

NEBRASKA TAXPAYERS FOR FREEDOM ISSUE PAPER:

SOCIALIST DEMOCRATS PLOT TO BLOCK TRUMP & CONSERVATIVE CANDIDATES.

BACKGROUND. Petrified that President Trump will win re-election in 2024, the Biden Regime and its leftist congressional and radical allies are attempting to use the 14th Amendment to the U.S. Constitution to prohibit him from running, based on a scurrilous interpretation of this amendment that would label Trump an insurrectionist. They also want to bar conservative officeholders and other conservative Trump supporters from serving, labeling them insurrection supporters. Sec. 3 of this amendment originally intended to stop former Confederate elected officials or military officers from gaining power in the reconstructed federal government following the War Between the States unless a congressional waiver done. In 1898, Congress passed a statute ending the exclusion of members for that purpose. Known as the disqualification clause, the section remained obscure in history until leftists twisted its interpretation to accuse Trump of inciting supporters to storm the Capitol on Jan. 6, 2021. Sec. 3 reads *"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 under 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 have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."* This section interpreted by the Left to mean that not only could an individual suffer removal from office but also banning from holding state or federal offices in future. The offices from which such persons barred by Sec. 3 include seats in Congress, membership in the Electoral College, and a civil or military office in the U.S. or state. Although not expressly referenced, the bar appears historically to apply to judgeships. One argument states that because the President not covered explicitly by the provision, the presidency itself is exempt from the disqualification, but the Left wants to use the disqualification clause to ban Trump, barring him as someone who already has held a public office and who participated in insurrection against the U.S. This mechanism never heretofore used against a U.S. president. Legal scholars argue about if it applies to the presidency.¹ Expect litigation on this issue soon, because state election officials charged with determining ballot access in the presidential primaries must make an initial determination if Trump eligible to serve under Sec. 3. States did enforce Sec. 3 on their own during Reconstruction and can do so again. Liberal officials invariably will find that Trump is ineligible, and he will then challenge those rulings in court. The Supreme Court will almost certainly hear at least one of the state cases regarding Trump eligibility.²

THE PROBLEM. There currently is no federal statutory authority to enforce Sec. 3; many states may simply ignore it. Liberal-run states may seek to enforce it. Allowing each state to enforce Sec. 3 in its own manner will result in a chaotic system that will question presidential eligibility. President Trump definitely will run again, so his eligibility must become determined quickly, or the 2024 GOP presidential nominating process will become embroiled in confusion. However, if Trump haters engage in long litigation tactics during the primary season, and states take different actions, a prompt Supreme Court decision could become delayed. Congress could ask the Att.-General to take primary authority to initiate



Sec. 3. Congress also could determine the standard of proof to apply to Sec. 3, which does not expressly require a conviction and historically, one was not necessary. No such requirement imposed when the provision enforced during Reconstruction. A Socialist Democrat-dominated Congress could adopt a concurrent resolution determining that an insurrection occurred and that the President, as a participant, is ineligible to run again. A concurrent resolution on Sec. 3 is non-binding and subject to judicial review. Only a court judgment can hold an individual ineligible under Sec. 3. Trump could argue that the Jan. 6 riot was not an insurrection. He could argue that Sec. 3 does not cover the President or the presidency, because that office not specifically mentioned in the text.³ Trump easily could allege that he did not engage in the rioting, did not incite it, and in fact sought to end it. It would seem difficult to prove that he intended the crowd to breach the Capitol. Yet, when Trump runs in 2024, someone will go to court charging that he is ineligible to become president because of his conduct leading up to, on, and following Jan. 6, 2021. Because this is a constitutional question, the courts must adjudicate it. The Constitution and Insurrection Act of 1867 do not define insurrection. Dictionaries define insurrection as a violent uprising against the government. The Jan. 6 rioters did not seek to violently overthrow the government, though some intended to temporarily delay the process for declaring a presidential winner.⁴ To bring this aspect of the 14th Amendment up to date and utilize it in a modern political context, Congress should pass a new law. Somewhat surprisingly, Sec. 3 terms are not self-executing. For an individual to seek judicial enforcement of the Constitution,

¹ Disqualification from Public Office under the 14th Amendment, by FindLaw Attorney Writers, 8-31-2021.

² Gerard Magliocca, Enforcing the 14th Amendment's Bar on Insurrectionist Officers and Candidates, 2-15-2021.

³ Ibid.

⁴ Noah Feldman, Trump's 2024 Hopes.....in Bloomberg Opinion, 1-11-2021.

Congress generally must have passed a statute giving litigants a cause of action. Congress can enhance the enforceability of the 14th Amendment ban on specific individuals holding public office by permitting private citizens to bring lawsuits for alleged violations of Sec. 3. In theory, a law passed by Congress to implement Sec. 3 could give a competing candidate for the same office the necessary standing to bring a civil lawsuit. When Trump runs in 2024 and a plaintiff or Democrat nominee sue to enjoin his campaign, the constitutionality of the legislation would undoubtedly go before the U.S. Supreme Court, with unpredictable results.⁵ Removing an official requires a "conviction" by a 2/3rds Senate majority under the Constitution. Under congressional precedent, only a simple majority needed for disqualification. Historically, that vote only happens after a conviction, and a disqualification would require conviction first. To do otherwise would seem the equivalent of punishing the president for an offense he did not commit. Congress can later remove disqualification, but only if 2/3rds of both houses vote in favor of doing so.⁶

DEMOCRAT REVENGE. As Democrats face increasingly bleak projections in 2022 and 2024, a group of Democratic lawmakers and allies are plotting to stop Donald Trump from ever holding office again. About one dozen Democratic congressmen are quietly speaking about using a constitutional mechanism to prevent Trump from becoming president again, according to [The Hill](#). Biden Regime [federal prosecutors are trying to charge Trump](#) for inciting the Capitol riot, which could, in theory, lead to his conviction in a court of law. Such conviction could give Congress the authority to pass a law barring Trump from office on the premise that he had "engaged in insurrection or rebellion," as the 14th



Amendment states.⁷ Leading the attack on Trump are Deepak Gupta, a leftist constitutional law expert, and Brian Beutler, editor-in-chief of Crooked Media. Sen. Tim Kaine, a Virginia Democrat and the Democratic VP candidate in 2016, is among the ringleaders proposing to use the 14th Amendment to prevent Trump from seeking federal office again. In a Feb. 3, 2021 speech, he said, "What I want to do is offer my colleagues an option to impeachment."⁸ Democrats approached Harvard constitutional lawyer Laurence Tribe about how best to apply the amendment to the former president. "I hear it being raised with considerable frequency these days both by media commentators and by members of Congress and their staffs, some of whom have sought my advice on how to implement Section 3," said Tribe, who met with the staffs of Reps. Jamie Raskin (D-Md.), a member of the House select

committee investigating the riot, Jerry Nadler (D-N.Y.), chairman of the House Judiciary Committee, and Debbie Wasserman Schultz (D-Fla.). It is unclear what mechanism they would use to apply Sec. 3 to Trump. Some experts say the House and Senate could vote by a simple majority to find the 45th president engaged in insurrection against the government. Others, including Tribe, say the determination must come from a federal court or a neutral fact-finding body.⁹ Raskin served as a House manager during Trump's impeachment trial over his role in the Jan. 6 attack. Days after the Trump acquittal in the Senate, Raskin discussed the constitutional option, saying Trump was "right in the bullseye middle of that group. The point is that the constitutional purpose is clear, to keep people exactly like Donald Trump and other traitors to the union from holding public office," adding that the legal mechanics would require "more research." Under the 14th Amendment, restoring Trump's eligibility then would require a supermajority vote. One bill, introduced by Rep. Steve Cohen (D-Tenn.) after the 2021 Senate impeachment trial, would permit the attorney general to make the case before a 3-judge panel that an officeholder had violated Sec. 3 and should become barred from future office. This bill has not become law. One leftwing group, Free Speech for People, has mounted a pressure campaign against top state election officials to apply the 14th Amendment to Trump when he runs again. Doing so would effectively bar his name from appearing on their ballots in 2024. This radical group sent letters to chief election officials in all 50 states and Washington, D.C., claiming that they have a constitutional duty to bar Trump from appearing on future ballots. The group argues that Sec. 3 does not require additional steps by Congress, because the 14th Amendment is already operative by itself. "We intend to litigate this question," John Bonifaz, the group's president, told [The Hill](#), so if a secretary of state does not follow the mandate of Section 3, we will bring this matter in court." Yet, some scholars think such lawsuits could face serious hurdles and would likely face a challenge in the Supreme Court. "If a Secretary of State declines to find

⁵ POLITICO. [Congress Still Has One More Way to Ban Trump from Future Office](#), by Kimberly Wehle, 2/05/2021. *Kimberly Wehle is a professor of law at the University of Baltimore School of Law.*

⁶ Jan Wolfe, [Impeachment or the 14th Amendment: Can Trump be Barred from Future Office](#), Jan. 14, 2022.

⁷ Kelsey Vlamis, INSIDER. [Here's How the 14th Amendment Could be Used to Prevent Trump from Running Again](#), 2-15-2021.

⁸ U.S. Politics. Masood Farivar, [Some Lawmakers, Experts Eye 14th Amendment to Bar Trump from Future Office](#), 2-4-2021.

⁹ New York Post, [Democrats explore barring Trump from holding office over Jan. 6 riot](#), by [Callie Patteson](#), Jan. 6, 2022

Trump ineligible, it is far from clear who could challenge that determination,” said Gerard Magliocca, a law professor at Indiana University, who noted that state law varies widely on the issue. According to Tribe, if lawsuits arose over Trump eligibility in 2024, the outcome of that litigation would likely hinge on if a neutral fact-finder established by Congress had previously determined that Trump's role in the Jan. 6 attack triggered Sec. 3. Absent that, a lawsuit by Trump challenging his exclusion from a ballot would “stand a good chance of success,” he said.¹⁰ The Supreme Court has noted in the context of the Insurrection Act, it is generally up to the President to determine whether a civil disturbance rises to the level of an insurrection or obstruction of the laws serious enough to overcome the ability of civil authorities to suppress it. Consequently, a presidential invocation of the Insurrection Act would likely suffice to establish the existence of an insurrection for 14th Amendment disqualification purposes. President Biden therefore by edict could determine that Pres. Trump and his adherents violated Sec. 3. A legislative determination that an insurrection occurred pursuant to one



of these constitutional authorities would likely have judicial weight, if a prosecution occurred for insurrection or any procedure Congress might conjure up to determine disqualification under Sec. 3. Once an insurrection deemed to have occurred, the question becomes if a specific person engaged in it. Sec. 3 does not establish a procedure for determining who is subject to the proscription on holding office, instead providing only a process by which the disability may reverse (i.e., by 2/3rds vote in both houses). Although definitions of insurrection and rebellion for purposes of the 14th Amendment would not necessarily confine to statute, a criminal conviction for insurrection or the “levying war” definition of treason would provide sufficient proof, and each of them contains a bar on holding office. A Socialist Democrat majority in either chamber could presumably vote to preclude him from taking office.¹¹ A resolution finding that the elements of Sec. 3 now satisfied requires only a majority vote. This requirement could appear immediately achievable in both houses of Congress, if Democrats can muster majorities. Thus, whether Trump is ineligible for future office because he aided or comforted insurrectionists is a matter for Congress to decide.¹² Gary Bauer, chairman of the Campaign for Working Families, says use of the term “insurrection” is key for the Socialist Democrat narrative. “[They are hoping] to legally disqualify former President Trump and multiple conservative members of Congress from running for re-election,” he states, “and by doing that [they would be] disenfranchising one half of this country.”¹³

THE RINGLEADERS. Rep. Jamie Raskin concentrates on 1 idea to bar the former president. He suggested that the constitutional provision preventing those who “engaged in insurrection or rebellion” from holding office may prevent Trump from becoming president for a second, nonconsecutive term, saying, “If they're people who did participate in insurrection, or rebellion, they are constitutionally barred from holding federal or state office again.” But Raskin, previously a tenured constitutional law professor at American University, said it is questionable if that section of the 14th Amendment is “self-executing” and can “operate in itself” without requiring a previous conviction. “There's also another view out there that, for example, Donald Trump already determined to have participated in insurrection and rebellion by virtue of his impeachment by the House by majority vote, and then the determination by 57 senators that he incited violent insurrection against the union,” said Raskin. Although the Senate refused to impeach Trump, leftists could argue that a majority has established as a legislative fact that he participated in insurrection or rebellion. Legal scholar Laurence Tribe, Raskin's Harvard Law School professor and a leftist constitutional scholar, told [The Hill](#) that the answer to whether Democrats could use Sec. 3 of the 14th Amendment against Trump to prohibit him from ever holding office again is a highly complicated question over which constitutional scholars disagree. For example, some experts told [The Hill](#) the mechanism is not “self-executing” and thus would require Congress to act. Tribe, though, suggested Congress would need to establish a neutral fact-finding body to determine if Trump “engaged in insurrection or rebellion” as the amendment states or assign a federal court to establish whether Trump crossed that line.”¹⁴ Majority House Whip James Clyburn, who chairs the Select Committee, dismissed the notion that holding an impeachment trial of Trump after he left office is like persecuting a private citizen, saying, “The impeachment still stands.” He also suggested that Trump conduct bars him from holding office under Sec. 3. “Quite frankly he should be convicted and forever barred from holding any office of honor in this country for the rest of his life, he concluded.”¹⁵ Sen. Tim Kaine, (D-VA.), is in the forefront of the 14th Amendment push among Democrats, also Sen. Chris Coons (D-Del.). “What Senator Kaine is talking about is a censure resolution that would also specifically include the elements of the 14th Amendment that lead to disqualification from

¹⁰ John Kruzell, [Democrats Quietly Explore Barring Trump from Office over Jan. 6](#), 1-6-2022. [The Hill](#).

¹¹ POLITICO. [Congress Still Has One More Way to Ban Trump from Future Office](#), by Kimberly Wehle, 2/05/2021. *Kimberly Wehle is a professor of law at the University of Baltimore School of Law.*

¹² [Time to Reconsider the 14th Amendment for Trump's Role in the Insurrection](#) by James Wagstaffe. 2-22-2021.

¹³ Chad Groening and Jody Brown, [Dems' Effort to bar Trump from Running Again is Real](#), Jan. 10, 2022.

¹⁴ Mike Miller, [Democrats Quietly Plot to use Provision in Constitution to bar Trump for Holding Political Office](#), Jan. 9, 2022.

¹⁵ Fox News Flash, [Clyburn suggests 14th Amendment could bar Trump from holding office again](#), Jan. 13, 2021.

future office," Coons said, "That's intriguing to me and something I'm willing to look at. The bottom line here is we have to deliver accountability for the events of January 6."¹⁶

THE DEFENSE. Sec. 3 rarely used, mainly targeting Civil War figures, a much different context than the Jan. 6 riot. Therefore, it is fuzzy about how much past precedents offer useful guidance for applying to Jan. 6. Determining who has engaged in either of the 2 disqualifying activities, engaging in insurrection or rebellion or giving aid or comfort to an enemy, is probably a difficult task given the scarcity of precedents and lack of clear definitions. The Constitution does not define "insurrection" or "rebellion." Those who resist this use of Sec. 3 assert that any preemptive congressional action would appear an unconstitutional bill of attainder (Art. I, sec. 9, cl. 3), applying advanced criminal punishment to an individual by statute instead of judicial trial.¹⁷ Sec. 3 applies only to former officials who swore an oath, meaning that an average citizen who stormed the Capitol and who did not have previous government or military service could still serve in office. The biggest obstacle to using the Disqualification Clause against a potential candidate is the lack of a mechanism to implement it. Congress would have to pass legislation declaring the riot as an insurrection under Sec. 3. Republican resistance to labeling the events of Jan. 6 an insurrection will become a major obstacle to passing a new law; a new law only with extreme difficulty would meet the 60-vote threshold in the Senate to move to a final vote. To prove in court that Jan. 6 amounted to an insurrection "would be a tough row to hoe," said Frank O. Bowman III, a University of Missouri law professor.¹⁸ Trump could argue in court that he is immune from disqualification either under federal law or the laws of a particular state in which he seeks ballot access. The former president could argue that what occurred at the Capitol was not an insurrection, that his role in that event does not mean that he was engaged in insurrection, or that the presidency is a unique office not covered by Sec. 3.¹⁹ Trump could appeal a Sec. 3 determination by Congress to the courts, where he would face detailed questioning in a judicial proceeding. Allowing a simple majority of Congress to impose a lifetime ban on a former president would become bad precedent. Once in control, Republicans could return the favor by voting to disqualify Democrats for expressing views on protests like BLM that turned into riots. There is a great deal of obvious political risk in allowing Congress to make such determinations by majority vote and potentially disqualifying from office members of the minority party with little evidence and through an entirely partisan political process.²⁰ Trump at one point in the Jan. 6 rally told his followers to "peacefully and patriotically" march to the Capitol, a comment to which his defenders point as part of the reason why he does not bear responsibility for the riot at the Capitol. The Senate acquitted him on charges of inciting an insurrection. Also acquitted on charges of abuse of power earlier in his tenure. Polls show him the clear favorite to win the 2024 Republican nomination.

TEST CASE. The leftist group Free Speech for People is representing leftist voters in North Carolina to challenge the candidacy of conservative Cong. Madison Cawthorn for re-election to Congress under Sec. 3, alleging that he participated in the Capitol insurrection. Cawthorn spoke at the rally on Jan. 6, shortly before the riot began, but he did not participate in the riot. A team of leftist N.C. attorneys has initiated the challenge before the State Board of Elections. If ousted, Cawthorn could seek judicial review of the adverse decision. Under North Carolina candidacy challenge statute, a registered voter in a district may challenge a candidacy based on "reasonable suspicion or belief" that he "does not meet the constitutional or statutory qualifications for the office." Once a challenge filed, the burden of proof shifts to the candidate, who "must show by a preponderance of the evidence . . . that he or she is qualified to be a candidate for the office." The statute authorizes "depositions prior to the hearing, if requested by the challenger," and "subpoenas for witnesses or documents . . . including a subpoena of the candidate." The challengers intend to depose Cawthorn and members of his staff. After the hearing, a panel will issue written findings of fact and conclusions of law. Either side can appeal its decision to the State Board and can appeal the State Board decision to the North Carolina Court of Appeals.²¹ Because this is new legal territory, experts imagine great difficulty to prevent Cawthorn from serving. Yet, leftists intend to use this case as a precedent to bar Trump from re-election. Multiple bills sponsored by other Democrat activists are trying to use the 14th Amendment against Republicans who supported the valid Trump contention that the 2020 election was fraudulent.



¹⁶ Fox News, [Schumer Leaves Door Open to 14th Amendment Measure to Bar Trump from Office.](#), Feb. 11, 2021.

¹⁷ Mike Miller, [Democrats Quietly Plot to use Provision in Constitution to bar Trump for Holding Political Office](#), Jan. 9, 2022.

¹⁸ Louis Jacobson, [Unpacking the Theory that the 14th Amendment Could Keep Donald Trump out of the Oval Office in 2024](#), 2-4-2022.

¹⁹ Mike Miller, [Democrats Quietly Plot to use Provision in Constitution to bar Trump for Holding Political Office](#), Jan. 9, 2022.

²⁰ U.S. Politics. Masood Farivar, [Some Lawmakers, Experts Eye 14th Amendment to Bar Trump from Future Office](#), 2-4-2021.

²¹ Rob Schofield, [Challenge Filed against Cawthorn Candidacy under anti-Confederate provision of 14th Amendment](#), in *Defending Democracy*, Jan. 10, 2022.

TARGETING CONGRESSMEN. Socialist Democrats increasingly holler for repercussions against 140 congressmen who supported Trump to question the results of the tainted Nov. 2020 election, seeking to expel them all from the House. Several of these Dems are on the House Select Committee investigating the January 6 riot. "Even if Section 3 of the 14th Amendment isn't self-executing against the former president, it is certainly a strong basis for a vote of expulsion from the House for those members who aided and abetted the insurrection," Laurence Tribe said.²² However, voting against certification of the electoral college does not equal insurrection, not anything illegal or unconstitutional. Congress has never tried to use the 14th Amendment to expel a member, and anyone excluded by that means would have a valid case in court. The Supreme Court has not ruled on the constitutionality of an exclusion under the amendment or on the interaction with Congress' separate power to expel a member through a 2/3rds vote.²³ Nevertheless, Missouri Democratic Rep. Cori Bush and 47 co-sponsors introduced a resolution directing the House Ethics Committee to investigate if any members of Congress violated the Constitution by seeking to overturn the 2020 presidential election, citing the 14th Amendment. A bill from Democratic Rep. Steve Cohen (TN.) aims to enforce the 14th Amendment provision against congressmen by allowing the Att.-General to argue before a 3-judge panel that an officeholder or former officeholder engaged in insurrection or rebellion.²⁴ The biggest obstacle to using the Disqualification Clause against an incumbent is the lack of a mechanism to implement it. "It is unclear what is required to keep someone out of office this way," said Brian Kalt, a law professor at Michigan State University, "Some say that Congress would have to pass legislation declaring the insurrection to be covered under the amendment. Others say that a court could find the facts. Still others say that the last word would go to the House in voting whether or not to seat."²⁵

HYPOCRITES. The leftwing media commonly refers to the Capitol riot as an insurrection, though no one has faced charges for such a crime. The House Kangaroo Court Select Committee on the January 6th Insurrection desperately seeks to link Trump in some small manner to said "insurrection." These Trump haters actually hypocritically objected to certification of Florida GOP electoral votes in 2016, objecting to certification votes for Trump 11 times. They stood silent after the 2016 election led to violent riots in Washington, D.C. and other cities across the nation, led by radical leftists like Antifa and Black Lives Matter. Democrats plan to vote on a censure resolution to declare Trump engaged in "insurrection," not needing or seeking GOP House votes. A resolution to censure Trump would require a simple majority vote to pass in the House and Senate. Democrats rejected Trump Republicans from inclusion on their select committee investigating the Capitol riot. Instead, they chose committed 'Never Trump' Republicans Liz Cheney (R-WY) and Adam Kinzinger (R-Ill.) for their panel. They then promoted Cheney to co-chairman in an attempt to portray the group as a neutral fact-finding body.²⁶



TAKE ACTION NOW. Socialist Democrats and their radical legal, political, and media allies will use the most underhanded and spiteful means to stop the re-election of President Trump and his congressional allies. If they win, they will have a permanent stranglehold on our nation. It is vital that Trump and allies win in 2022 and 2024, so that they can put a screeching halt to our downward spiral toward socialism. The future of our nation depends on Trump and his conservative GOP allies in Congress restoring fiscal and social sanity across America. Using the information above, lobby your congressman and 2 NE senators to vote against Congress using Sec. 3 to bar Trump and many other conservatives from

election or re-election to local, state, and federal office. Email netaxpayers@gmail.com for Capitol Hill contact information and to join our NTF *President Watch Project*.

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²² Newsmax, Feb. 19, 2022. [Rep. Jamie Raskin Suggests Using 14th Amendment to Bar Trump from Office](#).

²³ [Excluding Lawmakers under 14th Amendment no Easy Task](#), by Michael Macagnone, Jan. 12, 2021, Congress Roll Call.

²⁴ Emily Brooks, Political Reporter, [Jan. 6 Panel Member Floats 14th Amendment as Way to Bar Trump from Holding Office](#), Jan. 17, 2022.

²⁵ Louis Jacobson, [Unpacking the Theory that the 14th Amendment Could Keep Donald Trump out of the Oval Office in 2024](#), 2-4-2022.

²⁶ One Political Plaza - Home of politics. [Democrats Seeking to Use 14th Amendment to Bar Trump from Office](#), Jan 7, 2022.