



Democrats Want Legislation to Keep Trump From the Presidency

The Left has come to a conclusion: They can't afford to let Donald Trump return to the White House. And they're willing to use every tool at their disposal to prevent that from happening.

A [recent article](#) by Kimberly Wehle at Politico articulates one of the strategies Democrats are considering to keep Trump out of the presidency: passing legislation, based on the 14th Amendment, that would bar from him from holding office again, even if they aren't able to sentence him to prison.

As Wehle notes, Representative Liz Cheney (R-Wy.), who sits on the January 6 Select Committee, was asked by CBS's Margaret Brennan whether it is "the consensus view of the committee" that "criminal culpability for the president" is possible.

"I think one of the really important things that our committee has to do is lay these facts out for the American people," Cheney replied, "so that they inform us in terms of our legislative activity going forward."

Cheney's words suggest that the committee has its sights set on doing, by legislation, what they can't do in the court of law.

Representative Jamie Raskin (D-M.D.), who also serves on the January 6 Committee, explicitly invoked the 14th Amendment in describing Democrats' options for keeping Trump away from the presidency.

Raskin told Politico:

[Trump] is not going away. I mean, had we been able to convict him and disqualify him from future federal office, this would be over. But it's not over. And there are other provisions in the Constitution that relate to the question of someone who has sworn an oath to the Constitution who betrays it by engaging in insurrection or rebellion. Section three of the 14th Amendment forbids such people from ever serving in public office again at the federal or the state level. That's a live proposition. But at this point, accountability for Trump remains essential, but our problems go way beyond that. It's a question of the movement that Trump has created, which is based on authoritarian politics and fascistic tactics like big lies and conspiracy theories and propagandizing in the followers.

Wehle's argument for legislatively blocking Trump from future office likewise makes use of the 14th Amendment. She points to Section 3, which states: "No person shall ... hold any office, civil or military,



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Written by [Luis Miguel](#) on January 9, 2022

under the United States, or under any state, who, having previously taken an oath ... to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.”

She then follows it up with Section 5, which reads: “The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.”

For Wehle, this language “gives Congress express constitutional authority to pass legislation implementing a ban on insurrectionists holding office, rather than requiring Congress to fall back on other powers — such as its power over interstate commerce — that are more general and thus less focused on the task at hand.”

However, there are flaws with Wehle’s reasoning.

The 14th Amendment was explicitly written in reaction to the Civil War to target former Confederate leaders. Employing it point blank to apply to a single candidate in the 21st century would be unlikely to hold up in the courts.

Thus, new legislation would be needed, as Wehle argues. The problem for the anti-Trumpers is that passing such legislation with the express purpose of barring Trump from future office would violate constitutional prohibitions on *ex post facto* laws (laws that punish actions retroactively) and on bills of attainder (acts of a legislature declaring someone guilty of a crime without a trial, which in Britain was long used as a means to remove political enemies from office and was thus banned by the American Founders).

Democrats and the mainstream media have been [accusing Republicans](#) of “authoritarianism,” rhetoric that goes hand-in-hand with the January 6 “insurrection” narrative. The goal for Democrats is to paint Trump and his supporters as insurrectionists so that they can legally be purged from government.

The ship has sailed for the Left to achieve this with Trump. The danger remains, however, for other conservative lawmakers or candidates who lack the 45th president’s wealth and clout. Constitutionalists must fight back against future “anti-insurrectionist” policies to prevent the establishment of a tyrannical one-party rule.



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