



Written by [Steve Bonta](#) on August 18, 2023

Law Professors Insist Trump Ineligible for Future Office

A new law-review article written by two law professors, William Baude of the University of Chicago and Michael Stokes Paulsen of the University of St. Thomas, which argues that Donald Trump is already disqualified by the U.S. Constitution from ever becoming president again, is making the rounds in Washington. According to the article, Section Three of the 14th Amendment disqualifies Donald Trump from ever becoming president (or, for that matter, ever holding any elective office) again. The text of Section Three is as follows:



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No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Baude and Paulsen's [126-page paper](#), slated to be published by the *University of Pennsylvania Law Review*, was posted online August 14 and is already turning heads. The [paper's abstract](#) has garnered more than 104,000 views so far, while the full paper has been downloaded more than 41,000 times. An [editorial](#) at *The Hill* supporting their position is also trending among its most popular current offerings.

Baude and Paulsen, who are affiliated with the conservative Federalist Society, argue confidently that Section Three has far more sweeping application than traditionally believed, and is more than sufficient to ensure that Donald Trump never becomes president again. In the abstract alone, they assert that

Section Three remains an enforceable part of the Constitution, not limited to the Civil War, and not effectively repealed by nineteenth century amnesty legislation. Second, Section Three is self-executing, operating as an immediate disqualification from office, without the



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need for additional action by Congress. It can and should be enforced by every official, state or federal, who judges qualifications. Third, to the extent of any conflict with prior constitutional rules, Section Three repeals, supersedes, or simply satisfies them. This includes the rules against bills of attainder or ex post facto laws, the Due Process Clause, and even the free speech principles of the First Amendment. Fourth, Section Three covers a broad range of conduct against the authority of the constitutional order, including many instances of indirect participation or support as “aid or comfort.” It covers a broad range of former offices, including the Presidency. And in particular, it disqualifies former President Donald Trump, and potentially many others, because of their participation in the attempted overthrow of the 2020 presidential election.

The New American's Joe Wolverton has already [analyzed in detail](#) why such a broad-based interpretation is unwarranted, and why this section would not apply to Donald Trump, against whom charges of rebellion, insurrection, and the like not only remain unsubstantiated, but appear to be contradicted by the events of January 6. (How, for example, can exhorting his supporters to “protest peacefully” be construed as rebellion or insurrection?).

But as we’ve witnessed in the past two months, legal realities, including both precedent and common sense, have had little bearing on what can only be characterized as a desperate war of indictments against the former president, an obviously coordinated campaign of legal persecution designed to prevent him from ever again setting foot in the Oval Office. This brazen railroading of a former president has no precedent in American history, and is clearly motivated by purely partisan and tribal hatred rather than any reasoned parsing of the law. It’s the sort of thing that happens as a matter of course in Third World Potemkin republics and dictatorships of every flavor, the law being conveniently modified, re-interpreted, and applied in novel settings to accommodate the timeless partisan lust for eliminating political opposition.

The abiding damage being wrought (and yet to be wrought) by the bitter campaign of partisan persecution against Trump and his supporters, being waged under the color of legal prosecution, is going to be political as well as legal. It signals a decisive turn away from the more or less detached posture of jurisprudence (remember Lady Justice with her blindfold?) and into the era of mob-driven Montagnard-esque payback. In this spirit, even the wording of Baude and Paulsen’s abstract is cause for concern. They assert that Section Three supersedes the constitutional guarantees of due process and free speech, meaning that Trump need not have been convicted — or even formally accused — of any crime to qualify as an insurrectionist and rebel, and that his free speech rights are moot. In other words, the mere imputation to Trump (or anyone else) of rebellious conduct is sufficient to trigger the provisions of this section. Never mind that Section Five of the same amendment authorizes Congress to “enforce, by appropriate legislation, the provisions of this article,” which certainly should apply wherever vague language or unclear conditions are laid out. In our once-enlightened legal tradition, clear, not vague, language is a precondition for just law.

But the tenor of Baude and Paulsen’s arguments is that Article Three, alleged to have been neglected by being wrongly tied to the post-Civil War context, should have almost unlimited applicability. And whether the professors’ views have any legal or constitutional countenance, it is very likely that they will be used, in the last resort, to try to keep Donald Trump from office should he win the presidential race next year. Given the fraught political atmosphere in Washington and across the country, it is not difficult to imagine post-election circumstances in which the fanatical Left and their allies on the RINO



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right, having failed to prevent Trump from being reelected, invoke Baude and Paulsen's analysis of Section Three as a pretext for an all-out revolt against the incoming president.

Imagine a radical Left-Deep State alliance enraged after all their efforts to destroy the man they hate the most have failed to prevent his base from reelecting him. Imagine that the same liars and conspirators who have been orchestrating the "Get Trump" campaign for years, sick at the prospect that a chastened and more experienced Trump may actually drain the swamp this time around, decide to pull out all the stops in a fanatical effort to preserve their power and pelf. Imagine the Democrats and their allies trying to prevent the swearing-in of the new president, perhaps by persuading leaders of the military and federal law enforcement to take their side. Imagine the fomenting of race riots and other forms of violent "resistance" on an epic scale to oppose a president whom they regard as utterly illegitimate and undeserving of any protection or support. With what we have seen unfolding over the past few years, such a scenario is not far-fetched, and could lead to a national crisis on an unprecedented scale.

And it is precisely such legal innovations as Baude and Paulsen's hit piece disguised as constitutional theory that will add accelerant to the fire.



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