

[Intro Music]

Kirk McDaniel: Welcome to Sidebar, a podcast from Courthouse News. I'm Kirk McDaniel, Sidebar's producer and a reporter in Austin, Texas. On this episode, we'll be diving into the divisive conspiracy theory QAnon, the January 6 insurrection and the events that followed the 2020 presidential elections and the effects all of this has had on the American psyche. Before we get into that, the Supreme Court began its new term this month, and Nicholas Lovino and Nina Pullano have chronicled the cases with the potential to be big wins for conservatives. The cases before the court are the type that don't usually come up in polite conversation: guns, abortion, religion. It's going to be a consequential term for the court. But don't take it from me, here's Nick and Nina.

[Music Break]

Ahilan Arulanantham: Massive, very high red curtains that they part and then the justices are there and it's strange how close you are, you're really close physically to them. And because they're sitting in this round, you know, semi-circle, it's like you can almost, you can't even see anything else, your peripheral vision is all just more justices so it's a very intense kind of immersive experience.

Pullano: That sounds really intense.

Lovino: It sure does.

Pullano: So, who is that?

Lovino: That's Ahilan Arulanantham, a UCLA law professor. I asked him what it was like to argue before the highest court in the land. He'll be arguing his third case before the Supreme Court on November 8.

Pullano: And what case is that?

Lovino: It's called *FBI v. Fazaga*. And it's about whether the government can use what's called the state secrets privilege to block a lawsuit, claiming it illegally spied on devout Muslims in Southern California.

Pullano: That sounds pretty important.

Lovino: It is. But as you know, it's not the only one. The Supreme Court is slated to hear a host of pivotal cases over the next few months, including on divisive issues like abortion, gun control and the separation of church and state.

Pullano: It's also a peculiar moment for the court in terms of its public perception. Some have argued based on recent decisions that it's more political than ever, and judges are basically just politicians that wear robes instead of suits.

Lovino: Some justices have been pushing back on that narrative in recent weeks, including Justice Amy Coney Barrett, who said during a speech in September that the justices don't decide cases based on their political beliefs.

CNN clip: She said, quote, my goal today is to convince you that this court is not comprised of a bunch of partisan hacks.

Pullano: This will be the court's first full term with Justice Barrett, a conservative who replaced the late liberal Justice Ruth Bader Ginsburg last year. The court now has a 6-3 supermajority of Republican-appointed justices.

Iovino: And that's something that has many people on the left nervous about how the court might rule on some politically charged cases. UC Berkeley Law School Dean Erwin Chemerinsky told me this is the most conservative Supreme Court since the 1930s.

Chemerinsky: The shift in the composition of the Supreme Court is likely to make all the difference when it comes to matters like abortion, guns, aid to parochial schools.

Pullano: The court has faced sharp criticism over some recent decisions on emergency petitions, including its refusal to block a Texas law that bans most abortions after about six weeks.

CBS clip: It is nearly impossible to get an abortion in Texas. The most restrictive abortion law in the country went into effect after the U.S. Supreme Court declined to act on a request to block it.

Pullano: Court watchers and legal scholars refer to these decisions, which are often issued with little to no reasoning, as the shadow docket.

Iovino: Ooh, sounds spooky. Why did they call it that?

Pullano: The term was coined by University of Chicago Law Professor William Bode, and it basically means that unlike the merits docket, in which cases received full briefing or argument, lengthy opinions that spell out the reasons for each decision, shadow docket rulings follow a much less transparent process. Sometimes we don't even know which justice has voted in favor of a decision unless they choose to write a dissent.

Iovino: We spoke to some legal scholars across the political spectrum about this. And each of them had different views on the subject. Zack Smith from the conservative-leaning Heritage Foundation said he thinks the term shadow docket is a misnomer.

Smith: You know, the term shadow docket sounds nefarious, like there's something you know, shadowy or sinister going on. But it's really just the Supreme Court's emergency motions docket, which is a docket that every court in the nation has.

Pullano: But others, like Dean Chemerinsky, said the court has been downright capricious in how it handles emergency petitions in politically controversial cases.

Chemerinsky: The Supreme Court has been very inconsistent on when it gets involved and doesn't get involved. It had no problem getting involved to stop governors from limiting gatherings including religious worship, so as to restrict the spread of Covid. The court had no problem in getting involved to stop lower courts from making absentee ballots more easily accessible. But then Texas adopts a blatantly unconstitutional law, and the Supreme Court doesn't want to get involved at all.

Pullano: Concerns about whether the court is deciding cases on partisan lines are unlikely to go away anytime soon, especially with some of the hot button cases on the court's agenda this term.

Iovino: Well, let's jump right in and take a closer look at some of these cases, starting with one that could overturn the nearly 50-year-old legal precedent established in *Roe v. Wade*.

Pullano: Right. The case is *Dobbs v. Jackson Women's Health Organization*, and it concerns a Mississippi law called the Gestational Age Act, which bans nearly all abortions after 15 weeks. Jackson Women's Health Organization is the state's only licensed abortion facility, and the organization sued the state to block the law from taking effect. They won that lawsuit in district court and later the decision was affirmed in the Fifth Circuit, since the state had not proved that a fetus would be viable at 15 weeks and Supreme Court precedent says it's unconstitutional for states to ban abortion before a fetus is considered viable. That precedent, of course, is the monumental abortion case, *Roe v. Wade*.

1973 Walter Cronkite newscast: In a landmark ruling, the Supreme Court today legalized abortions. The majority in cases from Texas and Georgia said that the decision to end the pregnancy during the first three months belongs to the woman and her doctor, not the government.

Pullano: So, the Supreme Court will decide whether Mississippi's law is in fact unconstitutional, which means...

Kimberly Mutcherson: ...*Roe* is dangling over the edge of the balcony, and you know, could get dropped at any moment.

Pullano: That's Kimberly Mutcherson, co-dean and professor of law at Rutgers Law School in Camden, New Jersey. She explained how since 1973, *Roe v. Wade* has guaranteed the right to abortion. Then in 1992, another case, *Planned Parenthood v. Casey*, upheld that right. Although, as Professor Mutcherson said, it created more opportunities for states to burden that right. Now, fast forward to the year 2021.

Mutcherson: The Supreme Court is being asked to decide whether it is prepared to overrule *Roe v. Wade* and *Planned Parenthood v. Casey*.

Pullano: So, let's talk about what that actually means. And first, what it doesn't mean.

Mutcherson: If *Roe v. Wade* gets overturned, it doesn't mean all of a sudden abortion is illegal in the United States. It means that there is no longer a protected constitutional right to have an abortion and the issue goes back to the states. And so, each state individually will get to decide what their laws are on abortion.

Pullano: And it's not just Mississippi and Texas. Here's Professor Chemerinsky again.

Chemerinsky: Over 20 states have laws already on the books that prohibit all or virtually all abortions that would go into effect if *Roe v. Wade* was overruled. Additionally, many other states would adopt laws restricting abortion.

Pullano: In other words, the ability to get an abortion will be determined by where you live, or by where you have the means to travel.

Chemerinsky: The reality is that women with money who want an abortion will travel to states where abortion is legal.

Pullano: And if you can't afford to travel...

Chemerinsky: ...It's poor women and teenagers, who again will be forced to make the choice between the unwanted child and the unsafe back-alley abortion.

Pullano: Zack Smith from the Heritage Foundation pointed to what he said could be an issue with the way that *Roe v. Wade* and *Casey* were originally decided.

Smith: One of the complaints of *Roe v. Wade*, of *Planned Parenthood v. Casey*, since those decisions were decided where the court found a constitutional right to an abortion, is that they were really unmoored from the text structure or history of the Constitution. The justices' jobs are to apply the text of the Constitution, apply the text of the laws they're evaluating and reach legal decisions and not political ones.

Pullano: We led with discussing this case for a reason. Legal experts tell us that the potential impact of the decision here really can't be overstated.

Mutcherson: If the Supreme Court does in fact explicitly overrule *Roe v. Wade*, that is a cataclysmic decision. Right? I mean, that is a decision that changes what has been established law in this country since 1973. So, overruling those cases utterly changes the landscape on abortion, the legal landscape on abortion in this country. It is a seismic shift if it happens.

[Music Break]

Iovino: There's another important dispute on the Supreme Court's agenda this fall. It will determine if states like New York can restrict a citizen's right to carry concealed firearms outside the home.

Charlton Heston: From my cold, dead hands.

Iovino: New York state resident Robert Nash sued the Empire State in 2018, after it denied his request for a concealed-carry permit. New York only grants those licenses to people who can show they have a special need for self-defense. Last year, the Second Circuit upheld a lower court's dismissal of the lawsuit, finding it was virtually identical to a previously rejected legal challenge. On November 3, the court will hear oral arguments in the case. It's called *New York State Rifle and Pistol Association v. Corlett*, and the outcome could have far-reaching consequences for gun control laws across the nation.

Chemerinsky: Many states like California have laws like New York's that limits the ability to have concealed weapons. I think if the Supreme Court rules against New York and strikes down this law, they'll put in jeopardy laws all over the country that restrict things like having concealed weapons.

Iovino: That's UC Berkeley Dean Chemerinsky. He says the idea that the Second Amendment guarantees the right to own guns for self-defense is fairly new. The precedent was established in a 2008 Supreme Court case called *District of Columbia v. Heller*. That 5-4 opinion overturned Washington, D.C.'s total ban on handguns and voided a requirement that rifles and shotguns kept in the home must stay unloaded and disassembled, or bound by a trigger-lock device.

[Loaded Gun Sound]

lovino: In 2010, the court went further in another decision, *McDonald v. City of Chicago*, finding that state and local governments cannot pass laws that interfere with the right to keep and bear arms in the home for self-defense. If the court follows the precedents established in those cases, Zack Smith of the Heritage Foundation says it will most certainly conclude that New York's firearm restrictions are unconstitutional.

Smith: So, I'm hopeful the court will basically reaffirm their holdings in *Heller* and *McDonald*, find that the Second Amendment is not essentially a second-tier right. And really, you know, review infringements on Second Amendment rights very closely, as they do with First Amendment free speech, religious liberty claims, Fourth Amendment search and seizure claims and really make the Second Amendment a co-equal right with those other guarantees found in the Bill of Rights.

lovino: But Arizona State University Law Professor Ilan Wurman is less convinced that the conservative-leaning court will abolish the power of states to limit carrying hidden guns in public. That's because states in their predecessor colonies have restricted concealed weapons for centuries.

Wurman: There have been restrictions on gun rights throughout all of American history, including in states that had Second Amendment equivalents, right. Now, if you ask my read of the history, there were tons and tons of restrictions on concealed carry. If you look at all the states, state after state after state prohibited the carrying of concealed weapons.

lovino: The question of whether citizens can openly carry guns outside the home is a separate issue, which could soon come before the Supreme Court. That's after the Ninth Circuit ruled this past March that the Second Amendment does not guarantee the right to openly carry arms in public. But on the narrow issue of carrying concealed weapons, Wurman believes conservative justices might surprise some on the left by taking a more nuanced position.

Wurman: I don't know what they're going to do. But, you know, knowing them, they care about historical practice, right? And lots and lots of historical practice suggests that prohibitions of certain types of concealed carry were routine. And so, I think that's important stuff that they're going to have to look at.

[Fife Music]

Pullano: If you think back to U.S. history class, the separation of church and state may stand out as this long-standing tenant of American freedom: a country with no national religion, where your right to gather and worship is guaranteed by the Constitution. But calling into question that boundary between government regulations and religious practices is an American tradition in itself. The first one comes from Maine, where a group of family sued because they were blocked from using a state tuition program to send their kids to Christian schools. The program is for families in areas that don't have their own public schools. The Maine Department of Education provides money for parents to send their children to the school of their choice, public or private. But it excludes religious schools, and the families who lost their case in lower courts want to change that.

Chemerinsky: If the Supreme Court rules in favor of the challenges and against the state of Maine, it's going to mean anytime the government provides any form of assistance to private-sector schools, for the parents of children and private-sector schools, it must provide that aid to religious schools.

Pullano: That's Dean Chemerinsky again, explaining the potential impact of this decision. Some legal analysts compare the case to a 2017 Supreme Court decision which said Missouri could not exclude a preschool from a grant program for playgrounds. But Professor Wurman questions how that reasoning squares with the Free Exercise Clause in the First Amendment.

Wurman: If a state collects taxes, and distributes it for the purposes of public education, and excludes religious institutions, how has anybody been prohibited from freely exercising their religion? Nobody has.

Pullano: But Wurman acknowledges that conservative justices like Clarence Thomas and Samuel Alito have made their views clear on whether states should be allowed to exclude parochial schools from state funding programs.

Wurman: I think they believe that discriminating against religious institutions and the distribution of public monies violates the First Amendment. I think they believe that.

Pullano: Also grappling with the separation of church and state is a case that comes straight from the heart of the original 13 colonies.

[“Yankee Doodle” Plays]

Pullano: It brings us to City Hall in Boston, where officials rejected a request from a Christian group called Camp Constitution to raise its flag above City Hall. As you probably guessed, the flag has an image of a cross on it, and the city of Boston declined to fly it, which it had never done before. Boston usually approves those requests and has flown flags supporting all kinds of groups and causes, like Chinese immigration, Juneteenth and gay pride. The group says that the rejection violates its First Amendment rights. But the free speech argument depends on who's speaking.

Chemerinsky: If the government itself is the speaker, the First Amendment doesn't apply. On the other hand, if the government is creating a forum for private speech, then it can't discriminate.

Pullano: Professor Wurman thinks that this one will be a pretty clear decision.

Wurman: Justice Alito, the most conservative, most likely justice to say this is not OK. He said in other government speech cases that the government can choose and decide which speech it wants to endorse, like in public monuments, and the parks and so on, as long as it doesn't discriminate against private speech. And so, I just I think that's the obvious answer here. I'm actually surprised that this is so controversial that it's kind of going up to the court.

Pullano: Taking another view, Zack Smith from the Heritage Foundation hopes to see a win for both Maine parents and Camp Constitution.

Smith: I think the fact that the court took both of these cases shows that they are maintaining an emphasis on religious liberty. They're seriously considering and evaluating many of the religious liberty claims that come before the court, and I am hopeful that there will be positive outcomes for religious liberty.

[Music Break]

Iovino: Beyond the hot button issues of abortion, gun rights and church and state separation, there are plenty of other important cases on the Supreme Court's docket this year. The justices have already heard arguments in a case involving a Guantanamo Bay prisoner being tortured overseas, a request to reinstate the death penalty for the Boston Marathon bomber and a dispute that will determine if those wrongly charged with crimes can sue for malicious prosecution after charges against them are dropped. On November 8, the court will hear arguments in yet another pivotal case. It's called *FBI v. Fazaga* and it involves a group of Muslims from Southern California who say the government targeted them with illegal surveillance based solely on the assumption that their devout faith made them potential terrorists. The government says the lawsuit must be dismissed because fighting it in court will reveal sensitive information that would harm national security. If the court accepts that position, plaintiffs' lawyer Ahilan Arulanantham says it could have serious ramifications for future lawsuits over covert government operations that violate the law.

Arulanantham: If the government can run programs that violate constitutional rights and escape any judicial accountability for those programs because they are running in secret, that would have opened a profound loophole in the web of constitutional protections that applies in our system.

[Music Break]

Iovino: As the fall docket stirs up controversy about how the Supreme Court functions, whether it's too political, and how the shadow docket is used, some legal experts are studying ways the court could be changed in the future.

Pullano: The ideas being floated out there include changing the confirmation process for new justices, setting term limits for these lifelong positions and even expanding the number of Supreme Court justices.

Iovino: Some have suggested we should have 13 Supreme Court justices, or that the judges should only serve 18-year terms. Changes like that don't come easy. In any push to reform the court will likely face fierce opposition in the halls of Congress.

Pullano: Dean Mutcherson said we can sometimes get bogged down with assumptions that just because the court has always operated a certain way, it can't change. But those perceptions might be starting to shift.

Mutcherson: In my experience, as somebody who's been a law professor for, you know, 20-plus years now, I've never heard the kinds of conversations about changing the court, serious conversations about changing the court and the way that we're hearing them now. It's really quite extraordinary.

[Music Break]

McDaniel: As mentioned before, this Supreme Court term will be consequential. In a very unusual move, the justices recently agreed to take up Texas' near total ban on abortion and appear to fast-track the case, scheduling arguments for November 1. To stay up to date with the latest from the court, head over to Courthouse News where you'll get the latest news on arguments, rulings and analysis of the effects of the court's decisions. Nearly a year after Joe Biden defeated Donald Trump in the 2020 election, the nation remains plagued by disinformation that pits citizen against citizen. Amanda Pampuro and Bianca

Bruno took a look back into how disinformation and conspiracy theories grew in the United States, and the lasting effects they may have on the body politic.

Jitarth Jadeja: I basically was always interested in politics because I love economics. And then when I went to the U.S., I got interested in American culture and American politics. And then when Donald Trump won, that really sort of kickstarted my sort of fall down the rabbit hole, because it was so unexpected, I was so shocked. But I was a Bernie Sanders supporter, I guess you should say, and I was very anti-Hillary, but I still wasn't like pro-Trump. And then after he won, there'd be a lot of things like the media would say about him that, you know, many things were, like valid, but there was a lot of stuff that was just like it was taken out of context, clearly, like he is clearly being figurative when you're taking literally, things like that. So, I eventually started being a Trump defender. And then I also started looking for a media outlet that was not anti-Trump. And, yeah, that's how I kind of found Alex Jones and InfoWars.

NBC Clip: Our report on the incendiary radio host Alex Jones. For years, Jones has been spreading conspiracy theories, claiming for instance, that elements of the U.S. government allowed the 9/11 attacks to happen, and that the horrific Sandy Hook massacre was a hoax.

Jadeja: My name is Jitarth Jadeja. I live in Sydney, in Australia. I just graduated from university last year with a degree in Bachelor of Arts with a major in economics and math. And I used to be a QAnon-believer for about one and a half years.

Bruno: I'm Bianca Bruno from San Diego.

Pampuro: Amanda Pampuro here in Denver. QAnon, the belief that Jitarth fell into started in October 2017 when a user on 4chan began posting under the name Q. With a diehard speech ethos, message boards like 4chan then 8chan and 8kun attracted some pretty extreme personalities. No one knows why Q or who Q is, but the anonymous user claimed to have top secret information, and that Trump was going to take down the deep state from inside.

Matthew Hannah: You know, and I remember when it started, we all laughed about it. We said, well, let's just on the dark web, you know, everything. Of course, on the dark web, everything's strange and bizarre anyway. My name is Matthew Hannah, and I'm an assistant professor of digital humanities at Purdue University, where I teach courses on digital humanities and media studies.

Pampuro: When did you stop laughing about it?

Hannah: It didn't take long. It didn't take long. I think I stopped laughing about QAnon when I started seeing, you know, Facebook pages on saving the children and they were showing up on my mainstream page. Or when Donald Trump was asked about it, and he said, you know, that they were, you know, he didn't know anything about it, but they were good because they wanted to save children. And I thought, oh, this is not going away. This is not just a bizarre Internet game. But this is actually an ideology.

Bruno: But where did QAnon conspiracy theories come from?

Brooke Binkowski: It's just the same Nazi crap that's been motivating people to do bad, bad things for a very long time.

Bruno: That's Brooke Binkowski, a nationally recognized disinformation expert, who has worked as an editor for fact-checking websites, including Snopes and Truth or Fiction. She said QAnon conspiracy theories are no different than others before it with anti-Semitic origins.

Binkowski: If you look at it in the context of historical disinformation campaigns, is "The Protocols of the Learned Elders of Zion," which was a satire written in the early 20th century passed around decoupled from its satirical origins, and turned into a major conspiracy theory that was used as the basis for everything from Nazis you know, rounding up Jewish people and putting them in concentration camps, to Stalin's doctors plot to the Birchers here in the United States to QAnon today, it's all been the same conspiracy theory in slightly different forums. And basically, what it has been turned into is, the Jews did it.

Bruno: The theory?

Binkowski: A small group of secretive elites are controlling Hollywood, the media and the banks, and politics secretly. And that small group of Illuminati or elites or lizards or whatever you want to call those people are also blood drinkers, in you know, with the spirit cooking stuff. They are also baby stealers, you know, we're here to save our children, you know, the human trafficking stuff.

Bruno: And the conspiracy theories spread in the year after Donald Trump was elected president.

Binkowski: My theory is that it's been an A/B tested conspiracy theory. So, they've been testing it on these fringe forums to see what activates people and gets them talking. What has happened here with QAnon, and I could be wrong, all right. So I'm just like, every caveat here in the book, but I think what has happened is that they just sort of like put some babying disinformation purveyors, whoever they were put, you know, one story into one channel one story into another channel, see, to see what got people talking more, and then just tested their messaging that way over and over and over again, just refining their messaging, until they ended up with sort of like the racist subconscious in this country.

Bruno: Binkowski and other disinformation experts agree. QAnon is a big tent conspiracy where contemporary right-wing politics have been woven together with historical racist tropes already present in popular culture.

Pampuro: Let's talk about misinformation.

Bruno: Disinformation.

Pampuro: Misinformation.

Bruno: Disinformation is false information purposely created and spread in bad faith.

Pampuro: Misinformation is also false. But it's not necessarily meant to cause harm. It might be sharing an article you thought was true but wasn't.

Bruno: QAnon is a force of disinformation.

Pampuro: A lot of people fell into Q because they believed misinformation. It's pretty amazing when you think about it, Q followers come to these conclusions on their own and compare notes. It's a crowd sourced conspiracy theory.

Bruno: But there's nothing amazing about people knowingly spreading disinformation.

Pampuro: If you listen to people in these alternative belief communities. A lot of them will gladly share their research, they want to be heard. But it's hard to even know where to begin to respond if you're not drawing the same conclusions.

Hannah: So, what I was saying was that it's very difficult to combat somebody who's done more research than you have and as QAnon, you know, followers make the bread and follow the breadcrumbs, they're engaged in an incredible amount of research and study and of course, we know that those areas of study, you know, are leading them into strange places, you know, that the word for this is apophenia, which is the extreme connection where none exists.

Pampuro: Again, Matthew Hannah at Purdue. QAnon, I don't need you to post or Donald Trump to be in office to continue. Without Trump, many QAnon followers came together around the anti-vax, anti-mask movements, things Q never even talked about. Hannah attributes the rise of the group in part to this sense of discontent in the country isn't going away.

Hannah: These conspiracy theories don't just come out of nowhere. It's not like these people are crazy. You know, these conspiracies don't necessarily only happen on the right, some of the people in the QAnon and on are actually on the left of the political spectrum. And it's just that there is a real sense in America that something is wrong, and that our politicians aren't doing anything about it. And that society is not what it should be.

Pampuro: Paranoid politics. That's what Richard Hofstadter called it in 1965 post-McCarthy when he traced it back to the 1800s. It's still everywhere. On the right...

Texas Gov. Greg Abbott: In La Jolla, Texas, where it was learned that migrants had been released by Border Patrol. They were in La Jolla found at a Whataburger with extreme signs of illness. And they themselves said they had Covid-19.

Pampuro: And on the left...

Rachel Maddow clip: More and more and more and more about the extent of Russian involvement in the election and the investigations into the Trump campaign's contacts with Russia during and after the campaign.

Ethan Zuckerman: So, it's absolutely worth mentioning that conspiratorial thinking is not solely the province of the right. Hi, my name is Ethan Zuckerman. I'm associate professor of public policy information and communication at the University of Massachusetts Amherst. Participatory media has become the dominant media of the age. What you had was people taking Q's posts, and essentially creating their own television shows. Everybody became a Fox News or OANN pundit on their own YouTube soapbox trying to interpret the news of the day through the lens of QAnon. And that process of sort of discovering the truth for yourself and advertising it to the rest of the world, that turns out to be downright addictive.

Pampuro: QAnon is just one movement to come out of this perfect storm of mistrust and technology.

Zuckerman: You know, I think most of us who study this space, ultimately believe that QAnon at some point was taken over by the owners of the 8chan message board, and that they essentially killed off the character after Donald Trump, you know, lost power. But there are still millions of people who are predisposed to a conspiratorial point of view. I think a lot of that conspiratorial thinking has now moved over to anti-vax and anti-mask thinking. I think that we'll see invocations of the Deep State and invocations of a conspiracy or cabal for quite some time to come particularly on the right, because it does seem to be a very compelling narrative that a lot of people are following. But, you know, thinking of it just purely in terms of QAnon is probably an oversimplification at this point.

Pampuro: Just pointing out inaccuracies isn't enough, is it?

Zuckerman: I don't think misinformation is a technical problem anymore. I think misinformation is now a political strategy. And for me, the turning point on this was 70% of Congresspeople, Republican Congresspeople voting not to accept election results. If one of the fundamental tenants of the Republican Party is going to be that the election was stolen, despite the fact that there's no factual data for it, then, you know, how can we do fact checking? If you're doing fact-checking, it's inherently going to be a political exercise, you're inherently going to end up saying, we can't allow these people to speak on these platforms because what they believe is factually inaccurate.

[Music Break]

Pampuro: Embedded in QAnon is the question of free speech. You can say or believe anything you want in America. You can vote for whatever candidate you want and support whatever issues you want.

Bruno: But some ideas can be dangerous, like the idea that the secure election was rigged.

Pampuro: Following the tight 2020 election, Trump filed dozens of lawsuits challenging the results. A Q-driven movement called the Great Steal, saying Trump won but they swore in Biden anyway. The facts don't matter here.

Bruno: D.C. reporter Samantha Hawkins has been closely following the fallout for hundreds of believers who stormed the Capitol January 6.

Hawkins: We still have a long way to go since over 600 people have been charged and only about 100 have entered into guilty pleas. And around 75 of those are in pretrial custody.

Bruno: Not only do the defendants denying the 2020 election results, but they don't even believe in the justice system they have to answer to. Several Trump supporters have fired their public defenders and are going it alone against the advice of judges overseeing their cases, they claim to be sovereign citizens.

Hawkins: So, it's a conspiracy theory started by a group of anti-government extremists who claim to be sovereign from the United States, meaning that even though they live here, they're not subject to any government authority and are free of any legal constraints.

Bruno: The theory is only creating additional challenges in getting the cases resolved.

Hawkins: These defendants have been filing motions that are hundreds of pages long and full of sort of pseudo legal nonsensical gibberish, claiming that the court doesn't have any jurisdiction over them. And then they often sign the documents with a red fingerprint, which is one of the many symbols that sovereign citizens use and attempt to tap into, I suppose, its ultimate identity that they believe the government set up for them at birth to unlock their own personal secret treasure account. So, one of the defendants that sticks out to me, her name is Pauline Bauer. She's nonviolent, low-level offender who insists that she's not under the court's jurisdiction, so isn't subject to pretrial release conditions. And she won't follow simple conditions like calling her pretrial services officer once a week or even confirming her address. So, she's landed herself in jail and has been filing these really long motions that don't make any sense which the judge just instantly dismisses.

Bruno: Proponents of the so called Stop the Steal movement aren't just turning the American political system on its head in D.C. Their conspiracy theories about the 2020 election have continued to reverberate throughout the country. In response to concerns about election fraud, Arizona did a full recount.

Pampuro: And Georgia tightened election laws. Here's CNS reporter Kayla Goggin, in Atlanta.

Goggin: When that law was signed, and we're talking about Senate Bill 202 in Georgia here, when that was signed into law in March, Governor Brian Kemp actually said that he was signing this law due to the many alarming issues, and that's a direct quote, around the way the election was handled, and he said there was a crisis of confidence in the ballot box. So, it definitely came about because of those fears of election fraud, which is frustrating because there has been no actual evidence of widespread election fraud. But yet, this law has implemented so many changes that are going to impact how people vote on a very granular basis, I mean, we have changes to everything including the way that we request absentee ballots, where and when we can use drop boxes, we can't pass out food and water to people waiting in voting lines now. So, there are real issues here that have frustrated voter confidence. And then when you throw in, you know, this group now and of course, the President of the United States, alleging that there's this widespread malfeasance, I think that, you know, that creates an atmosphere where it's difficult for people to trust not just the election systems but their election officials.

Pampuro: One outspoken Georgia elections activist thought the state already had a solid audit process in place.

Marilyn Marks: Yes, I'm Marilyn Marks, executive director of Coalition for Good Governance. Because Georgia has such flexible opportunities for a losing candidate and they, more than any other state I'm aware of, offer that candidate many bites at the apple to challenge. Trump just didn't take advantage of it. Starting with Georgia permits even before the county certifies the results, the county permits any candidate, no matter how far out the margin is, to come into the election board and ask for a discretionary recount, based on you know, anything that they believe might have gone wrong.

Pampuro: Marks says skipping these technical procedural steps stirred up distrust, and now it's near impossible to talk about real election security issues. Marks' organization actually sued Georgia in 2017, over unpatched security issues in the new voting machines.

Bruno: There is no evidence that these elections were rigged.

Pampuro: No, and that's the part that's hard to convey. Even if the election was carried out fair and square, there are still genuine issues of election security to be addressed.

Marks: You know, one of the problems with promoting election security with elected officials is that whatever system elected them, they are just not going to question, they do not want to bring any kind of cloud over the system under which they were elected. They just naturally recoil, we see it regardless of party, with the idea in their minds of any system that elected me must be a good system.

Pampuro: As part of their litigation, the Coalition for Good Governance asked University of Michigan computer scientist Alex Halderman to try to hack into voting machines — and he did. He proved voting machines can be hacked.

Bruno: They weren't in 2020.

Pampuro: But they could be in the future, like if the proprietary software was leaked, the machines could possibly be hacked.

Bruno: Could that really happen?

Pampuro: Earlier this year, voting machines' passwords were leaked from two counties in the country. Security experts told The Associated Press about the potential consequences.

Bruno: Emphasis on potential.

Pampuro: Yeah, but that's where conspiracy theories thrive: in between possibility and reality, where the lay person has just enough information to form an opinion. Election security is like fire prevention, something officials always have to maintain. Marks has one simple solution: handmarked paper ballots.

Marks: So long as we have a paper that the voter has marked and we keep that paper secure, there is never any question about what the voter put on the paper because pen and ink can't be hacked.

Pampuro: I keep asking this question: how do we build trust in elections in the post-truth age? If the masses aren't going to believe the secretary of state and they're not going to believe me just because I have a press pass. Ethan at UMass Amherst actually echoed a principle of Q: Do you own research.

Zuckerman: So, here's an interesting thing. So, I wrote this book on mistrust. And my point in many ways was that I don't know that the best path is to try to increase individuals trust in institutions, I think in many cases, actually, helping people harness their mistrust in interesting and fundamental ways is probably a better way to make change. People are sort of saying how do I strengthen an institution, and the best way to strengthen an institution is based around being involved with it. There were a number of sort of anecdotes of people who expected election fraud in 2020, became poll observers expected to go in and sort of overturn the conspiracy of how the election was being stolen, and came away sort of going, wow, it'd be kind of hard to rig an election, these things are actually pretty thoughtfully put together.

Pampuro: Today Jitharth moderates an online forum for other ex-Q followers in recovery — and he says trust isn't going to come easy.

Jadeja: If someone says, 'Oh, we saw this photo of this guy, stuffing a ballot', right? A blanket, carte blanche, 'yo it's all misinformation, misinformation.' This is not going to work first of all. This is not like it's too easy for you. Anyone who's been watching mainstream media at any time in the last four years, to point out times when the media has intentionally or unintentionally more often than not misled people, it is ludicrous to then expect them to listen to you, when you're when you're standing on like, you know, a house built of sand. So, you got to take them seriously, you can entertain an idea without accepting them and just calmly debunk it. But I also think on some level, you have to admit your own mistakes.

Bruno: How do we combat disinformation in a post-truth era where folks are crowdsourcing information online that aligns with their political leanings?

Pampuro: We could use more journalists, for one thing.

Binkowski: Journalists. We're the first defense against disinformation campaigns like this, we have to be — that's why we exist. And I believe that's why, you know, so many shady companies have gone out of their way to buy us out or sue us out of existence or smear us using bots and trolls until, you know, we're all so demoralized that we don't want to fight more.

Bruno: While that may sound bleak, Binkowski pointed out participatory democracy should be our guiding light.

Binkowski: Start participating, use your voice because the more we use it, the more chance we have of saving democracy, because at the end of the day the ultimate goal is to convince the world that American style democracy is not sustainable. That's the whole goal of this, to get people softened up for the boot to get us to accept authoritarianism. So don't accept it.

Pampuro: The American Democratic experiment depends on it!

["America the Beautiful" Plays]

McDaniel: American Democracy, that's no small potatoes. The good news is you are not entirely powerless to help combat disinformation. Always check multiple sources for news on current events and never share content online that comes from a questionable source. Whether in the courtroom of the highest court of the land or on internet message boards, Americans are debating the issues that will determine the nation we will be. Thanks for listening! Subscribe to Sidebar CNS on Apple Podcasts and Spotify so you don't miss an episode. See you next time, when we tackle the war on wolves, the real border emergency and the ongoing fraud trial of disgraced Theranos founder Elizabeth Holmes. See ya!