



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

November 18, 2022

Dear Attorney General,

In the wake of last week's election where participants in the January 6 insurrection were elected to positions in government throughout the country, I am writing to explain the key role that state attorneys general play to ensure those who participated in the January 6 insurrection are not permitted to run the government they tried to overthrow.

In September, 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.¹ As a result, the court ordered Mr. Griffin to be immediately removed from office, concluding that Mr. Griffin engaged in several acts that both separately, and together constitutionally disqualified him from ever holding state or federal office again.² 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.³ This important decision makes clear that officials who participated in the January 6 insurrection are disqualified from government service. State Attorneys General have a key role in enforcing this constitutional mandate across the country.

As the chief legal officer of the state, attorneys general are charged with ensuring that state and federal laws – both statutory and constitutional – are followed within their jurisdiction.⁴ Section Three of the Fourteenth Amendment, also known as the

¹ *State ex rel. White v. Griffin*, No. D-101-CV-202200473, 2022 WL 4295619 (N.M. 1st Jud. Dist. Ct., Sept. 7, 2022), <https://perma.cc/88PE-SXPI> [hereinafter Griffin Judgment].

² "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>.

³ 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/>.

⁴ See American Constitution Society, "About the State AG Project", <https://www.acslaw.org/projects/state-attorneys-general-project/about/>.



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

Disqualification Clause, is one of the constitutional provisions that a state attorney general is obligated to enforce. Ratified in the wake of the Civil War, Section Three 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.⁵ This provision establishes a qualification for office no different than the age, citizenship, and residency qualifications set forth elsewhere in the U.S. Constitution and in state constitutions.⁶

During Reconstruction, Congress and state courts invoked Section Three of the Fourteenth Amendment to disqualify and exclude former Confederates from office.⁷ Although Section Three has largely remained dormant since Reconstruction, the January 6 insurrection has renewed the applicability of this important constitutional qualification for office.

In March 2022, CREW filed a *quo warranto* lawsuit in New Mexico state court against former Commissioner Griffin, arguing that he violated his constitutional oath by engaging in the January 6 insurrection and that, as a result, he should be removed and disqualified from public office under the Fourteenth Amendment.⁸

The court agreed. In finding Mr. Griffin disqualified, the court explained that an insurrection need not “rise to the level of trying to overthrow the government.”⁹ 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

⁵ U.S. Const. amend. XIV, § 3.

⁶ See U.S. Const. art. I, § 2, cl. 2 (House of Representatives qualifications clause); *id.* art. I, § 3, cl. 3 (Senate qualifications clause); *id.* art. II, § 1, cl. 5 (President qualifications clause).

⁷ *E.g.*, *Worthy v. Barrett*, 63 N.C. 199, *appeal dismissed sub nom. Worthy v. Comm’rs*, 76 U.S. 611 (1869); *In re Tate*, 63 N.C. 308 (1869); *Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631 (La. 1869).

⁸ *White v. Griffin*, 2022 WL 3908964.

⁹ Griffin Judgment at 29.



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

anything that [is] useful or necessary' to the insurrectionists' cause."¹⁰ 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.¹¹

The *Griffin* court's factual findings identify several categories of conduct which warrant disqualification, including incitement to violence, physical presence beyond police lines on the U.S. Capitol grounds on January 6, and logistical and organizational support to the January 6 insurrection. In the case of Mr. Griffin, 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."¹²

Although the court's decision rightfully sets a high bar for disqualification, CREW believes there are current and soon-to-be officeholders elected last week throughout the country who, under the court's standard, are disqualified from public office because they engaged in any one of those categories of prohibited conduct. The obligation to exclude and disqualify these individuals will be borne by many federal and state officials throughout our country, but state attorneys general have a particularly important role to play.

¹⁰ Griffin Judgment at 34.

¹¹ U.S. Const. amend. XIV, § 3.

¹² Griffin Judgment at 17-18.



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

State attorney's general swear an oath of office to support and defend the Constitution of the United States.¹³ They are frequent litigants in federal and state courts suing to enforce constitutional provisions and protect the public interest.¹⁴ Enforcing the Disqualification Clause is no different.

Many states have *quo warranto* statutes which provide a statutory cause of action for a state attorney general to test whether a public official meets all constitutional and statutory qualifications for office.¹⁵ Just as state attorneys general can bring *quo warranto* claims to test whether officials meet age and residency qualifications, they can, and should when the facts support it, bring *quo warranto* actions to determine if an office holder has engaged in insurrection in violation of the Disqualification Clause.

Enforcing the Disqualification Clause cases is consistent with a state attorney general's obligations as a law enforcement officer and their oath of office. As the *Griffin* court explained, 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.'"¹⁶ 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 CREW does not take lightly the idea that officeholders should be removed from their positions based on Section Three of the Fourteenth Amendment. The court's recent decision in our lawsuit is, however, a helpful guide for state attorneys general throughout the country to use when evaluating whether actions by officeholders or soon-to-be officeholders trigger

¹³ See, e.g., MD Constitution, Art. 1, § 9; TX CONST Art. 16, § 1; O.C.G.A. § 45-12-4.

¹⁴ See, e.g., "Judge confirms Attorney General's authority to investigate potential race discrimination by auto insurers PEMCO and Progressive", Washington State Office of the Attorney General, <https://www.atg.wa.gov/news/news-releases/judge-confirms-attorney-general-s-authority-investigate-potential-race>, Nov. 8, 2022; "Attorney General Bonta Supports Effort to Block Meta Acquisition of Popular Virtual Reality Fitness App", State of California Department of Justice, <https://oag.ca.gov/news/press-releases/attorney-general-bonta-supports-effort-block-meta-acquisition-popular-virtual>, Nov. 8, 2022.

¹⁵ 65 Am. Jur. 2d Quo Warranto § 1.

¹⁶ Griffin Judgment at 44-45.



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

disqualification and removal under Section Three. Where the evidence supports disqualification and removal, it is your constitutional duty to act.

Very respectfully,

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

Noah Bookbinder
President
Citizens for Responsibility and Ethics in
Washington