

What Roman Mars Can Learn About Con Law The Disqualification Clause

LeVar Burton: Hey, everyone, It's LeVar Burton. And I wanted to wish you and your families happy holidays. For you, this holiday season might mean cooking, eating, getting cozy by the fire, or maybe listening to my new kids and family podcast, Sound Detectives. Sound Detectives is a comedy caper that invites elementary school aged kids to explore the magic and mystery of sound. The first few episodes of Sound Detectives are out now. Listen to Sound Detectives this holiday season wherever you get your podcasts.

Roman Mars: So, we're talking on Friday, December 1st, 11:00 a.m. And what are we going to cover today?

Elizabeth Joh: Well, one of the hundreds of riders who attacked the Capitol on January 6th, 2021, was a former rodeo rider, who helped found a group called Cowboys for Trump in 2019. And his name was Couy Griffin. And after Biden was declared the winner of the 2020 election on November 7th, as we all know, Trump didn't accept the election results, and neither did his supporters. And the Cowboys for Trump group was active in the many Stop the Steal rallies that took place around the country after the election. Now, again, remember there's that famous tweet where Trump tweeted on December 19th, 2020, that there was going to be a big protest at the upcoming joint session of Congress on January 6th to certify the election results. And when Trump tweeted, "Be there. Will be wild," many people took him seriously and literally. And Couy Griffin was one of those people. Griffin was a featured speaker on a multi-city bus tour that stopped at several cities on the way to Washington. And in his speeches, Griffin made statements like, "This is a battle and a war we cannot lose. And there might be some of us that might lose our lives." And after Trump spoke at the White House Ellipse on January 6th, Griffin was part of the crowd that marched to the Capitol. And he ended up climbing a wall that separated the sidewalk from the West Lawn of the Capitol and then walked on to the inauguration stage that had been built in front of the Capitol. Now, there's no evidence that Griffin personally attacked anyone, but he was part of the mob that overwhelmed Capitol Police with violence that day--the same mob that caused the evacuation of Congress and the suspension of the certification of the results of the electoral count. Now, remember, Congress didn't finish certification until 3:42 a.m. the very next day. Griffin left the riot, went back home to New Mexico, and returned to his job. And you see, Griffin was a commissioner on the Otero County, New Mexico Board of Commissioners. The board of commissioners is the county's governing body. They have the power to enact local laws and to control the budget. And at a commission meeting just a week after the riot, Griffin said he was going to return to the Capitol with guns for the inauguration of President Joe Biden. But when he showed up, he was arrested. Couy Griffin, like hundreds of others who participated in the January 6th attack, became a criminal defendant. And in March of 2022, he was convicted for entering and remaining in a restricted building--federal crime. But that wasn't the end of the story for him. Six months after a federal judge found him guilty, a group of citizens in Otero County, New Mexico, filed a lawsuit against Griffin. "He was an insurrectionist," they argued, "and he shouldn't be allowed to be an elected official in New Mexico." And on September 6th, 2022, a New Mexico State judge agreed. Because Griffin tried to stop Congress from certifying Biden as the legitimate winner of the 2020 election, Griffin was no longer qualified to be an Otero County commissioner. In fact, he was no longer qualified to be any kind of public official for the state or the federal government for life. That was the first time in 153 years that an elected official was disqualified for future office for his role in an insurrection. How did the judge decide that Griffin was disqualified? And what does that mean for Donald Trump and the 2024 presidential election? Time to find out.

Roman Mars: Let's do it. This is What Roman Mars Can Learn About Con Law--an ongoing series of indeterminate length and sporadic release, where we look at a clause from the Reconstruction era about insurrectionists and use it 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.

Elizabeth Joh: So, Roman, today I thought we'd talk about the disqualification clause of the 14th Amendment.

Roman Mars: Cool. Yeah.

Elizabeth Joh: So, let's start with some basics. The 13th, 14th, and 15th Amendments are called the "Reconstruction Amendments" because they were enacted after the Civil War, during Reconstruction. And these three amendments all try to address matters about the legal and political status of African Americans. The 13th Amendment abolished slavery, the 15th Amendment focuses on voting rights, and the 14th Amendment addresses many things. And it's longer than the other two, and it contains ideas that you recognize. Section 1 recognizes the idea of birthright citizenship. Section 1 also guarantees equal protection of the laws and due process. And while the reconstruction amendments were aimed at securing the rights of African Americans, over time, they haven't been limited to that context. So legal doctrines like equal protection and due process have been interpreted in many different and modern cases. But then there is Section 3--Section 3 of the 14th Amendment. Why is it like other parts of the Constitution? It's so very, very obscure. And there are at least four big questions about what it means. But why don't we look at what it says first? So, why don't you go ahead and read it, Roman?

Roman Mars: Okay. "No person shall be a senator or representative in Congress or elector of president and vice president or hold any office, civil or military, under the United States or any state who, having previously taken an oath as a member of Congress or as an officer of the United States or as a member of any state legislature or as an executive or judicial officer of any state to support the Constitution of the United States, shall be engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability."

Elizabeth Joh: Perfectly clear, right?

Roman Mars: Yeah.

Elizabeth Joh: Yeah, it is a mouthful. There are a lot of questions about what it means.

Roman Mars: Yeah. Not clearly written.

Elizabeth Joh: There are some things that people do agree about with Section 3. There's broad agreement about the original design--what it was originally intended for. The original purpose was to ensure that former officials and soldiers in the Confederacy would be barred from serving in public office. After all, these were men who fought on the other side in the Civil War. And so why should they be allowed to return to their positions as if nothing had happened? And it was a real practical problem. When Congress reconvened right after the war ended, there were members of the House and Senate--as well as military officers--who had been part of the Confederacy but were ready and willing to resume their

old positions. Some people were, in fact, disqualified as a result of Section 3. The problem, as a historical matter, was that Section 3's disqualification power was pretty quickly gutted. And a lot of that had to do with the popularity and progress of reconstruction itself. In 1872, Congress passed an amnesty act that removed the disqualification status for many of these former members of the Confederacy. They could return to public life. And in 1898, Congress passed another amnesty act to most of the other people who would have also been disqualified under Section 3. And those amnesty acts were legitimate because, as you just read, Section 3 allows Congress to remove the disability of Section 3 as long as they do so with a supermajority vote. So, with the Civil War and Section 3, that was the end of that. The last time elected officials were disqualified under Section 3 appears to have been 1869. And that's pretty much the last time anyone ever thought about it until January 6th and the attack on the Capitol. Trump, of course, was impeached again in February of 2021 for inciting insurrection. But he was acquitted because there was not the necessary Senate supermajority vote. And the House January 6th Committee argued that Trump did incite an insurrection and recommended that the Justice Department prosecute Trump for aiding and abetting an insurrection. Of course, that did not happen. But voters began to file lawsuits, and they argued that Trump could not be president again because he is considered disqualified under Section 3. There are now maybe a couple of dozen lawsuits that are either ongoing or have been dismissed around the country.

Roman Mars: So, what is unclear about Section 3 because even though it is a mouthful, it does seem pretty clear that just, like, if you were part of an insurrection, you are not qualified for any of these offices. So, what does a judge have to decide in these cases?

Elizabeth Joh: Well, there are a lot of very unclear questions. So remember, Section 3 says, "If you're a member of Congress or an officer of the United States or a state official and you took an oath to support the Constitution and you also engaged in an insurrection or a rebellion or gave aid or comfort to the enemies of the United States, then you can't be a senator, a member of the House, an elector of the president and vice president, or hold any office in federal or state government." Now, the problem is that there are so very few cases on what exactly Section 3 means, and there's no Supreme Court case on what it means. So, we don't have any definitive final word on the meaning of Section 3. So, for now, all we can do is say, "Here are some of the big questions." And we do have some decisions about how some courts have initially started to decide these Trump disqualification cases. So first big question: is Section 3 self-executing? So here "self-executing" is just a fancy, lawyer's term for asking, "Does the disqualification of Section 3 just work all by itself, or does Congress need to pass a federal law, and the federal law might give somebody the power to enforce Section 3?" So, for instance, you know, do we need Congress to pass a law that would give maybe the Justice Department the power to file legal cases against people who are holding office, but they should be disqualified--they should be booted out of their jobs? Now, there's no clear answer to this question. It might be that Congress does have to pass a law, which... That sort of ends the issue for all of us. That means nobody can do anything right now. There is no current law that Congress has passed that's meant to put Section 3 into action. And if that's true, then we don't need to talk about it anymore. Or we could agree that Section 3 is self-executing, meaning that if you meet the definition of being a disqualified official, then you should be disqualified. And if there's a dispute over this, you can litigate this in court or have this enforcement done by state or federal officials. Now, several of the Trump lawsuits have presumed that they can decide these cases. So that means that some judges think already, "Yes, Section 3 is self-executing. There's no need to wait for Congress." So second big question: is Section 3 a political question the courts can't decide? Or is it a legal question that courts can decide? And if it's a legal question, who can sue? So that's

actually a couple of questions. So, the political question doctrine is actually a limitation that the Supreme Court has recognized about some kinds of disputes. And essentially, the idea is that when you have a case in federal court, if it's deemed a political question--in other words, this is something that the political branches, not the courts, should decide--then they dismiss the case.

Roman Mars: And so, what's an example of that--of a political question?

Elizabeth Joh: A good example would be if you are, let's say, upset about an American involvement in a war. And let's say you go to court saying, "American involvement in a war is unconstitutional." It's almost certainly the case that a court will say, "We don't get involved in these kinds of questions. You know, if you are upset about American involvement in a war or our decision to go into a war, then you should go to the president or Congress, not the courts." Now, one group of lawsuits about disqualifying Trump has gone in this direction. In Michigan, there have been two lawsuits brought by voters to keep Trump's name off of the ballot. And then Trump countersued in one of those cases. So, all three cases went before the same state court judge in Michigan. And in November, he issued three separate rulings, but they all share the same reasoning. And in these cases, the judge said, "The kinds of things the plaintiffs wanted--Trump disqualified from being on the Michigan ballot--that's just not the kind of thing a court should be deciding. This is a political question." And then the judge ended up dismissing those lawsuits, deciding that the Michigan lawsuits were political questions has nothing to do with deciding whether or not Trump is disqualified or not under Section 3. It only means that this court has decided, "I don't want to deal with this case. I just want it to go away." So, the political question doctrine is actually a way a court can get rid of a case without deciding the substance of a case. So, let's assume that Section 3 is the kind of issue that a court can decide. But then who can bring such a case? In federal court, you can't just bring a claim because you're upset about a legal issue or you want something to be resolved. You have to show that you have some stake or some injury that's connected to the lawsuit. If you don't, a federal court judge will say that you don't have standing to sue in that case. And that's what happened in a different Section 3 case. A federal judge in Florida decided that an individual citizen does not have standing to challenge whether another individual is qualified to hold public office. So, this is just a different way for a judge to decide, "I don't want to decide this case." But the result is the same; there's no decision about whether or not Trump is disqualified under Section 3. So that takes us to the third big question about Section 3. What counts as an insurrection? What does it mean to engage in an insurrection because that is the language of Section 3? The people who are addressed in Section 3 only face disqualification if they "engage in an insurrection or rebellion or have given aid or comfort to the enemies of the United States." That's what the language of the text says. That "aid or comfort" portion maybe is less relevant to Trump than insurrection, so why don't we talk about that? So, here's the problem. Section 3, as you've already read, doesn't define what an insurrection or rebellion is. So, we have all kind of commonly talked about January 6th as an "insurrection"--or lots of people have, including the House January 6th Committee and language in the second impeachment of Trump. And some judges in the January 6th cases have referred to that event as an insurrection. So, is that good enough? I mean, does it mean something like treason? Does it mean that you want to overthrow the government? Or can it just be that you want to interfere with something that the government does? That's not obvious because the text only says "insurrection." And does it require that you have to be separately convicted of a crime? I mean, there is a federal crime of insurrection, and Trump hasn't been convicted of anything yet. Now, one court has now provided us with one answer. Yes, January 6th was an insurrection that can be decided by a court in the context of a Section 3 case. And this is a lawsuit filed in

September by six Colorado voters. The case asks the state court judge to declare that Trump be disqualified from the office of the presidency under Section 3. There was a five-day trial on this issue, and it considered not just the House January 6th Committee's findings, but they also had expert testimony from both sides. The Colorado case is the very first one in which a judge has decided on the substance of these claims. And the judge, Judge Sarah Wallace, made a number of factual findings. It's a 100+-page opinion, but here's the very quick summary. Trump knew that he had violent supporters, that he could influence those violent supporters with his tweets and speeches, and that he, in fact, influenced them before the election, during the election, and then after Biden had won. And when Trump said things to his supporters like, "They had to fight like hell," he knew how this would be interpreted by his supporters, but he did it anyway. Trump knew what would happen when he behaved in the way that he actually did. And so, when it comes to insurrection, the judge said, "It was understood at the time of the 14th Amendment as any public use of force by a group of people to hinder or prevent the execution of law." So, what this means is that an insurrection doesn't have to mean you're trying to overthrow the government because that's not what Trump was doing, right? He wasn't trying to change the entire government. He just wanted to take the job of being president of the United States. So, when Trump incited his followers to disrupt the certification, the judge in the Colorado case was really saying, "That's enough. That's enough to count as an insurrection." And when he was telling his followers through tweets and his speeches, he was engaging in insurrection. It didn't matter that Trump didn't personally use violence or didn't personally take up arms. Using this kind of conduct was enough to count as engaging in an insurrection.

Roman Mars: Yeah. Yeah. And it really is the interruption of the proceeding to certify the vote rather than the criminal trespass on federal property, correct?

Elizabeth Joh: Yeah, that's right because then if that were the case, then he wouldn't have engaged in insurrection because he was far away from it, you know, watching everything unfold on TV. And, you know, if we had a much narrower definition or he had to personally be part of the violence, then he could easily say, "Well, this doesn't apply to me." Now, there's another aspect of Trump's responsibility that Judge Wallace had to consider because, in a way, we're just talking about what he did or we could observe in the world. But what was he thinking? What was his state of mind? Ever since January 6th, Trump and his followers have argued that "well, we acted the way we did because we sincerely believed that the election was stolen. We sincerely believe that Trump won the election. And if we did that, how could we have acted in an illegal way? We didn't have the appropriate criminal state of mind." But here, too, the judge found that Trump knew that he'd lost. People kept telling him. He kept suing, and he kept losing. And then he egged on the violence and then did nothing within his considerable power--remember, he was still president--to stop it when it was clear that the mob had become violent. And Judge Wallace ultimately concluded that Trump acted with the specific intent to incite political violence and directed it at the Capitol with the purpose of disrupting the electoral certification. And in the court's view, the plaintiffs have established that Trump engaged in an insurrection on January 6th, 2021, through incitement. So that's a pretty big deal. We actually have a judge who said, "This is insurrection, and Trump was part of engaging in an insurrection."

Roman Mars: Yeah. So, does that mean that the judge ruled that Trump shouldn't be on the Colorado ballot or not?

Elizabeth Joh: It's not that easy because we have yet to address the last and final difficult question. Can Section 3 be used to disqualify a person, like Trump, who's running for president? So, let's go back to the founder of Cowboys for Trump, Couy Griffin. Whether he has the kind of position subject to Section 3 disqualification, I think, is a much easier case. Remember that Section 3 says that you can be potentially disqualified if you are a member of Congress, an officer of the United States--that's the federal government--or an official in the legislative, executive, or judicial branches of a state government. Well, Griffin was an elected member of the Otero County, New Mexico Board of Commissioners. That's a state executive position, and that's one of the positions literally mentioned in the text of Section 3. And as the New Mexico court pointed out, Griffin also swore an oath to support the Constitution, just as it is mentioned in Section 3. And because the judge there decided that Griffin had been engaged in an insurrection, he was disqualified from public office for life. His job is the kind of job that is pointed out in Section 3. Now, with Trump, it's a little bit more difficult. Whether he's vulnerable under Section 3 is less obvious. We could decide that he is addressed by Section 3, but you need to take a few analytical steps. And that's because Section 3 does not mention the president by name.

Roman Mars: No, I'm just realizing that, having actually read it. It doesn't say, "President or vice president." It says, "Elector of president or vice president." So, one of those people who is in the Electoral College who votes for the president is being specified here specifically. The president isn't being called out specifically.

Elizabeth Joh: That's exactly right. You cannot be an insurrectionist, corrupt elector who votes for president under Section 3 because that job is mentioned in Section 3 itself, but not the president of the United States. And that's why it's not terribly clear. That is the easiest argument for Trump to make. "Look, the president is not mentioned in Section 3, so it doesn't apply to me--no matter whether I engaged in an insurrection or not. "There are parts of the Constitution that specifically mention the president, like the Impeachment Clause. There, the Constitution is very specific that the president is one of the people who can be removed from office by the process of impeachment. But Section 3 does not name the president of the United States specifically. That's the thorny legal question. Is the president of the United States an officer of the United States, which is mentioned in Section 3?

Roman Mars: "Or hold any office." That to me sounds like the president.

Elizabeth Joh: Could be, but it's not obvious. But on the other hand, could it really be the case that all of these less important officials are subjected to constitutional disqualification if they engage in an insurrection but not the president of the United States? And a number of serious and even conservative scholars and experts have said, "No, that's ridiculous. That's absurd." Think of it this way. Did the drafters of the 14th Amendment really think that the Confederate senators and representatives should be disqualified--that Jefferson Davis, the president of the Confederacy, would be able to run for the president United States? That seems kind of like a weird result, right?

Roman Mars: Yeah.

Elizabeth Joh: But that's precisely the problem. There isn't a clear answer. And so, the judge in the Colorado case knew that--whatever she decided--this would be appealed. And in a way, she did kind of punt on this. She said that even though Trump engaged in an insurrection, he is not one of the people who is addressed by Section 3. And that's exactly what happened. The Colorado Supreme Court has agreed to review the case. Trump has

made these types of arguments that we've just discussed. "The president isn't mentioned by Section 3, so there's no possible way I could be disqualified." And then Trump also has another interesting argument I wanted to point out. He's already filed a brief before the Colorado Supreme Court. Section 3 says you can be disqualified if you have this type of job that's mentioned in Section 3 and you take an oath to support the Constitution. "Well," argued Trump, "I never took an oath to support the Constitution the way that Couy Griffin did. I took a different oath." That's the presidential oath. The presidential oath is specified in Article II of the Constitution. The president of the United States does have to solemnly swear, but the president solemnly swears that he or she will "preserve, protect, and defend the Constitution of the United States." The president doesn't swear to support the Constitution. And in fact, the presidential oath is important enough--I don't know if you remember--that when Chief Justice Roberts made a mistake administering the oath to President Obama, they repeated it later because they were worried that somebody might complain that "hey, Obama is not a legitimate president because he didn't take the right oath." So even when the Supreme Court of Colorado decides the case in whichever way they're going to, they won't be the final say. Because this is a matter of federal constitutional law, the Supreme Court was almost certainly going to get involved in one way or another because they do have to resolve this question. President Trump is running. And is he allowed to run or not?

Roman Mars: Hmm. I guess my first question is that when the Colorado Supreme Court and eventually the U.S. Supreme Court sees this case, are they going to be arguing over whether or not the president is subject to Section 3? Or are they going to be arguing over whether or not the lower court judge was right in declaring what Trump did as an insurrection?

Elizabeth Joh: That's a great question. And what trial court judges or district court judges typically do is they find facts. And they also make findings of law. And the way that the judge decided this case was to decide that, factually speaking, he engaged in an insurrection. What counts as an insurrection--the definition--is a legal question. So, she made these 100+ pages of opinions with findings of facts, which in general appellate courts are extremely reluctant to overturn. In other words, we usually say that they're "deferential" to trial courts. But appellate courts are free to overturn decisions about law. So, in a way, Judge Wallace's decision to make this very long list of factual findings is smart because, you know, she has preserved this decision in terms of his facts. And if the Colorado Supreme Court wants to overturn these factual findings, there's usually a very high legal barrier for them to do so. They could do it, but it would be against what courts normally do. So appellate courts generally just review issues of law. And that's true for the Supreme Court, too. They don't take additional evidence. They don't hear witnesses or anything like that. But many of the biggest questions, of course, are the legal ones. Simply, you know, the Supreme Court hypothetically could say, "Well, that's true. He's not addressed in Section 3. So, it doesn't matter whether he engaged in insurrection or not. He just can't be disqualified in this way."

Roman Mars: Right. Right. But that's the part they'll be deciding is whether or not he is subject to this. They won't relitigate the actual fact of an insurrection, necessarily. They could, but they probably won't.

Elizabeth Joh: Yeah, not the factual part. But they could decide, for example, that insurrection means that you have to engage in a civil war. And because this wasn't literally a civil war, for that reason, too, there is not an insurrection for purposes of Section 3.

Roman Mars: Yeah. Yeah.

Elizabeth Joh: There are a couple of dozen Trump disqualification cases pending, and we're running right into the election. Somebody has to decide. And we can't have 50 different answers.

Roman Mars: You know, I'm strangely of two minds on this. The hypothetical that you presented--whether or not the drafters of Section 3 of the 14th Amendment, you know, would somehow think that Jefferson Davis was somehow exempt from this--is a kind of silly one. But on the flip side of that, I think they had a really clear idea of what they meant by insurrection. And I think they meant a civil war.

Elizabeth Joh: Well, if that's true, then none of these cases are going forward. It doesn't make any sense. I think there's also kind of another, like, norm idea here in Trump's favor. And that is that a number of people have argued, "You know, we can all say that we think that a second Trump term would be terrible for the country--it would be terrible for democracy. But maybe this is not the way to address that question." And that is the result of a successful Section 3 case against Trump would mean you're taking essentially the Republican nominee off the ballot. And does that make sense to just say, "You can't actually vote for the person you like, even though he's not a great candidate and he's bad for the country"? Still, should the voters have a chance to do that? And I think there's some discomfort with that idea--that just a handful of voters and one lawsuit might be able to successfully make sure that, you know, in a crucial state, if Trump is disqualified, that's the end of the election, right?

Roman Mars: But not Colorado probably.

Elizabeth Joh: Not Colorado. Some others.

Roman Mars: That's the thing, like, winding its way through these courts. I mean, I guess Michigan is a, you know, potential swing state. But I would imagine that most of these that we get to, you know, a trial judge would be in states where Trump doesn't have much of a chance of winning.

Elizabeth Joh: Well, they're all over the place right now, so we'll see. You know, frankly, I think pursuing Section 3 cases may not be the best way to figure out how to make sure Trump doesn't become president again.

Roman Mars: Well, what do you mean by that?

Elizabeth Joh: That maybe it is an interesting part of the Constitution to pursue as an academic matter, but to bring all of these different lawsuits now and to run the risk of having the Supreme Court saying, "Well, actually it doesn't address the president United States at all, and therefore Trump is free to run," would be both a legal victory for the presidency but a political victory for Trump that he could run with during the 2024 election.

Roman Mars: Yeah. "The Supreme Court says I'm okay and therefore I'm okay and I'm your champion and etc., etc., etc."

Elizabeth Joh: Yeah. "This is the one institution I like for now." Yeah.

Roman Mars: But doesn't it matter, in terms of these lawsuits, that there's one Colorado judge actually on record and, as a sort of statement of fact, says that Trump is an insurrectionist? Like this is the one instance where that's actually happened and has been written down.

Elizabeth Joh: I suppose that's right. But, you know, Trump is now facing a bunch of different lawsuits that might even have more powerful effect. Whether or not he is criminally liable for his role on January 6th, whether he's criminally liable for what he's done in Georgia--that might be even more powerful. But, we'll have to see. Then I have some odd trivia about Section 3.

Roman Mars: Okay. Go for it.

Elizabeth Joh: Remember that Congress, after the Civil War, basically neutralized disqualification under Section 3. They granted amnesty to almost everybody who might have been affected by it, except for two people: General Robert E. Lee and Jefferson Davis. And Congress did eventually remove their disabilities under Section 3 in the 1970s.

Roman Mars: Wow.

Elizabeth Joh: On August 5th, 1975, President Ford signed the congressional resolution restoring Lee's citizenship. And October 17th, 1978, President Carter restored the full rights of citizenship to Jefferson Davis. President Carter declared that Congress had now "officially completed the long process of reconciliation that has reunited our people following the tragic conflict between the states."

Roman Mars: Well, that's a bunch of nonsense. Oh, that's so irritating. Oh, God. I mean, like, who in the world was pushing for that? Like, who needed that? I just-- that blows my mind.

Elizabeth Joh: Well, I mean, the political context at the time was that Carter was also providing the amnesty for Vietnam or draft dodgers. And, you know, there was a sense that this was the right time for people to push through Davis's amnesty. Posthumous amnesty, of course, because it really didn't matter.

Roman Mars: It did not matter at all. But it kind of does, you know? It's one of those things that keeps this nonsense about the virtue of the South and the Civil War alive--that it's just, like, a disagreement in some ways and sort of a fundamental flaw in the character of an economy and a people and their government. So, it's chilling. Okay. Well, that is an interesting fact. And I can't believe that now Jefferson Davis can be president.

Elizabeth Joh: He really could.

Roman Mars: Thank you so much, Elizabeth. I appreciate it.

Elizabeth Joh: Thanks, Roman.

Roman Mars: The show is produced by Elizabeth Joh, Sarah Baik, and me, Roman Mars. Our executive producer is Kathy Tu. You can find us online at learnconlaw.com. All the music in What Roman Mars Can Learn About Con Law is provided by Doomtree Records, the Midwest Hip-Hop Collective. You can find out more about Doomtree Records, get

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