



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

September 21, 2022

Dear Member of Congress,

Earlier this month, New Mexico District Judge Francis Mathew ruled that “the January 6, 2021 attack on the United States Capitol and the surrounding planning, mobilization, and incitement constituted an ‘insurrection’ within the meaning of Section Three of the Fourteenth Amendment,” and that Otero County Commissioner Couy Griffin “engaged in” that insurrection.<sup>1</sup> As a result, the court ordered Mr. Griffin to be immediately removed from office and held that he is constitutionally disqualified from ever holding state or federal office again.<sup>2</sup> This lawsuit, which my organization, Citizens for Responsibility and Ethics in Washington (CREW), and co-counsel brought on behalf of three New Mexico residents, marks the first time since 1869 that a court has disqualified a public official under the Fourteenth Amendment.<sup>3</sup> We are writing both to make you aware of this important development and to explain Congress’ institutional role in enforcing Section Three of the Fourteenth Amendment against those who betrayed their constitutional oaths by engaging in the January 6 insurrection.

Section Three of the Fourteenth Amendment, also known as the Disqualification Clause, was ratified in the wake of the Civil War. It bars any person from holding federal or state office who took an “oath...to support the Constitution of the United States” as a federal or state officer and then “engaged in insurrection or rebellion” against the United States.<sup>4</sup>

In March, CREW filed a *quo warranto* lawsuit in state court against Mr. Griffin, arguing that his conduct before and on January 6, 2021 amounted to engaging in insurrection under the Fourteenth Amendment and that, as a result, he should be removed and disqualified from public office.<sup>5</sup>

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<sup>1</sup> *White et. al. v. Griffin*, No. D-101-CV-202200473 (N.M. 1st Jud. Dist. Ct., Sept. 7, 2022), <https://perma.cc/88PE-SXPI> [hereinafter Griffin Judgment].

<sup>2</sup> “The Insurrection Bar to Office: Section 3 of the Fourteenth Amendment”, U.S. CRS, 117th Cong., LSB10569, Version 6 (2022), <https://crsreports.congress.gov/product/pdf/LSB/LSB10569>.

<sup>3</sup> Aaron Blake, “Effort to bar Jan. 6 figures from office notches historic win. What now?,” *The Washington Post*, Sept. 6, 2022, <https://www.washingtonpost.com/politics/2022/09/06/couy-griffin-fourteenth-amendment-insurrection/>.

<sup>4</sup> U.S. Const. amend. XIV, § 3.

<sup>5</sup> *White et. al. v. Griffin*, 2022 WL 3908964.



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In his decision earlier this month finding Mr. Griffin disqualified, Judge Mathew explained that an insurrection need not “rise to the level of trying to overthrow the government.”<sup>6</sup> Rather, an insurrection is an assemblage of people acting through force, violence, and intimidation by numbers to prevent the federal government from performing a constitutional function—a definition that indisputably applies to the January 6 attack. The ruling also cites Reconstruction-era case law establishing that a person can be disqualified under the Fourteenth Amendment even if they have not been convicted of a crime and even if they did not engage in violence; the test for disqualification is instead whether the person “voluntarily aid[ed] the [insurrection], by personal service, or by contributions, other than charitable, of anything that [is] useful or necessary’ to the insurrectionists’ cause.”<sup>7</sup> It is important to note that a disqualification under Section Three of the Fourteenth Amendment cannot be cured through a presidential pardon and can only be removed by a two thirds vote of Congress.<sup>8</sup>

The *Griffin* court’s factual findings are instructive. The court found that, ahead of the January 6 attack, Mr. Griffin and his organization “Cowboys for Trump” played a significant role in mobilizing a violent mob to assemble in Washington, D.C. to stop Congress from certifying the 2020 presidential election as mandated by the Constitution. He was a featured speaker on a cross-country “Stop the Steal” road tour where he incited crowds, normalized violence, and encouraged Trump supporters to show up en masse in Washington D.C. on January 6. He flooded social media with similar messaging, and then traveled to D.C. to participate in the insurrection. On January 6, he joined the mob in breaching multiple security barriers and occupying restricted Capitol grounds, contributing to law enforcement being overwhelmed and the congressional proceedings being delayed. After January 6, Mr. Griffin took to social media to celebrate the violence he witnessed that day and previewed a more brutal attack on the Capitol to prevent President Biden from taking office where there would be “blood running out of that building.”<sup>9</sup>

Although the court’s decision sets a high bar for disqualification, we believe there are other current and former office holders throughout the country who, under the court’s standard, should be disqualified from office. The obligation to exclude and disqualify these individuals will be borne by many federal and state officials throughout our country, but Congress has a particularly important role to play.

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<sup>6</sup> Griffin Judgment at 29.

<sup>7</sup> Griffin Judgment at 34.

<sup>8</sup> U.S. Const. amend. XIV, § 3.

<sup>9</sup> Griffin Judgment at 17-18.



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Pursuant to its constitutional role as the “Judge of the ... Qualifications of its own Members,” Congress has a long history of enforcing the Disqualification Clause.<sup>10</sup> Both during Reconstruction and following World War I, Congress exercised this authority by refusing to seat members-elect who were deemed disqualified because of their participation in insurrection or rebellion.<sup>11</sup> As Judge Mathew ruled, enforcing constitutional disqualifications does not “subvert the will of the people” because “the Constitution itself reflects the will of the people and is the ‘supreme Law of the Land.’”<sup>12</sup> And in the unprecedented context of the January 6 insurrection – an event that marked the first ever presidential transition marred by violence – failing to enforce the Constitution against those who sought to subvert a free and fair presidential election imperils the very foundations of American democracy.

Engaging in insurrection is a high bar, and we do not take lightly the idea that members of Congress can or should be excluded based on Section Three of the Fourteenth Amendment. The court’s recent decision in our lawsuit is, however, a helpful guide for Congress to use when evaluating whether a member’s, or member-elect’s, actions trigger the Constitution’s Disqualification Clause. Where the evidence supports exclusion, it is Congress’ constitutional duty to act.

Very respectfully,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder".

Noah Bookbinder

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<sup>10</sup> U.S. Const. Art. I § 5.

<sup>11</sup> Gillian Brockwell, “Confederates, Socialists, Capitol Attackers: A 14th Amendment History Lesson,” *The Washington Post*, Sept. 11, 2022, <https://www.washingtonpost.com/history/2022/09/11/14th-amendment-disqualification-couy-trump/>.

<sup>12</sup> Griffin Judgment at 44-45.