

The Real Insurrection in America



By Paul Engel

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- With all of the talk about Donald Trump and the Fourteenth Amendment, I've seen few actually dive deep into the constitutionality of the suits.
- Most of the statements come from a fundamental misunderstanding of the Fourteenth Amendment.
- So who really committed insurrection?

Although I've talked about the recent attempts to keep Donald Trump off the 2024 ballot on the radio program, I realized I haven't taken the time to do an in-depth article here. I apologize for taking so long to broach this extremely important topic in this venue.

Unless you've been hiding from everything politics in the United States, you are aware that there are actors in several states that have sued in their state courts to disqualify Donald Trump from being on their states primary election ballot for President of the United States. As of this writing, in only two states, Colorado and Maine, have those actors found some measure of success. While this case will undoubtedly find its way to the Supreme Court, this truly is a state issue, even though it has national importance.

We begin with the basis of the multiple claims that Donald Trump is ineligible to hold federal office under Section 3 of the Fourteenth Amendment to the Constitution of the United

States. Most of these suits have been filed by a single person, John Anthony Castro, a candidate for the republican nomination for President with an extremely small chance of success. To date, Mr. Castro has filed suites in Arizona, Idaho, Kansas, Montana, Nevada, New Hampshire, North Carolina, South Carolina, Utah, and West Virginia. Interestingly enough, it does not appear that Mr. Castro has filed a suit in his home state of Texas. In addition, the group Citizens for Responsibility and Ethics in Washington has filed suit in Colorado, and Robert Davis has filed suit in Michigan.

Meanwhile, the Secretary of State of the State of Maine has determined, under state law, that Donald Trump is ineligible to be on the ballot because of his participation in events at the capitol on January 6th.

While there are subtle differences between these suits, they are all based in a claim that Donald Trump is ineligible to hold federal office for participating in an insurrection on January 6th, 2021.

The Fourteenth Amendment

When most people think of the Fourteenth Amendment, they generally focus on the first section. That covers things like citizenship, due process, and equal protection of the law, while the argument being made in the states comes out of Section 3:

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.

[U.S. Constitution, Amendment XIV, Section 3](#)

While the most basic question that should be asked is did Donald Trump incite, assist, or engage in a rising or rebellion against the government of the United States, there are other things that need to be considered as well.

Standing

I'm sure some of you are wondering, does Mr. Castro, a resident of Texas, have standing to bring suit in these other states. The short answer is yes. As a candidate for the republican nomination for the Presidential election, it's expected that Mr. Castro would logically compete for the votes in all 50 states. Therefore, if Mr. Trump is ineligible for office in any, it would increase what little chance Mr. Castro has of winning delegates in that state.

Civil Office

One of the arguments being made is that Donald Trump is not subject to Section 3 because the office of President is not listed.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President,

[U.S. Constitution, Amendment XIV, Section 3](#)

The Fourteenth Amendment lists the three offices elected by the people of the United States, Senator, Representative, and elector for President and Vice-President. Since neither the President nor the Vice-President are elected by the people, they are not included in this part of the list. However, that's not the entire list.

No person ... hold any office, civil or military, under the United States

[U.S. Constitution, Amendment XIV, Section 3](#)

This is where things get a little tricky. Some people claim that the President is not a civil officer,

By this term are included all officers of the United States who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or the lowest departments; of the government, with the exception of officers of the army and navy.

[Civil Officer – The Free Legal Dictionary](#)

Therefore the President is not subject to Section 3. But that's not what the Constitution says.

No person ... hold any office, civil or military, under the United States

[U.S. Constitution, Amendment XIV, Section 3](#)

It seems difficult to say that the office of the President is not an office under the United States.

An office is a right to exercise a public function or employment, and to take the fees and emoluments belonging to it,.

[Office – The Free Legal Dictionary](#)

Previously Taken an Oath

There is one other area where I see a lot of misunderstanding when it comes to Section 3 of the Fourteenth Amendment, and that is the need to have perviously taken an oath.

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,

[U.S. Constitution, Amendment XIV, Section 3](#)

Just because someone has participated in an insurrection or rebellion does not disqualify them from holding office under the Fourteenth Amendment. They must have previously taken an oath to support the Constitution of the United States as a member of Congress, an officer of the United States, or as a member of the legislature or officer of any state. I don't know of anyone claiming the Donald Trump did not take an oath to support the Constitution of the United States when he assumed the office of President, but it does shoot holes in the claim that the Presidency is not an office of the United States.

Insurrection

Which leads us to the crux of the matter. Did Mr. Trump engage in insurrection or rebellion?

shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

[U.S. Constitution, Amendment XIV, Section 3](#)

This entire argument rests on the claim that the events of January 6th, 2021 was an insurrection. That Donald Trump helped to organize the event, and that when he said,

I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard.

[Donald Trump Speech "Save America" Rally Transcript January 6](#)

he really meant for people to overturn the government of the United States. After all, that is what an insurrection is.

A rising or rebellion of citizens against their government, usually manifested by acts of violence.

Under federal law, it is a crime to incite, assist, or engage in such conduct against the United States.

[Insurrection – The Free Legal Dictionary](#)

Since Donald Trump spoke to the group that would walk from the Ellipse to the Capitol, it would be difficult to say that he did not engage in the demonstration. And though he did acknowledge that people would be walking to the Capitol, he neither encouraged them to do so, nor to act in an illegal fashion. Acknowledging that people would be peacefully and patriotically assembling to petition their representatives for a redress of the grievances they perceived, was in no way an attempt to rebel against their government. Since at least five (5) states violated the Constitution by appointing electors for President in a manner other than the one determined by their state's legislature, they were asking their members of Congress to enforce the Constitution which created the government of the United States, even though the governments of those states refused to do so.

Fundamental Misunderstanding

The cases against Donald Trump are fundamentally based on a misunderstanding. Granted, that misunderstanding has been promulgated and promoted by supporters of a political agenda, it's a misunderstanding nonetheless: That the government of the United States is sovereign and therefore above the law.

The government of the United States did not create the United States. Both the United States and its government are a creation of a compact between the states: The Constitution. No action by the United States is the supreme law of the land unless it is founded on the Constitution of the United States.

This Constitution, and the Laws of the United States which

shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

[U.S. Constitution, Article VI, Clause 2](#)

To claim that the demonstration on January 6th, 2021 was an insurrection requires the assumption that political parties are the authority in the United States. At least according to Noah Webster.

A rising against civil or political authority; the open and active opposition of a number of persons to the execution of a law in a city or state.

[Insurrection – Webster’s 1828 Dictionary](#)

For a rising in the United States to be insurrection, it must be against a legitimate civil or political power. As I’ve already shown, at least five states were exercising an illegitimate power to appoint electors for President, since the manner of choosing them was established by the judicial or executive branch of the state government, not its legislature. Furthermore, the vast majority of the crowd was not looking to overturn the Congress or even the Presidency, but what was evidently the flawed and corrupt elections in several of the states. Even those who were convinced that Donald Trump had won and wanted him installed as President were not committing insurrection, since they were not trying to remove someone from office, but questioning the process by which he would be placed in it. How can the United States call itself a republic if the people in whom that sovereign power comes are not allowed to question the elections of their representatives? How can a calling for following the supreme law of the land be an insurrection against that law and the government it created?

Add to all this the obvious political biases in everything from the reporting on the event to the claims made by the

political actors. After all, when thousands shutdown highways, burned effigies, and stated that "Donald Trump is not my President", no one claimed they were committing insurrection. When violent demonstrations rampaged through Washington, D.C. in 2020, including the setting of fires across the street from the White House, those who call for such demonstrations were not accused of insurrection.

Who Has Incited Insurrection?

While the Fourteenth Amendment does not require someone to be convicted of insurrection, it does claim someone must have engaged in such a thing. In the United States we are supposed to have due process. That includes the assumption of innocence and the government bearing the burden of proof. Yet to date the only "proof" provided in support of this claim of insurrection have been misquotes, misrepresentation, and outright lies about the action of the majority of the demonstrators. Yes, some did force their way through a barrier, but that is trespassing not insurrection. There is video evidence that the majority of those who entered the capitol did so peacefully and with the consent of the Capitol Police officers there at the time. Congress was not forcibly removed, but evacuated due to an abundance of caution. In fact, Congress returned later that day to observe the rest of the counting of the votes by the electors for president.

So who has engaged in insurrection? While those who have harassed the people for the sin of being in Washington, D.C. on January 5th through 7th have committed crimes, insurrection is not one of them. Those agents of the federal government who have used abusive force, including heavily armed teams with overwhelming firepower to take someone into custody for non-violent and misdemeanor allegations, have committed crimes but not insurrection. Even those who are in the media, or who is or is not in the office of President doesn't make the government. While some of the actors in this drama we've been reviewing may come close, insurrection must be a rejection of

the government, not of those in office. Otherwise the United States is just another banana republic, run by emotions rather than the rule of law. George Washington warned us what would happen if we allow our political partisanship to rule our emotions:

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism.

[Washington's Farewell Address 1796](#)

If we continue down this road, then insurrection will no longer be political hyperbole used to promote an agenda. It will lead to something much, much worse.

It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foment occasionally riot and insurrection.

[Washington's Farewell Address 1796](#)

Is that the future you want for your children?

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