



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

March 3, 2022

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**Re: Request for DOJ to Include Bar-to-Office Provisions in Any Plea Agreements with January 6th Insurrectionists**

Dear Attorney General Garland, Deputy Attorney General Monaco, and U.S. Attorney Graves:

We respectfully request that the Department of Justice (“DOJ”) use all tools at its disposal to ensure individuals charged with crimes relating to the January 6th attack on the U.S. Capitol are, where appropriate, disqualified from public office in accordance with Section Three of the Fourteenth Amendment to the U.S. Constitution (the “Disqualification Clause”). In particular, we urge DOJ to take steps in plea negotiations, change-of-plea hearings, and during sentencing to ensure that constitutionally disqualified defendants do not to seek or hold public office.

The Disqualification Clause bars from federal or state office any person who (1) took an oath as a federal or state official “to support the Constitution of the United States,” and then (2) “engaged in insurrection” or gave “aid or comfort” to insurrectionists.<sup>1</sup> The term “insurrection,” as commonly understood around the time of the Fourteenth Amendment’s adoption, refers to a “rising against civil or political authority,— the open and active

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<sup>1</sup> U.S. Const. amend. XIV, § 3.

opposition of a number of persons to the execution of law in a city or state..”<sup>2</sup> It is “not necessary that its dimensions should be so portentous as to insure probable success”; rather, the rising must “be in opposition to the execution of the laws of the United States,” and must “be so formidable as for the time being to defy the authority of the United States.”<sup>3</sup>

The events of January 6th were plainly an orchestrated “rising . . . in opposition to the execution of the laws of the United States . . . so formidable as for the time being to defy the authority of the United States.” The attackers were armed, called for the death of elected officials in the building, overwhelmed law enforcement, and ultimately carried out “the most significant assault on the Capitol since the War of 1812.”<sup>4</sup> “The rampage left multiple people dead, injured more than 140 people, and inflicted millions of dollars in damage to the Capitol.”<sup>5</sup> And the attack did in fact obstruct the “execution of the laws of the United States” by forcing Congress to halt its counting of electoral votes as required by the Twelfth Amendment and the Electoral Count Act.<sup>6</sup> “Even with reinforcements from the D.C. National Guard, the D.C. Metropolitan Police Department, Virginia State Troopers, the Department of Homeland Security, and the FBI, Capitol Police were not able to regain control of the building and establish a security perimeter for hours.”<sup>7</sup> It was not until 3:42 a.m. on January 7th that Congress officially completed its business and certified Joe Biden as the winner of the 2020 presidential election.<sup>8</sup>

Recognizing this reality, DOJ has called January 6th an “insurrection” in court filings,<sup>9</sup> and charged key players in the attack with “seditious conspiracy”—a charge that closely tracks the definition of an insurrection.<sup>10</sup> Attorney General Garland has referred to January 6th as “an unprecedented attack on the seat of our democracy” and insists DOJ is “committed to holding all January 6th perpetrators, at any level, accountable under law.”<sup>11</sup>

A key component of January 6th accountability must include enforcing the Fourteenth Amendment’s Disqualification Clause against anyone who took an oath to support the U.S. Constitution as a government official and then engaged in the January 6th insurrection or aided insurrectionists. As one court explained shortly after the Fourteenth Amendment’s ratification, “[t]he oath to support the Constitution is the test. The idea being that one who had taken an oath to support the Constitution and violated it, ought to be

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<sup>2</sup> *In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894).

<sup>3</sup> *In re Charge to Grand Jury*, 62 F. at 830.

<sup>4</sup> *Trump v. Thompson*, 20 F.4th 10, 18-19 (D.C. Cir. 2021).

<sup>5</sup> *Id.* at 15.

<sup>6</sup> *See id.* at 17-19.

<sup>7</sup> *Id.* at 18.

<sup>8</sup> *Id.*

<sup>9</sup> *United States v. Chansley*, No. 21-cr-00003, ECF No. 5 (D. Ariz. filed Jan. 14, 2021),

<https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/jacob%20Chansley%20Detention%20Memo.pdf>.

<sup>10</sup> *See* Indictment ¶¶14-134, *United States v. Rhodes III*, 22-cr-00015, ECF No. 1 (D.D.C. Jan. 12, 2022),

<https://www.justice.gov/usao-dc/case-multi-defendant/file/1470536/download>.

<sup>11</sup> DOJ, *Attorney General Merrick B. Garland Delivers Remarks on the First Anniversary of the Attack on the Capitol*, Jan. 5, 2022,

<https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-first-anniversary-attack-capitol>.

excluded from taking it again, until relieved by Congress.”<sup>12</sup> The oath breakers who assaulted American democracy on January 6th failed this test and, under our Constitution, they are barred for life from public office.

According to DOJ’s Justice Manual, “[r]esignation from office, withdrawal from candidacy for elective office, and forbearance from seeking or holding future public offices [are] appropriate and desirable objectives in plea negotiations with public officials who are charged with federal offenses that focus on abuse of the office(s) involved.”<sup>13</sup> The Justice Manual further states that “[w]here the office involved is not one within the Legislative or Judicial Branches of the federal government, such negotiated terms may be also be enforced involuntarily against the will of the defendant by a sentencing judge . . .”<sup>14</sup> While the Justice Manual acknowledges that courts have raised separation of powers concerns about DOJ seeking resignation, withdrawal, or forbearance with respect to sitting members of Congress or Article III judges, those concerns have not been weighed against the significant Constitutional concerns of permitting an official to serve after violating the Disqualification Clause of the Fourteenth Amendment.<sup>15</sup> And to be clear, there are no separation of powers concerns raised by seeking involuntary resignation, withdrawal, or forbearance from former federal officers, former or current state officers, current executive branch officers, or current congressional and judicial staff who wish to plead guilty to crimes associated with the January 6 attack.

Federal sentencing law and guidelines also empower DOJ to seek and courts to impose restrictions on employment as a condition of probation or supervised release. Under 18 U.S.C. § 3563, a court may, at its discretion, require a defendant as a condition of probation to “refrain . . . from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances.” Title 18 U.S.C. § 3583 permits courts to establish the same conditions as a component of supervised release. The United States Sentencing Guideline § 5F1.5 clarifies that any such restriction shall be imposed “for the minimum time and to the minimum extent necessary to protect the public.”<sup>16</sup> Although federal sentencing law and guidelines do not explicitly reference the Disqualification Clause, they nonetheless represent an important, existing mechanism to effectuate it.

We urge DOJ to enforce the Disqualification Clause by all available means, including through plea negotiations with January 6<sup>th</sup> defendants, at change of plea hearings, and during the sentencing process. Specifically, during plea negotiations, DOJ should encourage

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<sup>12</sup> *Worthy v. Barrett*, 63 N.C. 199 (1869), *appeal dismissed sub nom. Worthy v. Comm’rs*, 6 U.S. 611 (1869).

<sup>13</sup> Justice Manual, § 9-16.110, Plea Negotiations with Public Officials, <https://www.justice.gov/jm/jm-9-16000-pleas-federal-rule-criminal-procedure-11#9-16.110>.

<sup>14</sup> *Id.* The Justice Manual references the Federal Probation Act, which was repealed by the Sentencing Reform Act of 1984. As explained below, federal sentencing law nonetheless continues to permit courts to impose restrictions on a defendant’s occupation as a condition of probation or supervised release.

<sup>15</sup> *Id.* (citing *Powell v. McCormack*, 395 U.S. 846 (1969); *United States v. Richmond*, 550 F. Supp. 605 (E.D.N.Y. 1982)).

<sup>16</sup> United States Sentencing Commission Guidelines Manual, §5F1.5, <https://guidelines.usc.gov/gl/%C2%A75F1.5>.

March 3, 2022

Page 4

appropriate defendants to voluntarily resign their office if they are currently a state or federal office and agree not to seek future office. Where appropriate, DOJ attorneys should also be instructed to seek involuntary agreements that defendants will not hold or seek public office. At change of plea hearings, DOJ should insist that these individuals admit at their change of plea hearing to having previously sworn an oath to support the constitution and to having subsequently committed an act of insurrection (or giving aid or comfort to others who did). Ensuring that those admissions are made on the record could prove important in case a defendant's disqualification needs to be enforced in ancillary federal proceedings or in a different forum. Finally, where appropriate, DOJ attorneys should request that courts impose special conditions of probation or supervised release that prevent individuals who violated the Disqualification Clause from seeking or holding public office for the full term of their sentence.

The Department of Justice must not hesitate to take concrete steps to prevent those who attacked our Constitution after swearing an oath to uphold it from being in a position of public trust again. We thank you for your prompt attention to these matters of grave importance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a stylized flourish at the end.

Noah Bookbinder  
President