

Amendment XIV disqualification argument redux

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Again we see officeholders, commentators, and editors on the left insisting that Amendment XIV disqualifies Donald J. Trump from reelection. But a number of other commentators, including one law professor, are objecting.

The Amendment XIV argument

Bob Unruh at *WorldNetDaily* [describes](#) “an increasing number of voices” seeking to exclude Trump from the ballot. Their theory: Donald J. Trump incited an “insurrection” on January 6, 2021. Donald Trump had previously sworn to uphold the Constitution – the Presidential Oath. Therefore Donald Trump is constitutionally ineligible to hold or enjoy office of honor, trust or profit under the United States.

Whoever those voices belong to, are raising an argument, some of whose proponents thought it was weak [nine months ago](#). Recall that Rep. David Cicilline (D-R.I.), after the failure of the Second Impeachment, introduced a bill to disqualify Trump under that section.

Cicilline says “The legislation details testimony and evidence demonstrating how Donald Trump engaged in insurrection against the United States.”

pic.twitter.com/vMluKQLdfZ— Nicholas Wu (@nicholaswu12) [November 16, 2022](#)

Amendment XIV Section 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. But Congress may by a vote of two-thirds of each House, remove such disability.

As *CNAV* pointed out then, Mr. Cicilline failed to take into account the Amnesty Acts of 1872 and 1898. The latter, passed on the eve of the Spanish-American War, removed all remaining “disabilities” of Confederate legislators, governors, or officers. But more to the point: *both these Acts, passed by two-thirds votes of both Chambers of Congress, removed the Amendment XIV Section 3 disability for all time.*

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So according to sober legal analysis, Section 3 is a dead letter anyway.

Jonathan Turley called the Amendment XIV argument a “legal urban legend,” saying the notion of applying it today is “chilling.” He explicitly repudiated the charge of “incitement to insurrection.” The Democratic House of Representatives brought Articles of Impeachment against Trump for this – but the Senate acquitted him. Therefore he stands *not guilty*, even if Section 3 is still alive.

A law professor speaks

Alan Dershowitz, in a guest column to *The Daily Caller*, said last week that Amendment XIV cannot disqualify Trump. According to his read, Amendment XIV Section 3 applied *solely* to the Confederate President, Vice-President, Senators, Representatives, State legislators, and Confederate States Army officers. (That is, until the Amnesty Acts of 1872 and 1898.) Furthermore, that section *did not provide* any criteria for deciding who, *after* the War Between the States, “participates in insurrection or rebellion,” or who shall judge such a controversy.

In the absence of any such designation, it would be possible for individual states to disqualify a candidate, while others qualify him. It would also be possible for the incumbent president to seek to disqualify his rival, or for a partisan congress to do so. There is no explicit provision for the courts to intervene in what they might regard as a political question. So elections might be conducted with differing interpretations of eligibility and no procedures for resolving disputes about them.

Which is what we see today. Furthermore:

It is absolutely certain that if Trump were disqualified by some person or institution dominated by Democrats, and if the controversy were not resolved by the Supreme Court, there would be a constitutional crisis.

Which would appear to be what the Democrats want. Which is ironical in the extreme, because the Democrats were the party of “insurrection and rebellion” during that War.

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