

Who Gets To Sue

ROMAN MARS: So it is Thursday, September 3rd at 8 a.m. as we record this. What are we going to be talking about today?

ELIZABETH JOH: Well, Roman, let's talk about the American burying beetle. Are you familiar with it?

ROMAN MARS: [LAUGHS] No.

ELIZABETH JOH: All right, well, the American burying beetle or *Nicrophorus americanus* is the largest carrion beetle in North America. It's, like, about an inch or an inch and a half long. And it feeds itself by dragging dead animals into holes and covering them with an embalming fluid secreted from its anus in the great circle of life.

ROMAN MARS: [CHUCKLING] Indeed. Beautiful nature.

ELIZABETH JOH: But over the past century, the range and population of the American burying beetle has been dramatically shrinking. And one scientific review declared in 1983 that the beetle had experienced one of the most disastrous declines of an insect's range ever recorded. And for that reason, in 1989, the beetle was listed as an endangered species under the Federal Endangered Species Act. But in 2020, the Trump administration reclassified the status of the beetle from endangered to merely threatened in response to a petition from the Independent Petroleum Association of America. You see, the association saw that the protection of the beetle was kind of a threat to oil and gas development.

Now the Center for Biological Development sued, and they argued that the beetle's protections had been improperly and unjustifiably downgraded. Now, the center is a nonprofit organization whose mission is to protect endangered species through activism and legal action. They're pretty big. They have about 1.7 million members. One of these members and an employee of the center was a Mr. Christopher Bugbee. He declared a declaration in federal court that it is his practice to visit Block Island, in Rhode Island, every summer with his family. And there he looks for and takes pictures of American burying beetles. And Block Island happens to be a place where you can see them. Now, he said allowing the American Burying Beetles population to shrink even further would lead him, Bugbee, to suffer professional, aesthetic, spiritual, and recreational injuries. That potential threat, decided the appeals court, was just enough to let the center proceed with its lawsuit. And that decision wasn't radical. It was consistent with other kinds of cases appeals courts considered.

Mr. Bugbee's harms didn't mean that the center would win their case--they did not, unfortunately--but it did mean that a court would consider their claims. And it turns out that a lawsuit about a bug that likes to drag dead animals into holes to eat their disintegrating bodies tells us something about the new ballroom Trump is building on the grounds of the White House. What is happening with that ballroom? And is it legal for Trump to build it in the first place? Time to find out.

ROMAN MARS: Let's do it.

This is What Trump Can Teach Us About Con Law, an ongoing series of indeterminate length and sporadic release, where we look at creepy bugs, tacky ballrooms, and what it means to be hurt by a law, 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.

Well, since you mentioned the ballroom, is it legal for him to do this at all?

ELIZABETH JOH: Well--no--the short answer is just no. But there are so many different reasons why building it is illegal that I thought today we'd talk about what those reasons are. And even though you think, "Well, it's just a ballroom," it's actually a symbol of how Trump views his own presidency, all right? So let's start with some background. In July of 2025, the White House announced plans to build what it called a State Ballroom on the grounds of the White House. Have you seen the renderings for the ballroom?

ROMAN MARS: Yeah, I have. It's gargantuan and out of proportion with everything else, yeah.

ELIZABETH JOH: Yeah, and the interior is going to be very gold--very, very gold. Yeah. It's also going to be a very, very big ballroom. The announcement said that the ballroom would cover approximately 90,000 total square feet and that the ballroom would be built with private funds. The site of the proposed ballroom would be the East Wing of the White House. Most people are familiar with the West Wing of the White House, that's where the president conducts his official business. That's where the Oval Office is located. In the middle is what's called the Executive Residence; that's the part of the White House we see in postcards and pictures. And the East Wing, at least until last year, was the site of a movie theater and offices for the First Lady. It's also the main visitor entrance. So if you've ever been on a tour of the White House, you entered through the East Wing.

Now, the proposed East Wing would be 60% larger than the White House residence by floor area because it's supposed to have seating for a thousand guests. But if you're looking at the volume of the proposed East Wing, it's more than three times as large as the old East Wing because Trump wanted a very high ceiling for his ballroom. Now, in the original design of Washington, D.C., as it was envisioned by Pierre L'Enfant in the 18th century, Pennsylvania Avenue directly links the center of the White House to the Capitol; there's a sightline between those two. But Trump's new East Wing building would not just metaphorically, but literally break the sight line between the White House and the Capitol. That's how big it was. So by any normal measure, this is a major change to the nation's Capitol and to really one of the most iconic and historically important buildings that we have as a nation.

So, I think we'd expect any major change to the White House, which of course is also known as the People's House, to have some public input because we're not just talking about changing the wallpaper. But just three months after announcing these plans, the Trump administration went ahead and just demolished the East Wing completely. It just took a couple of days. So that was a problem because, within days of the demolition, a group called the National Trust filed a lawsuit in federal court trying to stop the ballroom project from proceeding. And the National Trust for Historic Preservation in the United States is a nonprofit organization chartered by Congress. And the federal law that established the trust says that its very purpose is to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest. So what kind of claims did they have? So let's start with the legal issues in terms of the ones that people might be familiar with first and then get to the less familiar ones, right? So, Roman, let's start with the Constitution; let's start with the Property Clause. Can you read it?

ROMAN MARS: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

ELIZABETH JOH: So, Roman, that Property Clause of the Constitution makes it very clear that it's Congress and only Congress that has control over all property that belongs to the federal government. There's no ambiguity here. There's no sharing of the Property Clause powers with the executive branch. It's just Congress' power. And if it isn't clear already, the White House is a federal building on federal land. It sits in President's Park, which is a Federal Park administered by the National Park Service. So Congress originally funded construction of the White House by passing a number of laws authorizing we will have a residence for the president. And since 1800, every president has resided in the White House. And that's important. And maybe it's obvious, but the president is just a steward. He or she is just a caretaker of the White House. The President does not own the White House in any sense at all, okay? Then there's the District Clause of the Constitution. And maybe you could read that too.

ROMAN MARS: "[The Congress shall have Power . . .] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

ELIZABETH JOH: Now, it's called the District Clause, but you'll notice that it has no reference to the District of Columbia--well--because, at the time, we didn't know where the Capitol was gonna be. So the clause gave Congress authority over controlling our seat of government. And eventually, Maryland and Virginia were the two states who ceded or gave away some of their land so that we could have a Capitol. That's the creation of the District of Columbia. So, for our ballroom purposes, the District Clause simply means that Congress has legislative authority over the District of Columbia. Now lastly, we have the Appropriations Clause.

ROMAN MARS: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

ELIZABETH JOH: So the Appropriations Clause tells us that the federal government must spend money in ways that Congress specifies. You know, it's kind of that power of the purse, right? So the Appropriations Clause does two things here. It tells us that Congress, not the president, has the control over dispersing public funds, which of course are our taxes. And it exercises that power by passing laws. But it's also a limit on the other branches. The executive branch can't simply spend money without some kind of congressional approval. So, overall, you can think of the Appropriations Clause as a way of holding Congress to public account. It tells Congress, "Okay, you can spend money, but you also have to tell us how you're going to spend money by appropriating it through a law that's passed."

So if you put these three things together--the Appropriations Clause, the District Clause, and the Property Clause of the Constitution--it's very clear that it's Congress and only Congress that is in charge of federal property in the District of Columbia. And that includes

the White House. So if we just look at the Constitution itself, there is just no basis in the Constitution for the president--any president--to claim that he can just demolish the East Wing of the White House, which doesn't belong to him at all. And just to be clear, there is no current federal law that has been passed that allows President Trump to build a ballroom. He just went ahead and started.

ROMAN MARS: So how did he try to justify this project then?

ELIZABETH JOH: Well, since it's pretty clear that you need some kind of congressional authorization, the administration relied on three federal laws to say, "This is why we can do it." All right, so first there is 40 U.S.C. § 8106. That's a federal law that says no "building or structure shall not be erected on any reservation, park, or public grounds of the Federal Government in the District of Columbia without express authority of Congress." So, the plain English of that is you can't build anything on federal property in the nation's capital unless Congress says, "Yeah, you can do that because we're allowing you to do that." So the Trump administration's arguments about why the law doesn't really prevent them from doing anything, they're pretty weak. I mean, they say, "Well, 'building' doesn't mean a specific building. It doesn't mean that they have to specifically tell us we can demolish the East Wing and build a new ballroom. The law maybe doesn't apply to the White House." These are some of the things that they've said. They're not very plausible.

The administration has complained, "Why are we being punished here because structures have been built on the White House grounds that weren't specifically authorized by Congress?" So, in 1975, President Ford had a swimming pool built just south of the West Wing because he liked to swim for exercise. It wasn't specifically authorized by Congress, so potentially that's a problem. But a swimming pool that was never visible to the public, that was only for the President and his family, and that no one challenged in court--that's very different than a 90,000-foot ballroom that's going to be substantially larger than the central portion of the White House itself when it's completed, that everybody will be able to see, and that is going to be used for official functions. So that one doesn't fly.

Then there's another federal statute, 3 U.S.C. § 105(d)(1). That's a federal law that says, "There are authorized to be appropriated each fiscal year to the President such sums as may be necessary for the care, maintenance, repair, alteration, refurnishing, improvement of the Executive Residence at the White House." Okay, so Roman, let's play a game called Statutory Construction: Interpreting a Statute. So, if you look at the words "care," "maintenance," "repair," "alteration," "refurnishing," or "improvement" of the White House, do you think that includes demolition of the East Wing and building a ballroom complex?

ROMAN MARS: It doesn't to me, that's for sure.

ELIZABETH JOH: Yeah, they don't seem similar at all, right? Yeah, one of these things is not like the other. Demolition doesn't seem to naturally fall into that list of things called "improvement" or "repair." Now judges use rules of thumb to interpret disputed statutes or disputed phrases and statutes. Now one favorite of mine and one that was used in the lawsuit over the ballroom is "Congress does not hide elephants in mouse holes." So that's just a funny way of saying that if Congress intends to have a major statement or a change in regulation, they don't hide that in a vague or minor provision. So, no, a 90,000-square-foot ballroom is not a minor alteration or refurbishing. It is a huge change.

ROMAN MARS: Yeah, for sure.

ELIZABETH JOH: And that same statute begins with the language, "there are authorized to be appropriated." So that's somewhat confusing? What does that mean? In plain English, again, this refers to the fact that Congress has to authorize money to be spent, even if you're going to have a modest renovation or repair to the White House, okay? If Congress wants to authorize money to do that, they can. How do we know? Because Congress has, in fact, done that throughout American history, right? After the War of 1812, Congress authorized the borrowing of half a million dollars so the White House could be rebuilt. In 1909, Congress authorized \$40,000 to construct the Oval Office. And just last year, Congress relied on this very federal statute, Section 105D, to appropriate more than \$2 million for maintenance in the executive residence at the White House.

ROMAN MARS: So then how does Trump argue that any of this is legal if Congress has not given him any money to do this?

ELIZABETH JOH: Good question. They kind of ignore it. The administration is going forward as if, of course, the President can draw on any funding he wants. Now, the cost of the ballroom project keeps growing and growing. President Trump initially claimed that the ballroom would cost \$400 million from private donations and that no taxpayer money would fund it. That turns out not to be exactly right. We know from reporting on the contracting documents that the total estimate is now something like \$600 million with a whole lot of that coming from our tax dollars. But it's important to understand the fundamental problem in Trump's argument here. He's saying, "Look, I've got a lot of these donations, so of course I can build this new ballroom. I can do what I want because it's private money."

So the requirement of congressional authorization and funding is not a technical requirement. So, remember, going back to the Constitution, think of congressional spending as a kind of public accounting. We build a structure in the Constitution so that we can see where the government spends money, how it spends money, and even whether it should be spent at all. Private funding doesn't solve that problem or doesn't answer that issue. It doesn't mean Trump can do what he wants. It means that we need to call this out for public scrutiny, who donated, how much, and what is expected in return. I mean, we have a list of 37 donors--tech companies like Meta and Amazon and Apple, defense contractors, crypto companies--but that list is incomplete and we don't know how much each donated, right? So that's sort of a fundamental problem here.

ROMAN MARS: The point of the law isn't just for budgeting purposes in terms of, like, you're not spending money, that taxpayer money. It's about controlling these actions. Like, you couldn't privately fund a war, for example. You need to go through a process, you know? It's all the same thing. It's not just about budgeting. It doesn't matter that the money is coming from somewhere else, even if in this case it doesn't sound like it really is coming from somewhere else. But yeah, I get that point.

ELIZABETH JOH: Yes, the public money is a form of accountability. It's sunlight, right? We can see what's happening. Now then there's a third federal law the Trump administration relied on, 54 U.S.C. § 100101. It's also known as the National Park Service Organic Act. So, remember, the White House, including the West Wing and the East Wing, sit in President's Park, which is a park administered by the National Park Service. So this law says that "the Director of the National Park Service, shall promote and regulate the use of the National Park System" in ways that will leave historic objects, scenery, and natural objects "unimpaired for the enjoyment of future generations." So, Trump's argument here, so far as I can follow it, is that raising the East Wing and building a 90,000-square-foot

ballroom fits right into that statute, right? There's a small problem that the National Park Service isn't really involved in constructing the ballroom, but I guess that doesn't bother them.

So does this justify what Trump has done? No, it does not because, first of all, this general statement that the National Park Service is supposed to conserve historic objects? It's really hard to see how that also justifies demolition and construction of an entirely new building. And then there's the problem of Congress again because, in 1978, Congress amended that law, this National Park Service law, to say that the authority could only be exercised by the service as specifically provided by Congress. What is that a reference to? More money and authorization, right? So in general, Trump's argument about his ballroom can be summarized to something like this. "I'm in charge of the White House. There's vague language allowing me to do something with the White house. I have private money to do it. So I can turn a 123-year-old building into a pile of rocks and build something new on federal property." That's his argument. So think about that logic, Roman. If that's right--if Trump is right as a matter of law--then he can take private donations for anything. It doesn't have to be a ballroom. He could build, like, a Hooters on the front of the White House or a strip club, right? I mean, if he's right about that, there's nothing to constrain what he would build.

So then there's an additional set of legal problems with the ballroom, and that is required public input and review because, again, the White House is not just a federal property. It's not just an official residence of the president. It's also part of one of the many important buildings and monuments in the District of Columbia, which is supposed to be part of a master plan, right? For people who've been to Washington, it's a beautiful place because it has been planned from the beginning as something where all of the buildings are at standard relationship to one another, right? So the White House is a property that's subject to the Federal National Capital Planning Act of 1952. So Congress created a central planning agency, it's called the National Capital Planning Commission or the NCPG. And that commission is supposed to review any plan changes to federal property in Washington before any work begins. And any proposed changes are supposed to be approved by the commission. And the public can provide input that is to be considered by the Commission. The White House is also a federal property governed by the Commission of Fine Arts. This is a commission that was also established by Congress as a federal agency in 1910 to advise on matters of fine art within Washington D.C. So both of these commissions--the NCPG and the Commission on Fine Arts--they're supposed to play important roles on preserving the nature of historic buildings in the nation's capital. So, Roman, you want to guess? Was there any review here?

ROMAN MARS: I'm guessing no.

ELIZABETH JOH: Yeah, there was no review before the project began. I mean, the law said they were supposed to get review and approval ahead of time. So initially nothing happened. The wrecking ball started way before any kind of review ever got underway. So just like Trump didn't wait for Congress to approve of funding for any ballroom, he didn't wait for the commissions to weigh in either, even though, again, remember, he is legally obligated to get their input. So the NCPG, which is led now by Trump appointees, did eventually have a public comment period before it held a meeting in March of 2026, five months after the East Wing was already demolished. And they received 32,000 comments. And the overwhelming majority of them were negative. Here's one. One comment called the project a "gold-plated monstrosity." Nevertheless, in April of 2026, the commission voted to approve of the project. Now there's the other agency, the Commission of Fine

Arts. That was also a problem because they never approved of the demolition either. Remember that demolition began in October of 2025.

ROMAN MARS: So why didn't they offer any input at all?

ELIZABETH JOH: Because there was nobody. He fired all of the sitting members of the CFA on October 28th. There was no commission at all. You can't approve something when there's nobody to approve it.

ROMAN MARS: Yeah, yeah. You also can't disapprove of things when there's nothing to disapprove, I guess, is the way that he treats it.

ELIZABETH JOH: Exactly. But in February of this year, the commission, which was now filled by Trump appointees, approved of the ballroom project. They took 12 minutes.

ROMAN MARS: Hmm. I mean, if it takes 12 minutes to decide, these are just kind of rubber stamps. I mean, why do these approvals matter then?

ELIZABETH JOH: Well, look, if these agency reviews are used as intended, planning reviews for major construction in the nation's capital, they're based on the idea that the procedures themselves are meaningful. Just having the procedures are meaningful. Holding public meetings, allowing people to provide comments, having records of these public meetings--that's part of the democratic process for the buildings that we have paid for that are our buildings. So, you're right to ask, "What's the point and is the process mostly about procedure?" Yes. But remember procedure here has an important role. It gives that necessary transparency. We need to make sure people can say, "Well, what's going on here? I want a chance to look at these plans. I want to have a chance to have my voice heard." It makes things accountable. By design, having these procedures slows the process down. You know, when people are required to weigh in, that means we don't speed things up and demolish things without thinking about it.

So what you see, in reality, is that there was kind of a mockery of the process. So, take the Commission of Fine Arts. By law, the members of the commission are supposed to be what the law calls "seven well-qualified judges of the fine arts." Now, the first group of commissioners included Frederick Law Olmsted, right? I'm sure you know him, one of America's most famous urban planners and landscape architects. Who is on the CFA right now? Well, one of the members is a 26-year-old White House aide who was a long time executive assistant to Trump. She has no background in urban planning or architecture or anything that we could call fine arts. That is just not normal. To give you some comparison, when the Smithsonian proposed plans to construct the National Museum of African American History and Culture in Washington, D.C., the planning and review process took three years. They spent three years looking at the plans to see whether everything was going according to what the law required. And the Commission on Fine Arts was heavily involved in the process, including picking the exact color and finish on the panels that are on the outside of the museum. Now, more recently, during Trump's first term, the National Capital Planning Commission--that's the other necessary commission--spent nine months considering whether or not the White House could have a new fence. They looked at the design and size of the new White House fence. And we got nothing. We got nothing like that when it comes to the ballroom.

So, as a matter of constitutional text, congressional authorization, and procedural reviews, nothing was done by the books with the destruction of the East Wing and the ballroom

project. And that is why the National Trust sued the Trump administration last December. But somehow, Roman, the story here becomes even more complicated and worse. And that's because of the doctrine that ties the ballroom to our carrion beetle, and that's standing. So, remember, we've talked about this before, but the Supreme Court doctrine of standing means that only parties with actual harms or injuries can bring cases in federal court. It doesn't have to be, like, a physical injury, but it has to be something where it shows that you have some stake in the case.

ROMAN MARS: And so how did the National Trust argue that they had standing in this case?

ELIZABETH JOH: So this is an organization. They have a lot of members. The National Trust is an association. And the Supreme Court has said in the past that an association can have standing or the ability to be a party in a lawsuit like this as long as they meet certain conditions. For our purposes, the one condition that's important to understand in the ballroom lawsuit is that at least one of the association's members has to satisfy standing.

ROMAN MARS: So, if all these other laws are violated and procedures are circumvented, why does it matter that they have standing or not?

ELIZABETH JOH: Well, it's kind of a gatekeeping mechanism in federal court because, as the Supreme Court has defined standing, it's required by the Constitution. And if there's no one in a case with a constitutionally recognized harm or injury, there's no live case to decide. And so the federal court has no ability to decide a case. The case is over, period. So, standing can be really important because if a court says the party here has no standing, the court never actually gets to review the case. It doesn't tell us about whether or not the person or entity being sued did something legal or illegal. We just never know because with the doctrine of standing, a court will simply say, "You were the wrong party. Get out of here. Case dismissed."

ROMAN MARS: So then how did the trust argue that they had standing?

ELIZABETH JOH: All right, let's go back to the American burying beetle. So, remember, in that case, it was the Center for Biological Diversity that was the organization that sued. They claimed standing because they were an association and that one of its members, Mr. Bugbee, had standing. So he claimed that he went to Block Island, remember, every summer with his family, to look for the American burying beetle--to see it, to enjoy it, to photograph it. And, you know, basically he was saying that if this beetle goes extinct because of what the federal government had done, then that would be a harm to him. That was his claim, and so too for the Center for Biological Diversity.

ROMAN MARS: That seems a little bit like a stretch to me. I'm on Bugbee's side here, but how unusual is it to make that kind of argument?

ELIZABETH JOH: Not unusual at all. There are plenty of cases, often involving the environment actually, where plaintiffs claim that something the government has done is harming their ability to, let's say, enjoy a river or to enjoy seeing a very specific species of animal or plant that might be endangered that might be put in a worse position because of something that the government's done. Now, the kind of harm that qualifies for standing can also be an aesthetic harm--something that ruins our enjoyment. And that's something that the Supreme Court itself has said. So it's not an outlier kind of claim at all.

So, in the ballroom case, the National Trust said the specific harm could be documented through one of its members, a person named Alison Hoagland. Hoagland is a member of the trust and an architectural historian. And so Hoagland said, "Look, I live here in Washington. I walk by President's Park all the time. And I admire and enjoy the White House for personal and professional reasons. I write about architectural history. And looking at the White house is very important to me." And so she says, "If the ballroom is completed, it's going to dominate and overshadow the White House," which is literally true. It would be bigger than the White House. And that's the harm that she claims.

So I want to be clear about what standing does. Standing means that the case can just begin in federal court. It doesn't mean that the National Trust would win its case or lose its case. We don't know. But what's really important here is, as in the American burying beetle case, there was standing. Now there, in that case, the Center for Biological Diversity lost, but they got to make their argument in court. So the consequence of saying there is no standing here, if a federal judge says, "There's no standing in your case," then the party could never have brought the claim in the first place. So it doesn't matter whether the entity or person being sued is doing something even egregiously illegal, terribly illegal, obviously illegal. If you don't have standing, you can't bring the case.

ROMAN MARS: So how much of a hurdle was standing in the ballroom case?

ELIZABETH JOH: Initially, it was not a problem. Both the federal district court--that's the trial court--and the federal appeals court looked at the issue of standing and said, "Yes. Yes, this is the kind of harm that courts allow for purposes of standing." Now, as far as the substance of the case, the district court granted the request to put a halt on the ballroom construction earlier this year. That was paused while the Trump administration was allowed to appeal. The federal appeals court then said, "Yes, there's standing and, yes, that injunction or putting a pause in the ballroom is okay." But then the appeals court put a pause on the pause while the Trump administration was allowed to appeal. And that's exactly what they did. The Trump administration asked the Supreme Court to intervene. And I should mention that, by the time the Trump Administration asked the Supreme Court to intervene, it was no longer a fight about a ballroom. The administration is also building a bunker in the basement. So, it was arguing that the lawsuit was interfering with a matter of national security. Instead of just a ballroom, the administration called the project an "integrated military complex," which is vitally required by national security. It's the kind of language that gets the Supreme Court up in arms.

ROMAN MARS: Yeah.

ELIZABETH JOH: So, on August 31st, the Supreme Court in a 5-4 vote--a closely divided vote--said that the ballroom construction could continue not because Trump's actions were lawful, the majority did not address that issue at all. Instead, they--it's an unsigned opinion, so we don't know who wrote it--minimized the nature of the harm that was alleged by the trust. They said, "Look, just because you're offended, Alison Hoagland, by something, you can't sue. The National Trust lacks standing."

ROMAN MARS: Wow. I mean, is this the way we should think about standing, just to dismiss it like that?

ELIZABETH JOH: Well, it's pretty inconsistent with a whole body of legal decisions where courts have decided that a legal injury can be found in our desire to continue seeing or

enjoying something, whether that's an endangered species or even stars in the sky that are blotted out by something that a defendant has done. Even viewing an historic battlefield--courts have decided that these are harms that allow us to sue in federal court. So, it's hard to see how this claim is any different. The majority seems to be deciding that this is one kind of harm that is somehow so different than the other aesthetic harms that courts have said are okay that it's very hard to see what the difference is. I think what it does show you is that standing as a doctrine is very squishy. It's very malleable. And the majority is basically just using it to end the lawsuit and potentially to end opportunities for other groups concerned about an unlawful demolition and construction by the President.

ROMAN MARS: I mean, beyond the building of the ballroom itself, does this Supreme Court decision have greater, wider ranging consequences?

ELIZABETH JOH: It seems to. I mean, it seems to be a major blow to anybody who might be concerned about historic preservation of important buildings and monuments. Is it really true that you don't have any harm here when these objects are just destroyed and you have been enjoying this thing and you want to keep looking at it? So can Trump just demolish the Statue of Liberty and no one can sue? Can he just blast Mount Rushmore and put up, like, a giant crypto sign and nobody can sue? And is their only choice really just to not look at it anymore because the majority here says, "Well, you're just offended and that's not enough?" So, I think that's a pretty big decision in the sense that it leaves a lot of these other kinds of very similar lawsuits up in the air.

[AD BREAK]

ROMAN MARS: Hypothetically, why can't the willful disregard of laws be a harm? I grew up in a country of laws, and I like looking at a country that has laws. Why can't that be standing?

ELIZABETH JOH: You know, that's a good question. That's a good question. I think this is entirely basically the Supreme Court, not just this one, this current version, their interpretation of the fact that the Constitution requires live cases and controversies. And so what it essentially does is you can't just be angry that you heard about something being illegal and then run to federal court because of institutional reasons. We can't have 100 million federal cases. But it does raise a question, like, if we're going to have this doctrine, these are choices that the Supreme Court makes about how wide standing should be or how narrow it should be. A narrow version of standing means not that many people get to bring cases, even in cases where the law breaking seems pretty bad. So for a lot of people, I think the ballroom might be pretty low on the list of things they're kind of upset about right now, compared to ICE officers snatching people off the streets or killing civilians in boat strikes or messing with mail-in votes or illegal wars. But symbolically, it feels pretty egregious, right?

ROMAN MARS: It's part of a whole. I mean, it really is, yeah.

ELIZABETH JOH: I mean, it kind of feels like the President's version of the ballroom is, "Of course I can tear down a part of the White House. What are you going to do about it?" And that feels like a president who feels no limit on his authority because, remember, Trump is trying to remake Washington completely, not just with a ballroom. He wants to build an arch too, a 250-foot-tall arch that would commemorate himself. So 250 feet is something like the size of a 25-story office building. That would be taller than the Arc de Triomphe in Paris or the Brandenburg Gate in Berlin. It's actually taller than what the laws

in Washington D.C. allow on the height of buildings. And the planned arch is so tall, it would change the skyline of Washington D.C. It would interfere with the views of dozens of historic sites around the Capitol. And that's actually a conclusion from the National Park Service. They had an assessment like, "Yep, it's going to obstruct a lot of things."

And maybe most importantly, the location where Trump wants the arch to be is a real problem because it would be at one end of the Arlington Memorial Bridge. And that's a bridge that connects visually and symbolically the Capitol to Arlington National Cemetery. And of course, since the Civil War, that's an important place. More than 400,000 veterans and their families have been buried there. And so why is this an issue? It's an issue because Trump's arch would block the planned line of sight between the Lincoln Memorial and the cemetery. And this was an intentional design. In 1901, the Senate established a commission to develop this area. And the commission proposed building a bridge to link the Lincoln memorial with the Robert E. Lee Memorial to the cemetery. And the intention here was to have a symbol of unifying the country after the Civil War. So, Trump's arch would literally, and then of course metaphorically, cut off that connection completely. So why am I raising this? Because a group of Vietnam veterans has filed a lawsuit to try and stop the construction of the arch.

ROMAN MARS: And so what are they arguing?

ELIZABETH JOH: Well, these plaintiffs argue that the arch requires, unsurprisingly, congressional approval under a number of federal statutes and that one of them is the Commemorative Works Act of 1986. And that law says that a memorial built in a place where Trump wants his arch has to be of "preeminent, historical, and lasting significance to the United States."

ROMAN MARS: And why do they think they can sue?

ELIZABETH JOH: Well, here's the problem. They argue--these Vietnam veterans--that they have significant personal and aesthetic interests in the unobstructed views of the way that the Capitol exists now. The problem here, of course, is now that the Supreme Court has made its decision in the ballroom case, I think it's pretty easy to see that the Trump administration is just going to try and get the case dismissed on the basis that whatever we're doing, whether it's lawful or not, these plaintiffs have no real harm. They're just offended that this is happening. They don't have standing. And again, dismissing a case for lack of standing by a federal court simply means that these people can't bring the lawsuit. It says nothing about whether the Trump administration is doing something legal or illegal. And things are going forward. The Commission of Fine Arts approved the arch design in May. And the national capital planning commission has also given the arch preliminary approval.

ROMAN MARS: I mean, is there a certain point where a new Congress can just stop it from happening?

ELIZABETH JOH: Well, you know, there is a separate possibility. There's the idea that Congress itself can have standing. Of course, this Congress, which is controlled by Republicans, has no interest in stopping anything.

ROMAN MARS: Yeah, they lay down. They don't stand.

ELIZABETH JOH: That's right. You know, if the midterms should produce a Democratic House, they could possibly sue. They could exercise their oversight function and have hearings on Trump's construction plans. It's a matter of political energy that the House, even if it's controlled by Democrats, has a limited amount of time and energy, so does the public. And so they have to decide, of all the things that are happening right now, how important is the ballroom? And there's a real danger here too that, even if we could find someone else, apart from Congress, who might qualify to be the right kind of party to sue over the ballroom or even the arch, well, it's a matter of time.

ROMAN MARS: So what do you mean by that?

ELIZABETH JOH: Well, you know, lawsuits take a long time. And this Supreme Court seems to always have an eye on the clock in a way that favors Trump, I think. So you might remember the immunity case, Trump versus United States. Remember the Supreme court waited so long to issue that opinion--the very last day of its term--that there was no possibility that the prosecution against Trump could continue before the election. The case had to be dismissed, right? They just chose not to decide it right away. And here, by dismissing the National Trust case in the ballroom, it's not clear that any new lawsuit can be brought and won in time before the ballroom is finished. There is a crew of 250 workers right now, on the site, working seven days a week. And the administration claims that they're already 65% done. And the Court wouldn't stop the project now. And remember the lawsuit has taken all the way until August of 2026. So, if you use that same time span, it seems pretty clear that the ballroom would be done. And it's hard to imagine a court would order the destruction of an existing building.

ROMAN MARS: Yeah. Yeah. But the next president could just destroy it, right?

ELIZABETH JOH: Possibly, yeah. I mean, if we want a system of retaliation and recrimination, sure.

ROMAN MARS: I kind of do now. I didn't want to before, but I kind of do now.

ELIZABETH JOH: [CHUCKLES] Yeah. I mean, I think it's hard to know where this goes in terms of, do we live with these monuments with a Trump arch and a Trump ballroom because we realized it's not actually helpful to the country to engage in this kind of retribution? Or do we just say it was never lawful in the first place, so something has to be done?

ROMAN MARS: I think we argue it was never lawful in the first place and this needs to be stripped out of our history. It's the worst thing in the world. I can't stand it. I can't stand it. Well, this is infuriating and fascinating stuff as always. Thank you so much for walking us through it.

ELIZABETH JOH: Thanks, Roman.

ROMAN MARS: This show is produced by Elizabeth Joh, Isabel Angell, and me, Roman Mars. It's mixed by Martín Gonzalez. Our executive producer is Kathy Tu. You can find us online at trumpconlaw.com. All the music in 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. We are part of the SiriusXM podcast family.