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New Report: States Can Bar Insurrectionists such as Donald Trump from the Ballot without New Federal Legislation

WASHINGTON, D.C. (March 30, 2023) – A new report from Free Speech For People and Indiana University law professor Gerard Magliocca explains why states can enforce Section 3 of the Fourteenth Amendment (the Insurrectionist Disqualification Clause) without any new federal legislation--just as they regularly enforce other constitutional provisions and other sections of the Fourteenth Amendment itself.

As the report explains, state courts do not need permission from Congress to enforce the U.S. Constitution in general, or the Fourteenth Amendment in particular. State courts consistently enforce the Fourteenth Amendment's Equal Protection and Due Process Clauses. Nothing in the text, original public meaning, or the Reconstruction-era history of Section 3's implementation suggests that states need authorization from Congress to implement this part of the Constitution.

Two different states (Georgia and New Mexico) heard Section 3 challenges in 2022 against those involved in the January 6, 2021 insurrection. These challenges relied on standard state legal procedures for challenging a politician's constitutional eligibility for office.

"This report makes clear that states do not need to wait for Congress to grant them permission before they can enforce Section 3," said Ron Fein, Legal Director of Free Speech For People. "State courts regularly enforce other sections of the Fourteenth Amendment, and the Insurrectionist Disqualification Clause should be no exception."

"The text, history, and structure of Section 3 confirms that state courts can and must enforce disqualification from office without waiting for a new Act of Congress," said Gerard Magliocca, professor of law at Indiana University. "Congress itself also took that view during Reconstruction in granting amnesty to many former Confederates before any federal law was enacted to enforce Section 3."

Free Speech For People, a national nonpartisan nonprofit public interest legal and advocacy organization, [litigated](#) challenges under Section 3 in three different states in 2022, including one in Georgia that forced Rep. Marjorie Taylor Greene to testify under oath; Professor Magliocca is one of the nation's leading experts on Section 3, and [testified](#) as an expert witness in that trial.

Free Speech For People [advocates](#) for Secretaries of State and other chief elections officials to uphold Section 3 of the Fourteenth Amendment and bar Donald Trump from state ballots, in keeping with the [holding](#) of Judge (now Justice) Neil Gorsuch that "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from

the ballot candidates who are constitutionally prohibited from assuming office.” Free Speech For People also plans to challenge Donald Trump’s eligibility as a 2024 presidential candidate in multiple states using state candidate eligibility challenge procedures.

Read the full report [here](#).

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