

The Breakfast Club

Constitutional Minute for 24 October 2023-Update

The 14th Amendment Issue Isn't Going Away--But Soon Will

Since writing my recent essay discussing the ongoing suits, and now trials, attempting to prevent Donald Trump from appearing on presidential election ballots in certain states next year, a new analysis has emerged containing such good news I just had to share it. Let's review Section 3 of the 14th Amendment:

"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."

Notice that the President himself is not referenced as one of the targets of this disqualification; it only applies to "member[s] of Congress," "officer[s] of the United States," member[s] of any State legislature," and "executive or judicial officer[s] of any State."

The natural assumption is that "officer[s] of the United States" includes the President, after all, isn't he called the "Chief Executive **Officer**" of the United States? Turns out the answer is no! "Officer of the United States" has a legal definition. [This article](#)ⁱ in Wikipedia explains the basic concept.

Low and behold, the Supreme Court has even been asked to adjudicate this "term of art." As [this article](#)ⁱⁱ explains, in an 2010 SCOTUS case that few people outside of SCOTUS-geeks paid attention to (*Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010))ⁱⁱⁱ, Chief Justice John Roberts opined: "**The people do not vote for the 'Officers of the United States.'** Art. II, §2, cl. 2. They instead look to the President to guide the 'assistants or deputies ... subject to his superintendence.'"

I'm an "Officer of the United States," even though retired, and I have a commission to prove it; Donald Trump is not and has never been.

The District Court judges hearing the present cases in Colorado and Pennsylvania could easily dismiss this case by referencing the high Court's opinion in *Free Enterprise Fund*, but I doubt either will. Both are Democrat appointees and were "judge-shopped" with care. I predict both

will rule against Trump. Perhaps the Court of Appeals will as well. I fully expect the Supreme Court will not affirm the lower court's decisions.

As you probably realize, these cases are being watched with great interest; the Colorado case is being live broadcast. Stay tuned, more to come.

Now back to the November 7th election...

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ⁱ https://en.wikipedia.org/wiki/Officer_of_the_United_States.

ⁱⁱ <https://thenationalpulse.com/2023/11/01/heres-how-and-why-scotus-will-overturn-any-trump-ballot-ban/>.

ⁱⁱⁱ <https://www.oyez.org/cases/2009/08-861>.