH:** Right. So Trump is relying on ambiguity, right? First, he's claiming that imposing a tariff in this way or a set of tariffs is part of what it means to "regulate" under IEEPA because that's the word in the statute. And second, Trump is claiming that there are two emergencies here. Remember, this is an emergency power. And one emergency is allegedly that Canada, Mexico, and China are not doing enough to stop the flow of illegal fentanyl into the United States. The other emergency--again, according to Trump--is the ongoing trade deficit between the United States and other countries. In April, a group of small businesses and a group of states sued in a special court called the Court of International Trade. And they tried to challenge Trump's use of IEEPA to impose these specific tariffs. These two cases can be considered together.

**ROMAN MARS:** And what were their arguments in the Court of International Trade?

**ELIZABETH JOH:** So it's actually a really simple argument. Does IEEPA allow this? They're saying no. There's no question that, with IEEPA, Congress has definitely given the president the ability to do a lot of things once an emergency has been declared. But there's no mention of the word "tariff" in IEEPA. So the question is, does the power to regulate, which is in the statute, include the power to impose tariffs? And then a secondary question could be something like, even if the president could do this, does something like the existence of a trade deficit with other countries--something that's been going on for decades--really count as an emergency under the statute? That's another kind of issue.

**ROMAN MARS:** And so what's the status of this case? That seems like a pretty fundamental argument about presidential powers and stuff. They should figure that stuff out, right?

**ELIZABETH JOH:** Yeah, so in May of this year, the Court of International Trade--that's where the case was first filed--ruled against the Trump administration. The three-judge panel in the case decided that Trump didn't have the authority to use IEEPA in this way. The Trump administration appealed that decision. And at the end of August, the federal appeals court also decided against the Trump administration for basically the same reason. Trump does not have the authorities under IEEPA to impose these tariffs. Tariffs are presumptively Congress' responsibility, not the president's. Then the Trump administration appealed this decision. And on September 9th, the Supreme Court agreed to hear the case. And the Court has fast-tracked the case and has agreed to hear arguments in the case on November 5th.

**ROMAN MARS:** But what's really at stake with this case? This isn't just about tariffs. Declaring emergencies and doing things that should be Congress's job seems like Trump's MO across the board. So, what are the implications of all this?

**ELIZABETH JOH:** Well, of course, the tariffs themselves are a big deal. If you're a business or you're a consumer, the lawfulness of these big tariffs are of immense importance. Tariffs are a tax, and we pay those taxes through higher prices on the things we buy. But the case is also going to have very big implications for the power of the presidency because it's now up to the Supreme Court. Does Trump have the power to do this? The Supreme Court could say, "Well, look, Trump lacks the authority under IEEPA. He can't impose tariffs this way." They could interpret the statute and decide that the word "regulate" does not include the power to impose tariffs. That would be the end of that. But if the Court sides with Trump, then this would be a major expansion of presidential power. Trump has said that invalidating his tariffs will literally destroy the United States of America. Spoiler--it would not. But there is a very big question at the heart of the case. And because the case, which is now called V.O.S. Selections versus Trump, focuses on how the Supreme Court will interpret IEEPA, which is a federal statute, there's a connection between the tariff case and student loan forgiveness.

**ROMAN MARS:** Oh, okay! Tell me more. [CHUCKLES] That was out of left field for me, but okay. I'm following along. Let's go.

**ELIZABETH JOH:** Here we go. So, during the height of the pandemic, the federal Department of Education suspended loan repayments for everybody who was paying back their federal student loans. Many people weren't working at home. So, if you're not working--you can't pay back your loans--it seemed really unfair to make people try and repay them when everybody was stuck at home. Remember that student loan debt is a huge policy issue, whether or not you have the pandemic. Americans owe something like

\$1.6 trillion in student loan debt. And a lot of those loans are loans guaranteed by the federal government. So, in August of 2022, the Biden administration announced a major student loan forgiveness program. And that program was pretty straightforward. Every borrower who made less than \$125,000 received \$10,000 of loan forgiveness.

**ROMAN MARS:** So, as we've been talking about, most of the money business of the government is done by Congress. So why did Biden think he could do this?

**ELIZABETH JOH:** So Biden relied on the 2003 Higher Education Relief Opportunities for Students Act, or the Heroes Act. And that law says that the Secretary of Education can "waive or modify terms related to student financial aid if it is necessary in connection with a war or other military operation or national emergency." See, it's an emergency power? An earlier version of the Heroes Act was passed to help borrowers affected by the September 11th terrorist attack. So this goes way back. But the 2003 Heroes Act extended this coverage. Now remember, in March of 2020, the President declared that the pandemic was a national emergency. Remember who the president was?

**ROMAN MARS:** March of 2020? Yeah, that was President Trump.

**ELIZABETH JOH:** That was President Trump. Now, a group of states challenged the Loan Forgiveness Program. And in 2023, the Supreme Court was asked to answer this question. When the Heroes Act says that the Secretary of Education, which is of course part of the executive branch, can waive or modify student aid, does that include the power to forgive student loans? And the Supreme Court decided no, it does not. And the reason why is important because, you see, over recent years, the conservative majority in the Supreme Court has been relying on what it calls the "major questions doctrine."

**ROMAN MARS:** So, let's talk about the major questions doctrine because this has been a thing that's been percolating up over the last few years.

**ELIZABETH JOH:** That's right. And so the idea behind the major questions doctrine is that, if there's a dispute about what a federal statute means, let's say Congress puts in some ambiguous language, and the disputed part of the statute involves the Executive Branch trying to exercise a power involving "deep economic and political significance," the Supreme Court is not going to assume that that power is okay. The Court will say, "Look, if Congress is going to give the executive branch some very big power, they have to be clear about it. We're not going to interpret the law to say the Executive Branch gets to exercise this major power unless Congress says so. And they really have to be clear about it."

So, in the Biden student loan forgiveness case, the Supreme Court relied on the major questions doctrine to say, "Look, the forgiveness of billions of dollars of student loans by the Department of Education is a huge issue. And if Congress had intended for this to be a real possibility for a president to do, they would have made the Heroes Act much more specific and clear about this. And so, no, major questions doctrine means Biden cannot use the Heroes Act, which says you can waive or modify student federal financial assistance. You can't use it in this way to forgive student loans." And that's not the only case where the Supreme Court has found that Biden-era actions were not authorized by Congress.

**ROMAN MARS:** Huh. And so what does this mean for all the Trump cases?

**ELIZABETH JOH:** Well, if the Supreme Court's gonna be consistent, then the tariff case would also appear to pose a major questions doctrine problem. And that's because no president--no president before Trump--has ever used IEEPA in this way to impose tariffs around the world, meaning this is the very first time a president has used emergency economic powers to impose global ongoing tariffs. So that would seem to implicate a question of deep economic and political significance.

**ROMAN MARS:** A major question, you might say.

**ELIZABETH JOH:** That's right, a major question. But IEEPA says only that the president can regulate importation. So, if the words "waive" or "modify" do not mean cancel student loans under the Heroes Act, why should "regulate" mean tariff under IEEPA, especially when many other federal laws specifically refer to the word "tariff" or the power to impose tariffs? Now, in the student loan case, the Supreme Court said that the Biden administration was, and I'm quoting here, "modifying student loans only in the same sense that the French Revolution modified the status of the French nobility."

ROMAN MARS: Oh my God. Okay.

**ELIZABETH JOH:** And so in the tariff case, the federal appeals court used the same reasoning to say that Trump can't impose these tariffs. They're of unlimited duration on imports of nearly all goods from nearly every country with which the United States conducts trade. That was a transformative unprecedented power. And President Trump just didn't have the authority to do that. So, in other words, Trump's use of IEEPA to impose global tariffs requires a major questions doctrine analysis. And if we're gonna be consistent, it would seem that the tariffs have an uphill battle to climb if they're really gonna fall under this emergency statute. If Congress intended for this worldwide tariff scheme to happen, well, shouldn't they have said so explicitly? And that's the question for the Supreme Court. Will the Justices consistently apply the cases of just a few years ago and decide that Trump lacks the authority to use a federal law in this unprecedented way? Or will they side with Trump because they side with Trump?

**ROMAN MARS:** The pattern of siding with Trump makes me fearful for the outcome of this case.

**ELIZABETH JOH:** Yeah, I mean, there's lots to be worried about because, in a lot of cases, it seems like that has the most explanatory power, right? How can we explain what happened here? They seem to simply be siding with the Trump administration. Either way, it could be that the tariffs continue. I mean the Court could say that, yes, Trump has the power to use IEEPA in this way. Or the Court can strike down this use, but then a lot other folks have pointed out that Trump can rely on other statutes to impose tariffs. So, tariffs might continue. But I think the real heart of the matter is--you know--what's going to happen to what seems to be an expanding office of the president.

## [AD BREAK]

**ROMAN MARS:** A lot of this began with Congress abdicating some of its responsibility here to the President so that emergency action could be taken sort of in a good faith sense. A lot of these roads that we go down are often when these three branches aren't defending their space the way that we kind of need them to for the structure of the Constitution to work. The one thing that gives me a little bit of comfort in this is that it seems that the major questions doctrine is a lot of the Supreme Court kind of standing up

for itself and its role of determining these things and pushing Congress to do the things that it needs to do to sort of hold its place as an equal branch. In the interest of defending their role as the Supreme Court--as the arbiter of major questions--maybe they will be consistent here.

**ELIZABETH JOH:** It could be. I mean, that's the optimistic view, right? And then even if there is a check in the tariff case, when the Supreme Court ultimately decides it, passing the ball to Congress--we can only sort of hope that something works. I mean, the law itself actually gives Congress the ability to check the President, but they have not done so. And so we need everybody to kind of get involved.

**ROMAN MARS:** That's right. I mean, but it also seems like the sort of fig leaf with which these expansive powers that the Supreme Court has been giving Trump is a little bit of like, "Well, this Congress should stop. Then Congress passes a law. You know, like, that's their job." But we have a sort of complicit Congress who's just in the pocket for Trump, and so that doesn't work that way. And my optimistic read is that the ideologies align here to sort of thwart Trump, in this case, to reserve more power to Congress. I don't know.

**ELIZABETH JOH:** Yeah, that could work. I mean, I think one of the ironies here is that IEEPA--the very law that's at the heart of this case--is actually an attempt in the 1970s by Congress to try and claw back some power. But it absolutely hasn't worked this way at all. In fact, you know, folks have pointed out that presidents seem to declare emergencies all the time and then get to do whatever they want.

**ROMAN MARS:** Yeah. It's that word "emergency." Replacing the word "emergency" with the word "emergency" didn't seem like the most prudent. [LAUGHS] I have emergencies every single day. My kids have emergencies about stuff that you wouldn't believe.

**ELIZABETH JOH:** Exactly. And that's part of the problem. That's part of the problem--the word that doesn't exist in the Constitution but everybody seems to be focused on. So I didn't want to end on a gloomy note, Roman. So, before we end, why don't we go back to Lady Chatterley for a moment?

ROMAN MARS: Okay.

**ELIZABETH JOH:** There is a wonderful song mentioning it from 1965 by Tom Lehrer that I thought we could end with. Maybe Roman, you could read the lyrics. The song is called Smut.

**ROMAN MARS:** Tom Lehrer, of course, who just passed away.

**ELIZABETH JOH:** I know.

**ROMAN MARS:** He's really, really a national treasure, as far as I'm concerned. Okay. So here it is. "Who needs a hobby like tennis or philately? / I've got a hobby: rereading Lady Chatterley / But now they're trying to take it all away from us unless / We take a stand, and hand in hand / We fight for freedom of the press Great." That's so good.

**ELIZABETH JOH:** Yeah, that's awesome.

**ROMAN MARS:** What's fascinating to me here is, like, when we're talking about Article I in the last section, where we're doing our book club, the fights over Article I seem to be the

fights of our age. You know what I mean? What are the powers of Congress, and what are the powers of the executive? We haven't gotten to Article II yet. But it's really something to think about. What is enumerated? What is not? What is thought about? What is not? But what is clear to me is that, as I read it, the tone of Article I is that the tie goes to Congress almost all the time. That's what it reads to me like.

**ELIZABETH JOH:** But I think part of the problem is that, as you can see, you can't really talk about one branch without talking about the other today because, when you talk about Article I, you talk about a President who tries to take some of their power. And in fact, Congress has given the President some of this power. Why? Because in some ways, in the 20th century, Congress realizes, "We can't deal with all these things officially. But there's one person who can act quickly. And that's the president. So, we'll give him some of our power." And it turns out to have all of these unintended consequences or perhaps intended consequences. A president decides to run with that power and do much more than what Congress intended.

**ROMAN MARS:** It's really set up for a revolutionary mindset that each branch would be defending its turf in a kind of way. Like, it's not made for a collusion across branches. It's really made for Congress--even senators of the same party--to be offended by presidential overreach. And when I read the other Robert Caro books on Lyndon Johnson and stuff like this, Democratic senators take umbrage to... Johnson--not just because they're racist and he's trying to, like, create the great society, but also because just the fundamental fact of overreach and powers is something that they just immediately react to in a way that I just don't really see anymore.

**ELIZABETH JOH:** Yeah, I mean, I think you're referring to this idea of jealously guarding your branch. I mean, that definitely is not a major part of our conversations that we're seeing or having. In fact, there's just this extreme partisanship that seems to explain a lot of what's happening. And that's not the way we set up the separation of powers. It's called the "separation of powers" for a reason. And yeah, that's a kind of fatal collision--a Congress that decided decades ago to say, "Well, we'll be flexible with our authority and how we think of our powers and kind of transfer some of them to the executive." Now, what happens when you have extreme partisanship across two branches--maybe three? There is no inter-branch checking going on.

**ROMAN MARS:** Right. Right. I mean, it's sort of like... You know, our whole criminal justice system is based on an adversarial system. And it wouldn't function if there was this great deal of collusion across the different adversarial standpoints of criminal trial. It would be unfair and just unjust. It's adversarial for a reason. It's adversarial by design. And we seem to be losing that when it comes to these powers in different branches.

**ELIZABETH JOH:** Yeah, I mean, basically what you see are two different conversations happening today, which is, on the one hand, a kind of small group of people yelling loudly that there's something wrong with the structure here--that the way things are supposed to work, with checks, is not working. And then most of the conversation--not caring about that at all--really just a results-oriented approach to the way the federal government works. And I think that that's a real failure to connect--that the abstract structure helps people get to the substantive results that they voted for.

**ROMAN MARS:** We learned that in the last election--that this idea of the death of democracy or our democratic norms eroding wasn't really that motivating of an idea.

**ELIZABETH JOH:** Right. It was too much. It was too much classroom and not enough "get out there and vote with your feet."

**ROMAN MARS:** Thank you so much.

**ELIZABETH JOH:** Thanks, Roman.

**ROMAN MARS:** This show is produced by Elizabeth Joh, Isabel Angell, Jeyca Medina-Gleason, and me, Roman Mars. It's mixed by Martín Gonzalez. Our executive producer is Kathy Tu. You can find us online at <a href="learnconlaw.com">learnconlaw.com</a>.

The theme music for What Trump Can Teach Us About Con Law is provided by Doomtree Records, the Midwest Hip-Hop Collective. You can find out more about Doomtree Records, get merch, and learn about who's on tour at doomtree.net.

If you want more constitutional law content, check out our series The 99% Invisible Breakdown of the Constitution. We're going through the Constitution month by month, digging into each article and amendment and analyzing all the phrases and clauses to better understand what's in it. That's in the 99PI feed.

We are part of the SiriusXM podcast family.