



## **UPHOLDING SECTION 3 OF THE FOURTEENTH AMENDMENT**

**Free Speech For People and Mi Familia Vota Education Fund urges Secretaries of State to uphold Section 3 of the Fourteenth Amendment to the US Constitution and bar insurrectionists, including Donald Trump, from appearing on your state ballots.**

Section 3 of the Fourteenth Amendment, otherwise known as the Insurrectionist Disqualification Clause, makes clear that anyone who has taken an oath of office and then engages in insurrection is barred from holding public office again. Former President Donald Trump incited, mobilized, and encouraged the January 6th insurrection and is disqualified under this critical constitutional provision from ever holding future public office. Secretaries of state and chief election officials across the country have the responsibility to ensure that candidates seeking to appear on their state ballots meet the constitutional qualifications for the office that they seek. We urge you to enforce this mandate and declare that Trump is barred from appearing on your state ballots for any future office.

### **Facts vs. Myths**

The following are key facts about the enforcement of Section 3 of the Fourteenth Amendment:

**Myth: the Insurrectionist Disqualification Clause only applies to someone convicted of a crime.**

**Fact:** During the Reconstruction years immediately after the passage of the Fourteenth Amendment, states, Congress, and the U.S. Department of Justice routinely applied the Insurrectionist Disqualification Clause to people who had not been convicted of any crime. For example, in *Worthy v. Barrett*, 63 N.C. 199 (1869), a board of county commissioners determined that a sheriff who had served as sheriff under the Confederacy (but was never charged with any crime) was disqualified under Section Three. This was the rule, not the exception, as the vast majority of Confederate officials were never charged with crimes. Further, as noted below in the background section, two separate 2022 court rulings have established that no criminal conviction is required to enforce the mandate of Section 3 of the Fourteenth Amendment.

**Myth: the Insurrectionist Disqualification Clause only applies to someone whom Congress has formally declared to have engaged in insurrection.**

**Fact:** Nothing in the Fourteenth Amendment says this. Furthermore, Congress specifically instructed states to implement the Insurrectionist Disqualification Clause on their own. For example, in the Omnibus Act of 1868, Congress readmitted six Confederate states (Alabama, Florida, Georgia, Louisiana, North Carolina, and South Carolina) to the Union and, as a condition of statehood, required them to apply the Insurrectionist Disqualification Clause directly (“no person prohibited from holding office under the United States . . . by section three of the proposed amendment to the Constitution of the United States, known as article fourteen, shall be deemed eligible to any office in [any] of said States, unless relieved from disability as provided by said amendment”). In the years before Congress granted amnesty to most ex-Confederates, states applied Section Three without any further instruction from Congress. This provision of the Omnibus Act has not been repealed.

**Myth: states don’t have the power to decide the qualifications of federal candidates.**

**Fact:** States have the power to bar candidates from the ballot if they do not meet the qualifications set forth by the U.S. Constitution. The Constitution says that federal elections are run by states unless Congress intervenes. U.S. Const. art. I, § 4, cl. 1. States are allowed, as part of that power, to decide who gets to be on the ballot. *Storer v. Brown*, 415 U.S. 724 (1974). Many states specifically require all candidates, state or federal, to be qualified for the offices they are running for in order to appear on the ballot. Of course, states cannot impose new substantive qualifications for federal candidates. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). But, as confirmed by U.S. Supreme Court Justice Neil Gorsuch, they can and do exclude federal candidates from the ballot who do not meet the criteria for offices set forth in the U.S. Constitution.

*Hassan v. Colorado*, 495 Fed. App'x 947, 948 (10th Cir. 2012) (Gorsuch, J.); *see also Peace & Freedom Party v. Bowen*, 750 F.3d 1061 (9th Cir. 2014).

## **Background on prior work in 2021-2022 to uphold Section 3 of the Fourteenth Amendment**

In June 2021, Free Speech For People (FSFP), a national non-profit organization dedicated to defending our democracy and our Constitution, launched the 14Point3 campaign, calling on election officials in all fifty states and the District of Columbia to uphold Section 3 of the Fourteenth Amendment to the U.S. Constitution. In 2022, FSFP filed, on behalf of individual voters, legal challenges to the eligibility of U.S. Representatives Paul Gosar and Andy Biggs, and State Representative Mark Finchem in Arizona, U.S. Rep. Marjorie Taylor Greene in Georgia, and U.S. Rep. Madison Cawthorn in North Carolina, to appear on the 2022 ballot, based on their documented role in helping to facilitate the January 6<sup>th</sup> insurrection.

With these challenges, FSFP secured critical legal precedents and victories that will be applied to future challenges to candidate eligibility under Section 3 of the Fourteenth Amendment. In the challenge against Representative Cawthorn, FSFP won an initial important victory with the North Carolina Attorney General's Office stating clearly that the North Carolina State Board of Elections has the authority to determine whether candidates are disqualified under Section 3 of the Fourteenth Amendment. In addition, FSFP won a major victory in this case before the U.S. Court of Appeals for the Fourth Circuit with the appeals court ruling that Cawthorn could not claim immunity for his involvement in the January 6<sup>th</sup> insurrection under the 1872 Amnesty Act. A federal district judge had issued an injunction blocking the Cawthorn challenge from moving forward on the supposed basis that the 1872 law, which provided amnesty for ex-Confederates, absolved future insurrectionists, including those who engaged in the January 6, 2021 insurrection.

Further, in the challenge against Representative Greene, FSFP established important precedent through Federal Judge Amy Totenberg's 73-page ruling issued on April 18, 2022, that directly refutes misconceptions regarding the constitutional provision and its applicability to current candidates for public office; confirms the ability of state election officials to declare candidates ineligible from the ballot for engaging in insurrection; and paves the way for future challenges under Section 3 of the Fourteenth Amendment, including against former President Trump. And, this challenge led to a historic hearing with Greene on April 22, 2022 before an administrative law judge in Georgia, marking the first time that a Member of Congress has been publicly questioned under oath for their role in the January 6<sup>th</sup> insurrection.

Building on this precedent, on September 6, 2022, a state court judge in New Mexico issued a ruling removing from public office Couy Griffin, a county commissioner who had engaged in the January 6th insurrection and was therefore barred from continuing to serve in that office. The case, led by Citizens for Responsibility and Ethics in Washington, on behalf of individual New Mexico voters, established that January 6th was an insurrection for the purposes of applying Section 3 of the Fourteenth Amendment. Both the Greene and Griffin cases also established that no criminal conviction is required to enforce the mandate of Section 3 of the Fourteenth Amendment.

In November 2022, Free Speech For People and Mi Familia Vota Education Fund, a national Latino voting rights organization, launched the Trump Is Disqualified Campaign to engage in public education, organizing, and legal advocacy to ensure that secretaries of state and chief election officials across the country follow the mandate of Section 3 of the Fourteenth Amendment and bar Donald Trump from appearing on a future state ballot.

For further background on this campaign, see [www.14point3.org](http://www.14point3.org) and [www.TrumpIsDisqualified.org](http://www.TrumpIsDisqualified.org).