

## AUDIO ESSAY TEXT: TRUMP'S SECOND TERM AS PRESIDENT IS UNCONSTITUTIONAL

Olen Soifer, 12-13-2024

When Constitutional scholar Laurence Tribe spoke to Jessica Denson in mid-November, youtube video U J D V W G U T E, capital E, 8, he opined that we cannot expect, in this day and age, for a majority of any Congress to disqualify a Presidential candidate. On the other hand, he stated that Trump remains disqualified, but didn't explicitly describe why that is so. My thinking leads to the contrary conclusion that, in fact, Congress did formally disqualify Trump from a future term, by virtue of the House's majority vote to impeach Trump, followed by the majority vote of the Senate. That there were insufficient votes for conviction doesn't prevent that disqualification. .

It would be appreciated if Dr. Tribe, or other knowledgeable readers of this essay, would explain if & why this conclusion is flawed. These comments are also enumerated in a file available at freedom dawning dot O R, G. .

My argument relates to The 14th Amendment having stated how both houses of Congress must act if it desires to remove the "disability" of an insurrectionist (or conspirator) person, including a President, from holding office. But, the Amendment fails to state what is required to impose that disability in the first place, It is logical to assume that, so soon after the Civil war, the 1866 authors of Section 3 presumed that insurrectionists are so obvious that no proceeding is needed to delineate them. But, by the same token, the Constitution does not prohibit a state court from convicting an individual as an insurrectionist, though only Congress can "remove that disability". .

Thus Colorado did not exceed any Constitutional authority, whereas. SCOTUS exceeded its authority by mandating that only Congress can accuse any person of being an insurrectionist. . In fact, since the US Constitution is binding upon the states, and the running of national elections is left up to them, it can be more legitimately argued that the Colorado Supreme Court, after the evidence & testimony presented to it, would have been in violation of the US Constitution if it did NOT declare Trump to be an insurrectionist. In fact SCOTUS, completely skirted the issue of whether the Colorado decision was wrong. Instead, SCOTUS decided the Section 3 is not self-executing, and that such a disqualification must, and can only, come from Congress. . OK. . So be it. . I insist that Congress did, in fact, do its job. .

How can SCOTUS argue that the House majority vote to impeach the President for being an insurrectionist, followed by a Senate 57 (majority) vote to convict, should NOT be considered to be majority votes of both houses declaring Trump to be an insurrectionist? SCOTUS can hardly argue that the Constitution requires a successful impeachment & trial to condemn an insurrectionist candidate. .

In other words, the action by Colorado was legitimate, but not even necessary, because those majority votes of both houses of Congress had already declared Trump as disqualified to serve a second term. The point is that, based on SCOTUS own decision, nothing more than those simple majorities of both Houses was needed to declare Trump an insurrectionist, and disqualify him from a future run for President, even if they were unsuccessful at removing him from his first term. And, in fact, the impeachment & trial process occurred after he left office.

It can be argued that we are in the midst of a Constitutional crisis, having elected a President, disqualified by Congress, without it removing that disability. And, because a 2/3 vote will not be achieved to do so, Trump will remain disqualified. And, it will be hard for SCOTUS to disagree...they set the rule, and even before so Congress followed it. The Republican Congress will be put in a box, like the question: "When did you stop beating your wife?" They won't vote to remove the disability they think does not exist. But, if my legal logic is correct it does exist, and they will have given up the opportunity to remove it. .

I contend that SCOTUS well knew all this, and intentionally skirted this issue, continuing its bogus practice making inventing laws, rather than, in its own words, "calling balls & strikes". Just as the President grants pardons, but doesn't convict the offenders in the first place, SCOTUS was wrong in, effectively, insisting that Congress must have been the entity that convicted the person(s) it pardons. In fact, via its decision, SCOTUS shirked its own duty to speak out if an unqualified candidate is running for high office. .

As I say in the referenced doc, Justice Barrett's concurrence was flawed. She correctly stated that SCOTUS went too far in stating that it was necessary for Congress to disqualify Trump. But, then she stated that the people could decide if Trump should be President, in violation of the 14th Amendment. That concurrence is both wrong and surprising to come from a Constitutional scholar. What Constitution provision says that even a super majority popular vote of the people can elect a President who is, for example, not a US citizen, or too young, or is otherwise disqualified? The answer is that no such provision exists, and SCOTUS has not is not empowered to create one! .

But, again, though it had no authority to do so, the Court set that rule, and even before it did so, Congress followed it. Congress should now be forced to vote to “remove the disability”. And, it will be hard for SCOTUS to disagree. With the requested vote, the Republican Congress will be put in a box, like the question: “When did you stop beating your wife?” And, because a 2/3 vote will not be achieved, because the Republicans will insist that no such disability exists in the first place, Trump will remain disqualified. .

Thanks for hearing me out, and I hope you can respond to confirm that my train of thought makes sense.

The author of this essay is not an attorney, but after many years as an underwriter; a forensic analyst for a firm helping to successfully provide sophisticated litigation support; as well as decades of independently “reading the law, some confidence in ones ability to identify legitimate causes of action is not unjustified. .

Regards,

Olen Soifer

<https://www.freedomdawning.org>