

Welcome to Civil Discourse. This podcast will use government documents to illuminate the workings of the American Government and offer contexts around the effects of government agencies in your everyday life. Now your hosts, Nia Rodgers, Public Affairs Librarian and Dr. John Aughenbaugh, Political Science Professor.

Nia Rodgers: Hey, Aughie.

John Aughenbaugh: Good morning, Nia. How are you?

Nia Rodgers: I'm good. How are you?

John Aughenbaugh: I'm lovely, and I'm pretty excited because today, I get to talk about one of my favorite government documents. In fact, something I probably spent the last quarter-century teaching and researching.

Nia Rodgers: Tell the truth, you sleep with one under your pillow?

John Aughenbaugh: Not underneath my pillow, but I actually do have a pocket copy on my nightstand.

Nia Rodgers: What we're talking about, of course, is the US Constitution.

John Aughenbaugh: I have one on my nightstand. I have one in my backpack. I have one at my office. I actually have one in my automobile.

Nia Rodgers: Okay, Senator Byrd. He carried a constitution everywhere and threat people with it when they didn't know what was in it. Speaking of what's in it. When I'm excited about for today's podcast, don't get me wrong, I like the Constitution. It's a lovely document. But I don't love it the way you love it, and that's probably a good thing. There can only be so much love for the constitution in the world.

John Aughenbaugh: Again, let me repeat, the world does not need more people like me.

Nia Rodgers: On a number of levels, I would say.

John Aughenbaugh: Okay, like a number of variables, levels.

Nia Rodgers: But what brought this about was actually with something you said on a podcast way back, which was you were explaining that people who say, I'm going to take the Fifth, in television and movies, that is used badly because people say I'm going to take the Fifth when they are not in fact being accused of anything. You cannot take the Fifth against self-incrimination. I don't have to tell what I did or where I was, only if you're being accused.

John Aughenbaugh: That's right.

Nia Rodgers: Otherwise, you have to answer the question. If you haven't been accused of anything and somebody says, Aughie, where were you last night? You can't say, I take the Fifth. I mean, you can, but you will look like a chuckle-head and the other lawyer will make you answer because you're not being accused of anything. We had talked about that as this is something that movies get wrong all the time.

John Aughenbaugh: Yes.

Nia Rodgers: I said to you at that point, we should do an episode on stuff that got dissed, left out, and also stuff that people think is in the Constitution. It isn't popular. What the heck is really in the Constitution? It's like a lot of people think stuff is in the Bible and then come to find out it's Shakespeare or it's something else. It's not in the Bible at all. And they go, oh, okay because somebody said, I'm sure that's in the Bible somewhere, and that's what people say about the Constitution. I'm sure that's in the Constitution somewhere.

John Aughenbaugh: That's when I usually say, well, maybe it should be, but it isn't.

Nia Rodgers: I'm going to argue that you have read this document enough times that you would know. If I said to you, Aughie, the right to eat feta cheese is in the Constitution. You'd be like, no.

John Aughenbaugh: No.

Nia Rodgers: Maybe it should be, but it is not.

John Aughenbaugh: Maybe it should be, yes. Do you want to go ahead and start with-

Nia Rodgers: I want to start with this stuff that didn't make it and then I want to move to the stuff that should be in there, that we want to be in there but isn't.

John Aughenbaugh: Really, okay. First, let's go ahead and focus on things that have been proposed for the Constitution, but have never made it in the Constitution.

Nia Rodgers: I'm warning folks now, this is likely to be a two-parter because there's a fair bit of stuff that was proposed at the beginning and then has been proposed over the years that's not in there and then there's also a fair bit of stuff that we believe is in there that isn't. We may end up breaking those into two episodes. I just warning folks now. It's hot. It's the summer. They're writing the Constitution. Everybody's tired. It's Philadelphia, there's no air conditioning, and they just want to get done. Then you get the bill of rights. Because Madison's like, wait, we forgot a bunch of stuff.

John Aughenbaugh: There's a little bit more to the bill of rights than that Nia. After the delegates to the constitutional convention met in Philadelphia in the hot summer of 1787. Then the Constitution was submitted to the States for ratification. That's where the debate begins and there were a group of individuals who did not like the proposed constitution, the so-called anti-Federalists. One of their big complaints about the proposed constitution was that there was not a listing of civil liberties that could not be infringed upon by the government and understand that there were some delegates to the

constitutional convention who didn't think such a list was necessary because there were structural elements to the constitution that would make it very difficult for the government to act, like separation of powers, checks and balances, right?

Nia Rodgers: Right.

John Aughenbaugh: Alexander Hamilton was of that opinion.

Nia Rodgers: We don't need to add all this other stuff.

John Aughenbaugh: Because it is very difficult for the government to act, which we know is the case today, right?

Nia Rodgers: Right.

John Aughenbaugh: It's difficult for both houses of Congress to agree to something and even if they agree to something, the President could go ahead and say, yeah, thanks for sharing, but I'm vetoing it.

Nia Rodgers: Although Hamilton did not take into account, I would argue executive orders, executive agreements, things where the implied powers in the Constitution, if we didn't enumerate it, I'll just go ahead and do that. But also in fairness to Hamilton, he wasn't dealing with the size of government that we're dealing with now. It's a much smaller level of government.

John Aughenbaugh: At that time there were political parties, right?

Nia Rodgers: Right. They all fit into one room.

John Aughenbaugh: Yeah. Basically, the assumption of most of the framers was that they were all unified, that they didn't like the British crown.

Nia Rodgers: Right.

John Aughenbaugh: They were also unified because most of them at the Constitutional Convention recognized the Articles of Confederation were not working. The assumption of many of them was, of course, we will work together.

Nia Rodgers: And also side-note, not a lot of diversity in that room.

John Aughenbaugh: Oh my goodness, no.

Nia Rodgers: You have all wealthy, landowning, educated. They would've thought, of course, we will be civilized and we'll sit down, and we'll have discussions, and we'll argue until someone makes a really good point, and then we'll all agree and move on.

John Aughenbaugh: Yeah, because they had shared experiences, shared knowledge if he will share desires or expectations of what the government should do once it was formed.

Nia Rodgers: Right. One of the great things about diversity is that it brings different voices, but it also brings divisive.

John Aughenbaugh: Yeah, sure.

Nia Rodgers: By its nature, it makes arguments more argumenting. That's not a word, but you know what I mean.

John Aughenbaugh: More argumentative, more difficult because you have greater representation, you have more voices, which means it's more difficult to get consensus.

Nia Rodgers: It's a good thing because it brings lots of views, but it's a bad thing in the sense that it makes it harder.

John Aughenbaugh: To get things done. Again, those are trade-offs, right?

Nia Rodgers: Right, exactly. But that room didn't have those trade-offs because they didn't have any voices of color, they didn't have any voices of women, they didn't have any poverty. None of that stuff.

John Aughenbaugh: Working-class slabs.

Nia Rodgers: No, and uneducated or minimally educated. All of them were well-educated individuals.

John Aughenbaugh: You guys are making in reference to the Greeks and the Romans.

Nia Rodgers: Right.

John Aughenbaugh: I want to know how this is going to affect my form.

Nia Rodgers: Exactly.

John Aughenbaugh: Or do I have to work 80 hours a week?

Nia Rodgers: Exactly. [inaudible]

John Aughenbaugh: [inaudible]

Nia Rodgers: Exactly.

John Aughenbaugh: Narrow self-interest, right?

Nia Rodgers: Isn't that what whenever there's legislation passed, the first thing that any news organization does is put out an article saying, "How this is going to affect you."

John Aughenbaugh: Affect you. Yes.

Nia Rodgers: I'm not trying to be ugly, but most people with enlightened self-interest, that's what their first question is. "Wait, does that mean I'm going to lose or gain money? Does that mean I'm going to lose or gain position? What does that mean?"

John Aughenbaugh: How is this going to affect me? The Anti-Federalists wanted a list of civil liberties in a number of states that became extremely important for the outcome of whether the constitution would be ratified. The Federalists who were the supporters of the proposed constitution implicitly agreed that if the constitution got ratified, the first United States Congress would look at a list of civil liberties, give consideration, and possibly approve them and send them to the states as amendments. That's what becomes known as the Bill of Rights.

Nia Rodgers: But the Bill of Rights is only the first 10. After that, they're just amendments.

John Aughenbaugh: Yes. But when the first Congress met, they asked Madison, who was a member of the House of Representatives, to craft these amendments. We know the 10, they got approved. He proposed nearly 20, and of those nearly 20, 12 made the initial cut, meaning that they were approved by both the House and the Senate. But, the states only approved 10 of those 12.

Nia Rodgers: Which two got dissed?

John Aughenbaugh: Very good question.

Nia Rodgers: Wait, can we pause for just a minute?

John Aughenbaugh: Yes.

Nia Rodgers: Madison was a brilliant writer.

John Aughenbaugh: Yes.

Nia Rodgers: A huge amount of the language in the Constitution comes out of Madison's head.

John Aughenbaugh: Yes.

Nia Rodgers: Just like Jefferson did a fantastic job with the Declaration of Independence, Madison's hugely behind the writing of the Constitution and the language in the Constitution. Is that just because Madison was a great lawyer? Did he understand, or just was he visionary?

John Aughenbaugh: Well, he was a lawyer, but he was also a political pragmatist. Because he was active in Virginia politics, pre-revolutionary war, he was active in politics during the revolutionary war, he was active afterwards. He experienced a lot in his life. Also, what's very fascinating to me, when the Constitution was proposed, he was a Federalist. He gets into Congress and he has a transformation. He goes from being a Federalist to a member of the Democratic Republican Party that was very skeptical of the federal government's power. The fact that he wrote the proposed amendments that became the Bill of Rights, is one of those great transformations of an American politician and in a very short period of time.

Nia Rodgers: He's like, "Let's frame this in a little bit. Let's make sure that we cover some really important stuff here."

John Aughenbaugh: The two that the House and the Senate approved but the States rejected, one was a restriction on Congress voting itself a pay raise until one congressional session has passed. Basically, if Congress in a session gives itself a pay raise, the pay raise cannot go into effect until the next session.

Nia Rodgers: But that is an amendment to the constitution.

John Aughenbaugh: I was about to say, some of our listeners are like, "Wait a minute, but that is an amendment?" Yes, because it eventually got adopted as our 27th Amendment. It's our last amendment. It was approved in the late 20th century. The reason why, fascinating backstory. A kid in college in Texas in the 1980s is writing a term paper for a college class where he basically goes ahead and says, "This amendment did not have a sunset clause. It did not have a clause that said if it's not adopted by a certain period of time, it ends, it cannot be considered." He goes technically, "This could be adopted." His college professor gives the paper a C.

Nia Rodgers: Proves that college professors are often wrong. I'm just saying.

John Aughenbaugh: The kid writes a number of state legislatures pointing out the fact that this could be adopted. Listeners in the United States in the late 1980s, early 1990s, there was a lot of anti incumbent fervor in this country. This is the period of time where a number of states passed term limits on elected officials.

Nia Rodgers: Not because people stayed for an eternity.

John Aughenbaugh: You actually had very powerful members of Congress losing reelection campaigns because the American voters wanted change, and that's what happened. A number of states ratified what became the 27th Amendment.

Nia Rodgers: You said it's our last amendment to date.

John Aughenbaugh: To date, yes.

Nia Rodgers: Because the awesome thing about the Constitution is that.

John Aughenbaugh: We can get amended in the future.

Nia Rodgers: We could get a proposed amendment tomorrow. There's a whole process for that, and we've talked about it in other episodes so we won't talk about it today. But, it is possible to continue to amend. Madison had to wait 100 over years.

John Aughenbaugh: Well, almost 200.

Nia Rodgers: Two hundred years for that to be ratified, but they accepted. What's the other one?

John Aughenbaugh: The other one was basing the number of House of Representatives on the 1789 population.

Nia Rodgers: What is it based?

John Aughenbaugh: Congress makes the decision as to how many House of Representatives there should be. The most recent time it was changed was actually early in the 1900s.

Nia Rodgers: It's probably due.

John Aughenbaugh: Sure, of course. I mean, that's one of the criticisms of the House.

Nia Rodgers: Why is it now 435 people are representing 336 million people, which seems like probably too many one to ratio? The ratio's too high.

John Aughenbaugh: The ratio of population to representative is too high. On the other hand, if you raise the number of House of Representatives-

Nia Rodgers: If you doubled it, you have 870 members of Congress, they won't fit. They won't fit in the room.

John Aughenbaugh: The House of Representative Chambers would have to be renovated.

Nia Rodgers: It would be like college courses. Some of them would show up on Monday, Wednesday. Some of them would show up Tuesday, Thursday. Then Friday, they'd all Zoom in with their votes. My great gugli mugli. That would be a mess, wouldn't it?

John Aughenbaugh: You would have recitation sessions of the House of Representatives.

Nia Rodgers: Oh my gosh. Yeah, I think it's probably a good idea for it not to be based on the 1789 census, considering we have just a few more people than we had then.

John Aughenbaugh: There have been a number of proposed amendments, most of which, never get out of committee.

Nia Rodgers: Wait. Are there more that were rejected initially? Do you have any of the 20?

John Aughenbaugh: I have that, but in a different research document, Nia. You went ahead, and stopped me.

Nia Rodgers: No, it's fine. I'm glad.

John Aughenbaugh: Nia, right now, listeners, has a very smug look on her face because she was able to stop Aughie on a podcast episode. Because I went ahead and crafted two Google documents for research. I wanted to make the research document, the notes document, to be manageable for a podcast episode. I left out a whole bunch of stuff from my other Google doc.

Nia Rodgers: Well, that's my thought then. Tell us other stuff that's gotten rejected.

John Aughenbaugh: Listeners, proposed amendments to the Constitution are considered by Congress pretty much every congressional session.

Nia Rodgers: I didn't realize that often.

John Aughenbaugh: But most die in committee.

Nia Rodgers: You don't hear about it on the news because it doesn't make it out of committee. Because otherwise, that would be an interesting political. That would be interesting to know what Congress is thinking about changing, but it probably will get people all up in arms and frustrated, so maybe it's a good thing we don't know.

John Aughenbaugh: Some of them are just-

Nia Rodgers: Crazy. We want an amendment that deer hunting season always starts on September 1st, and ends on, stuff like that.

John Aughenbaugh: Changing the, what's the word I'm looking for, not the slogan, but the mottos.

Nia Rodgers: E pluribus unum?

John Aughenbaugh: Yeah. The motto's on currency. I came across that one. The logic was, most Americans don't know Latin.

Nia Rodgers: Out of many, one, by the way. In case, you don't know what e pluribus unum means. I don't know Latin either, but I do know that. That basically means, out of all the states, one united thing.

John Aughenbaugh: Yes, one united country.

Nia Rodgers: Which is [inaudible] United States. On money, it's, "In God We Trust," I think.

John Aughenbaugh: Yes.

Nia Rodgers: It's written on money, but I'm sure that there have been a few [inaudible] .

John Aughenbaugh: Then a number of proposed amendments to remove that, yes.

Nia Rodgers: To take God out of out of the equation.

John Aughenbaugh: It's been argued that it violates the establishment clause of the First Amendment.

Nia Rodgers: Well, and it probably has been argued that in the Bible, God doesn't want to have anything to do with money. Money is a terrible thing. Almost all the parables that involve money involve bad things happen to you, if you have lots of money.

John Aughenbaugh: Yes, if you idolize or cherish money, in the Bible, something bad is going to happen to you.

Nia Rodgers: Exactly. A dragon's going to eat your face. I'm pretty sure there are dragons in the Bible. But, anyway.

John Aughenbaugh: There have been five that have reached the floor of the Congress, and Congress has rejected them, adding the Declaration of Independence. Wait a minute here. I did include these. These are five proposed by Madison, rejected by Congress.

Nia Rodgers: These are five of the 20.

John Aughenbaugh: I did bring this over from the other group I got.

Nia Rodgers: I'm so glad. You haven't been in any way fainted, as they would say in fencing.

John Aughenbaugh: Well, hey, I'm very humble. I frequently make mistakes, and there's plenty I don't know. Here are the five. Madison wanted to add the Declaration of Independence to the Constitution's preamble.

Nia Rodgers: That would change the song a lot. Because right now, you can sing the song pretty quickly from Schoolhouse Rock.

John Aughenbaugh: The preamble.

Nia Rodgers: It just seems out the one little. "We, the People of the United States of America," which it leaves out because that doesn't scan with the song. But, boy, that would really change it if you had to add the whole Declaration, "When in the course of human events, [inaudible]" It's a beautiful document. I guess he wanted to, what? Pay homage to Jefferson, or he wanted to make sure nobody forgot the Declaration of Independence?

John Aughenbaugh: Madison's logic was the Constitution would be more powerful, if it was rooted in the statement that led to the colonies breaking the chains of colonial oppression. However, his fellow Members of Congress pointed out that it would minimize the powerfulness of the preamble, which, by the way, they spend a lot of time on at the Constitutional Convention.

Nia Rodgers: His friends in Congress said, "No, no, no. In 200 years, there's going to be a song. They won't be able to sing it, if [inaudible]." That would be really funny, if they had said that. I agree, actually. I think they're two very separate documents. Their purposes are very separate. The whole Declaration of Independence, we're done. We're done with England, and y'all go away.

John Aughenbaugh: The Declaration of Independence is the list of grievances. Whereas, the preamble is future-oriented. It's a mission statement for the new country.

Nia Rodgers: Exactly.

John Aughenbaugh: This is what we aspire to. The Declaration of Independence is basically the kiss off letter to Great Britain.

Nia Rodgers: The preamble is the "too long, didn't read" of the Constitution. You know how you get emails, where somebody will give you 18 pages of email, then at the bottom, they say "too long, didn't read," and they gave you a one sentence synopsis? That's a synopsis for the country. "We, the People of the United States of America, in order to form a more perfect union." It says, "What we're going to do and how we're going to do it." I don't know. I agree with them. I think Madison was wrong on that one.

John Aughenbaugh: Another proposed amendment, Madison wanted to guarantee that three of the liberties in the Bill of Rights would be enforceable on the states.

Nia Rodgers: The states cannot do these things?

John Aughenbaugh: They could not infringe upon the freedom of religion, the freedom of the press, and the requirement of a jury trial in criminal cases. It was rejected. The reason why is, most of the founding generation believe that the Bill of Rights needed to be added to the Constitution, not to protect the people from state government, but to protect people from federal government.

Nia Rodgers: Federal of the rich. No, because in your experience, your local governor is much less onerous on you than the king.

John Aughenbaugh: King, that's right.

Nia Rodgers: In their experience, the king is more dangerous. You have to limit the king, way more than you have to limit your local lord or governor or whoever.

John Aughenbaugh: What this ends up creating, Nia, is we add a dichotomy in the United States. Until the 1920s, where the Bill of Rights, according to the US Supreme Court, were not applicable to state governments. The states could basically ignore the Bill of Rights, and the Supreme Court would let them.

Nia Rodgers: A state could have chosen a religion.

John Aughenbaugh: Yes.

Nia Rodgers: The State of Wyoming is going to be Catholic, and if you live here, you have to be Catholic.

John Aughenbaugh: That's right.

Nia Rodgers: Okay.

John Aughenbaugh: Yes. Third, Madison wanted to clearly state in the Constitution Separation of Powers. Because, maybe listeners don't know this but the phrase separation of powers is not in the Constitution.

Nia Rodgers: Foreshadowing of what's not in the Constitution.

John Aughenbaugh: It is intuitive.

Nia Rodgers: It's implied by giving each of these different powers, you're implying that they have separate different powers.

John Aughenbaugh: That's right.

Nia Rodgers: But you don't say separation of powers.

John Aughenbaugh: Separation of power is a guiding principle. Madison wanted to clearly state that. He wanted to clearly state it, but again, his colleagues in Congress were like, yeah, hey, thanks for sharing.

Nia Rodgers: Yeah, no, it's all good. We're good. They understand that from the reading.

John Aughenbaugh: Yes.

Nia Rodgers: Including even the text.

John Aughenbaugh: Yes.

Nia Rodgers: In fairness, a whole bunch of them were lawyers and did understand that from the reading of the text. Well, clearly that's what we mean. It's one of those things where you've written it so you know what you mean.

John Aughenbaugh: Yes.

Nia Rodgers: It might have been nice actually, if there had been something in there that says there will be a clear delineation, but whatever.

John Aughenbaugh: I can't remember who said this on the floor of the house. But they emphasize the fact that each of the first three articles of the constitution start with different senses. Article 1 starts with all powers herein granted. Article 2 says, the powers of the president. Then Article 3 starts with the judicial power of the United States. The argument was, well, quite clearly, we are dividing the power of the federal government because we've started each of the three articles with different language.

Nia Rodgers: Can I just note for the audience who cannot see you that you just named those three sentences from memory? I'm impressed by that. But yeah, it makes sense to me that they were saying, we've pretty much clearly stated there are three different branches with three different sets of powers. I'm not sure we need that. I like that Madison though was like, we should underline it and put a couple of exclamation points and they were like, "Yeah, no, you need to calm down, it's all going to be fine."

John Aughenbaugh: Today, if I was grading it and I was Madison, I would use the highlighting function in Microsoft Word. A fourth one, Madison wanted a different version of the Second Amendment. He wanted to include a conscientious objector clause to the military service, prefatory clause of the Second Amendment. He wanted to clearly say that you could avoid being or serving in a militia for conscientious objector reasons, and it got rejected. Which is one of the reasons why the five conservatives on the Supreme Court in DC versus Heller said that the opening clause, the prefatory clause of the Second Amendment, has no legal bearing on the right in the Second Amendment. Because the United States Congress clearly rejected Madison's proposed amendment change to the language.

Nia Rodgers: A well-regulated militia is the phrase that you're talking about.

John Aughenbaugh: Correct.

Nia Rodgers: A well-regulated militia being necessary to the security of a free state. The right of the people to keep and bear arms shall not be infringed. Which by the way, is a terrible sentence. It's got way too many commas, it's ridiculous, this sentence.

John Aughenbaugh: Always passive voice.

Nia Rodgers: Yeah, this sentence should be taken out and shot. Anyway. He's saying that somewhere along the line, he wanted a well-regulated militia (unless you don't believe in being in a militia, in which case, never mind) being necessary or something like that. Like I'm sure he would have written it better than that because he's Madison.

John Aughenbaugh: Yeah, that's what he wanted to add.

Nia Rodgers: Then, is that why it was illegal for people to be a conscientious objector for a long time?

John Aughenbaugh: Well, no.

Nia Rodgers: Because can't you be put in jail for that?

John Aughenbaugh: Because Congress when it created the rules for the military, typically went ahead and wrote that it was illegal for you to object to military service because of your conscience.

Nia Rodgers: An able-bodied male of a certain age was required.

John Aughenbaugh: Yes.

Nia Rodgers: To serve, and if they didn't, then they could be jailed.

John Aughenbaugh: They could be jailed.

Nia Rodgers: Because people have gone to jail for that, I think. Muhammad Ali go jail for that?

John Aughenbaugh: Yeah, I was going to mention the Vietnam War, even the Persian Gulf War.

Nia Rodgers: Oh, okay.

John Aughenbaugh: There were people who were in the military who did not want to fight that war for various religious, moral reasons. Many of them lost their commissions or were forced to accept discharges. That was in lieu of being thrown into a military prison. Because many Americans sign up to participate in the military to receive college benefits. It's part of the G.I. Bill. But the assumption is we won't go to war. But then when we go to war, some of them are like, "Yeah, I don't want to fight in a war." Well, according to the military.

Nia Rodgers: That's what you came for. Sorry. That's what the military does.

John Aughenbaugh: Yeah, you signed a contract to accept these benefits. It's a complicated issue.

Nia Rodgers: It is complicated because it would also depend on the reasons for the war and where the war takes place and who you're fighting. There could be some real concerns there. They said, no, we don't want to make that, what is it? We don't want to make that amendment any clearer than it is right now. Was that their objection because they thought because that amendments are met, of all the amendments the one that's just a mess language wise, is the Second Amendment. It doesn't make any sense. It reads like it was written by a person who doesn't understand how to construct a sentence.

John Aughenbaugh: It is usually one of the examples when I teach constitutional law, that I give my students of how the language of the constitution can really lead to interpretive difficulties.

Nia Rodgers: Well, and I'm sure English professors everywhere pull it up and say, "What's wrong with this sentence?" Then three hours later, it's not even about what it's about as much as that just doesn't make any sense.

John Aughenbaugh: Nia, that's funny. You mentioned that because I had a high school English teacher who pulled up the language of the Second Amendment to show us why passive voice is a terrible way to write. She actually pulled it. She pulled it up and said, this is an example of passive voice. She showed us and then she is, "So who can tell me what this actually says?" Of course, many of us had not really read the US Constitution. We were like, it's about being in the military, it's about guns. We're not entirely sure and she goes, "Exactly."

Nia Rodgers: Exactly, there's so many sub-clauses in here nobody knows which ones are sub, and which ones are real. Number five.

John Aughenbaugh: But before we move on, you went ahead and said, why was this rejected? Many members of Congress spoke to how the nation was founded on religion. This goes back to something Nia, you and I have discussed in previous podcast episodes. Most of the colonies were founded on a particular religion. They left Great Britain because they wanted religious freedom from the Anglican Church in Great Britain.

Nia Rodgers: They wanted to be Lutheran, they wanted to be Catholics, they wanted to be some denomination of Christian. John, we shouldn't say religion because it was Christianity.

John Aughenbaugh: In New Pennsylvania was Quaker.

Nia Rodgers: Right.

John Aughenbaugh: Many members of Congress, and again, this is the founding generation. They were second generation colonists. They had been born and raised into religious families in religious colonies. This idea that somebody could go ahead and avoid military service for religious reasons was unheard of.

Nia Rodgers: Well, you fight for your freedom, you fight for your family, you fight for your country.

John Aughenbaugh: Yes.

Nia Rodgers: God will forgive you for what you're doing.

John Aughenbaugh: Yes and God will protect you on the battle.

Nia Rodgers: In defense of those ideals.

John Aughenbaugh: The fifth one, Madison wanted to weave the Bill of Rights into the main text of the Constitution, instead of just placing them at the end. His colleagues persuaded him that that would only make the reading of the Constitution mortar at the [inaudible] .

Nia Rodgers: I'm not trying to be ugly about Madison, but a lot of what he wanted to do would've made it a lot more complicated a document.

John Aughenbaugh: Oh, my goodness, yes.

Nia Rodgers: If we had to search through that thing for the amendment, first of all, they wouldn't be amendments, they would be rewrites of the original.

John Aughenbaugh: Yes.

Nia Rodgers: You wouldn't have amendments anymore, but also I think it's good that they're at the end.

John Aughenbaugh: I like that they stand alone because you read the main text and then you have, particularly the Bill of Rights, a discrete section that basically says, these are our civil liberties.

Nia Rodgers: If you're not going to read the Constitution, at least read the amendments.

John Aughenbaugh: Sure.

Nia Rodgers: At least understand what your fundamental rights are, even if you're not going to bother to read the Constitution. Which is fine. There are people who don't read the Constitution, I did not say it's fine, it's not fine, but you should read the Constitutions sometimes, if nothing else so that you know what's in it.

John Aughenbaugh: Yeah.

Nia Rodgers: But if you don't, at least knowing what's in the amendments helps you understand. We're going to later on get to things that aren't in there that you think are in there, but that's a different episode. What else has been?

John Aughenbaugh: What I'm going to do to conclude this episode is to talk about proposed amendments that have not been ratified by the state.

Nia Rodgers: This is now we're past the dudes in the room going, "No James, no, we're not going to do." Do you think he went by James? Do you think they called him Jimbo?

John Aughenbaugh: I think he went by Mr. Madison.

Nia Rodgers: Oh, okay.

John Aughenbaugh: This was a more formal time.

Nia Rodgers: Okay.

John Aughenbaugh: If you read personal letters between members of the founding generation, their personal letters frequently started with, "My dearest Thomas." They were formal.

Nia Rodgers: My dearest Thomas, I was speaking the other day with General Washington.

John Aughenbaugh: Yes.

Nia Rodgers: You would've put his title and his last name as opposed to, "I was speaking the other day with George."

John Aughenbaugh: George and I were having some cider.

Nia Rodgers: He would've been referred to as Mr. Madison.

John Aughenbaugh: Yeah.

Nia Rodgers: Or if by his enemies, "That damn Madison."

John Aughenbaugh: Yeah, that damn Madison.

Nia Rodgers: Or something along that.

John Aughenbaugh: When he became president, that SOB president.

Nia Rodgers: We are now past the hanging out in Philly doing stuff.

John Aughenbaugh: Yes.

Nia Rodgers: These are things that the Congress has proposed.

John Aughenbaugh: Yeah.

Nia Rodgers: Then the states have gone, "Yeah."

John Aughenbaugh: Yeah, the states have rejected them. The first one is in the 11th Congress, which was from 1809-1811. This is a proposed amendment, which I know you actually support. This is an amendment that would have voided US citizenship if a person accepted a title of nobility or honor from another country.

Nia Rodgers: Indeed. You don't get to be Prince John, for a variety of reasons, because Prince John was not the best prince. But that's not cool, Americans don't have titles. I will not say that we are not a country without classes, but we certainly don't use titles to separate ourselves from each other. That is not cool. I totally agree with that. If you want a tittle that's awesome. When Megan became Duchess of whatever, I can't remember which one. It's not Cambridge, because that's the other brother. But anyway, Duchess of Sussex, she voided her right to call herself an American. You're now British. You sworn through to the British crown, that's awesome. The Queen is cool, I like her. Go forth and enjoy your life, but you can't be an American if you're going to do that.

John Aughenbaugh: Yes.

Nia Rodgers: I like that one. But the states were like, "No, we're good."

John Aughenbaugh: Yeah, we're good.

Nia Rodgers: We're going to let people take titles.

John Aughenbaugh: The second one is pretty controversial. It was proposed in 1861 before the Civil War. It was an amendment that would have prohibited Congress from interfering in state domestic institutions concerning slavery.

Nia Rodgers: Trying to head off the Civil War.

John Aughenbaugh: Yes. It would have basically added to the Constitution, the Supreme Court's ruling in Dred Scott versus Sanford. Because in Dred Scott, not only did the Supreme Court say that slaves had no legal and political rights, but the majority opinion also said, the United States Congress had no authority to regulate the institution of slavery. It would have clearly said that in the Constitution. Not surprisingly, can you guess which states, from what geographical part of the country, rejected it?

Nia Rodgers: That could not have been acceptable to the Northern States.

John Aughenbaugh: No Northern state ratified that amendment.

Nia Rodgers: Yeah, abolition. At the end, 1861 was too late for that. You might have been able to pull that off in the late.

John Aughenbaugh: Maybe 1860 before the presidential election, but not in 1861.

Nia Rodgers: Yeah.

John Aughenbaugh: 1924 and by the way, these proposed amendments really highlight the evolution and change in our country. In 1924, there was a proposed amendment that would allow Congress to regulate child labor. This would have overturned the Supreme Court's ruling in Hammer v. Dagenhart in

1918. By the way, very few states ratify this proposed amendment. Because in many states, that would have forced a whole bunch of their industrial operations to change their labor practices? Yes.

Nia Rodgers: But we eventually do get that. We just don't get it as an amendment.

John Aughenbaugh: We don't get it as an amendment.

Nia Rodgers: We get it as an Congressional law.

John Aughenbaugh: We get a law passed by Congress, the Fair Labor Standards Act, which was deemed constitutional by the Supreme Court. In the case of US vs. Darby.

Nia Rodgers: Okay. We just don't get it as an amendment.

John Aughenbaugh: That's right.

Nia Rodgers: We get it as a public law.

John Aughenbaugh: Yes.

Nia Rodgers: Okay. Really it's a good thing. I'm just saying. A 13 year old child working in this coal mine? I don't think so. That's a terrible idea.

John Aughenbaugh: Yeah. Work in this textile plant when you are 12 years old for 60 hours a week. That is not good. The next one is pretty controversial. The Equal Rights Amendment was ratified by the United States Congress in 1972. Now, unlike the 27th Amendment, which was ratified by the states, the Equal Rights Amendment quite clearly had a clause that said the states had to ratify it within, I think, it was first five years and then a second five years. If the necessary number of states did not ratify it, then the amendment died.

Nia Rodgers: Which by the way is three-fifths. Right?

John Aughenbaugh: Yes.

Nia Rodgers: It's three-fifths of the states have to ratify it.

John Aughenbaugh: Three-fifths of states have to ratify it. There's some debate about this and we could do a podcast episode about it. When we get to the end of the second five-year window, the necessary number of states had not ratified. I think it was 35 out of 38.

Nia Rodgers: So it's sunsetted.

John Aughenbaugh: It's sunsetted.

Nia Rodgers: We're done. That would mean that it has to go all the way back through the process again.

John Aughenbaugh: It has to go through the Congress and then go to the states again.

Nia Rodgers: Okay.

John Aughenbaugh: Now, the Supreme Courts never ruled on it, never heard a case. I think three of the 35 states rescinded their approval. Three states, including Virginia, I think last year, ratified it while 38 states approved it.

Nia Rodgers: I see. Not all at the same time, that's interesting.

John Aughenbaugh: Not within the statutory window. Again, three states rescinded it and we don't know if states can rescind their approval of an amendment.

Nia Rodgers: Yeah, that's a murky legal question.

John Aughenbaugh: That's a murky legal question.

Nia Rodgers: Never mind. I've changed my mind. I don't agree. You already said you were in. You already called dibs. Okay, that would need to go to the Supremes to be untangled.

John Aughenbaugh: Yes. Interestingly enough, the last two presidential administrations have issued legal memorandums where they have concluded. Notice I said the last two, so Trump and Biden have issued legal memorandums out of their Office of Legal Counsel, concluding that because the necessary number of states did not ratify it, supporters of an Equal Rights Amendment, will have to start at the beginning. The last proposed amendment and we've actually talked about this at a previous podcast episode, is Congress in 1978 accepted an amendment for the District of Columbia to become a state.

Nia Rodgers: Is there a sunset on that one?

John Aughenbaugh: Yes, There was.

Nia Rodgers: Okay.

John Aughenbaugh: Which is why the United States Congress once again reconsidered DC statehood during the Trump administration.

Nia Rodgers: Got you. That one doesn't go anywhere once it gets out of Congress.

John Aughenbaugh: No, it doesn't go anywhere.

Nia Rodgers: For all the reasons we talked about in that episode of it's going to make things uneven, it's going to make things weird. Then you have the state that's very small and takes parts of other states and what part of it is actual state and what part of it is still federal. There's a lot of drama.

John Aughenbaugh: There are a lot of issues in regards to the DC statehood. Though I'm very sympathetic to the residents of the District of Columbia.

Nia Rodgers: They'll should move to Northern Virginia. That's the answer to that question.

John Aughenbaugh: Have Northern Virginia secede from Virginia.

Nia Rodgers: Yeah. It's not like that hasn't happened to Virginia before being west Virginia.

John Aughenbaugh: That's how we get the state of West Virginia.

Nia Rodgers: We could have North East Virginia.

John Aughenbaugh: Yes.

Nia Rodgers: They could call it Nova which would be an awesome name for a state, 54th stage of a nation is called Nova.

John Aughenbaugh: Most of us who live in the Commonwealth of Virginia already referred to that part of Virginia as Nova.

Nia Rodgers: That's right, Northern Virginia, Nova.

John Aughenbaugh: I don't know about you Nia, but when I go back home to my home state of Pennsylvania and I drop in references to Nova, most of my family's like, 'Where is this place you call Nova?'

Nia Rodgers: My family does the same thing. What is that? But they don't need more because now they've gotten used to me saying it.

John Aughenbaugh: We're going to conclude this episode. Our next episode is going to focus on things people think are in the US Constitution but are not.

Nia Rodgers: We will debate slightly whether they should be or not.

John Aughenbaugh: Sure.

Nia Rodgers: Some things should be, but some things probably should not be.

John Aughenbaugh: Should not be.

Nia Rodgers: It's part of the fun.

John Aughenbaugh: That's part of the fun. Because you're talking about the country's governing document. We should every once in a while ask, should this be in there?

Nia Rodgers: Maybe we should propose an amendment.

John Aughenbaugh: Sure.

Nia Rodgers: Thanks Aughie, we'll talk again soon.

John Aughenbaugh: Thank you, Nia.

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