ELEPHANT TRACKS

CONEJO VALLEY REPUBLICAN WOMEN

CVRW FEBRUARY GENERAL MEETING

When: THURSDAY, FEBRUARY 22
Time: 6:00 pm – Registration and Social Connections
6:30 pm – Meeting business and Dinner
7:00 pm – Guest Speakers:
Julia Snyder, Supreme Court Commissioner & Halla Maher, VCR Central Committee candidate

Ms. Snyder will share the challenges posed by the restrictive rules governing races for state judicial positions and the how the court administrative system works.

Halla Maher will provide report on her recent trip to Washington DC; her meeting with Congressman Kevin Kiley and others on lobbying on behalf of PERK, and an update on the congressional judicial committee.

Place: Sunset Hills Country Club
4155 Erbes Rd., Thousand Oaks

Cost: Members - $33 *(cash/Venmo/checks payable to CVRW)*
Non-Members - $37 *cash/Venmo/checks payable to CVRW)*

Beer, wine and cocktails available for purchase separately with credit card.

RSVP BY FEBRUARY 18
conejovalleyrepubwomen@gmail.com
(Please note new email address)

A NOTE FROM THE PRESIDENT

By Lisa Gelinas

The victory in the Iowa caucuses was a sight to behold. What a comeback for President Trump; Probably the biggest comeback in American history. The big night will be in November when he takes back the country. What I find fascinating in all of this is he won despite 91 criminal charges against him. In fact, he is showing up in Manhattan in a week for his defamation trial. Could the GOP nominate a convicted felon? Oh heavens! But honestly, who really cares? This former president thrives under pressure like no one we've seen in politics. He is untouchable. Yet, while Trump's incumbency is a huge factor, the fact he is out of power allows him to run as a candidate of change. The roles seem to be reversed from 2020. Biden is in the White House with a slew of accusations to be judged while Trump is an outsider and disruptor to the establishment.

This big victory in Iowa for Trump could mean more and more Americans are waking up, especially those who did not vote for him in 2020.

To witness a victory for Trump in 2024 will be one for the history books and the American people. No one will ever forget the time one man took on the establishment and changed the course of history and we were all there to witness it. God bless America and God bless Donald J. Trump.

CARING FOR AMERICA

by Jill Delaney

This month, we will focus our support on James Storehouse in Newbury Park. This organization works to serve children in the Foster Care System, "from kids to college." At our February meeting, we will be focusing on the youngest age group and taking donations of the following items:

Diapers/Wipes
New and New-like Baby Clothing
Baby Formula/Food
Gift Cards for Groceries
Infant Carriers

You can bring your donations to the CVRW meeting and drop them into the Caring for America bin.

If you have questions or want to suggest other agencies who could use our support, contact Jill_Delaney@live.com.

To learn more about this incredible organization we are supporting, check jamesstorehouse.org.

MEMBERSHIP

By: Jennifer McCarthy

As we begin the second month of our new club, I want to thank all of you who have already submitted your registrations. We are so thankful to see our club growing. Although all our members are "new" in this club, those who hadn't come over from the previous club are noted by an asterisk, and we warmly welcome you. The rest of you, please send in your membership, if you have not already.

And please invite all your conservative friends to join us. The election season is already heating up, and they won't want to miss a second of it.

Ruby Lifetime:
Kerry Nelson
Brandee Sisting

Platinum:
Michelle Spencer

Silver:
Lisa Gelinas
Ruth McGettigan
Donna Strull

New Members:
Lola Bush *
Rori Campbell *
Marie Doherty
Terri Hargleroad
Larane Nesbit *
Chris Navarro
Melissa Oppenheimer
Jackie Tucker
Joanne Wagner *

Associate Members:
Tom Campbell
Bob Doherty
Dennis Mattock
David Nesbitt

GET INVOLVED!

We still have board positions that need to be filled as well as other ways to get involved in CVRW.

- Campaigns
- V.P. Ways and Means
- Website
- Press & Publicity
- Caring for America
- Achievements
- Communications/Social Media
- Historian/Photography
- Voter Registration
- Ballot Harvesting

1st **CVRW Board Meeting**
2nd Ground Hog Day
6th Board of Supervisors Meeting
7th CVUSD Meeting
12th Thousand Oaks Planning Commission Meeting
13h Thousand Oaks City Council Meeting
14th Valentine's Day / Ash Wednesday
19th President's Day
21st CVUSD Meeting
22nd **CVRW General Meeting**
26th Thousand Oaks Planning Commission Meeting
27th Board of Supervisors Meeting / Thousand Oaks City Council Meeting
28th Central Committee Meeting

2024 Officers and Committee Members

President
Lisa Gelinas
VP Programs
Michelle Spencer
VP Membership
Jennifer McCarthy
VP Ways & Means
Open
Treasurer
Jen McGee
Recording Secretary
Marie Doherty
Corresponding Secretary
Marie Chodkowski
Hospitality
Liz Priedkalns
Newsletter
Miriam MacLeod
Parliamentarian
Marie Doherty
Americanism
Suzanne Toton
Legislation
Gina Libby
Press & Publicity
Open
Campaigns
Open
Fundraising
Donna Stull
Caring for America
Open
Website
Open
Achievements
Open
Communication and Social Media
Open
Military
Jill Delany
Historian
Open
Ballot Harvesting
Open
Voter Registration
Open

CVRW BOOK CLUB

Join us to discuss this month's book selection.

Book: **ELON MUSK**
By Walter Isaacson (It has been on sale at Barnes and Noble in Westlake Village)

Date: Monday, February 19
Time: 12:30 pm
Place: California Pizza Kitchen
Thousand Oaks Blvd.

This is a hefty book. The aim will be for everyone to at least concentrate on one chapter to share with the group.

The CVRW Book Club meets monthly. All members are welcome to join. To RSVP or get more information contact:

Jill_Delaney@live.com

AMERICANISM

Primary Caucus

By: Suzy T.

Many states hold what is called a "caucus" prior to a presidential election. The term refers to a meeting run by the political parties. The caucus can be for county or district level, or divided by the candidates they support. This is an opportunity for the candidates to present their stance on issues and gain voters. In an open caucus, you can vote for any candidate. In a closed caucus, you must vote for the candidates in the political party you are registered for.

Many of us are thrilled to find out that President Trump won the Iowa caucus. We know that is important for his victory. But why is it so important to win the primary caucus in Iowa?

Iowa is in a conservative part of the country, most likely to vote Republican. It has large numbers of Republican voters and has been used as a campaign launching pad throughout history. Although Joe Biden lost Iowa and New Hampshire but became president, for the better part of history, it has been predictive of presidents in the past, including Obama winning over Hillary in 2008 and Bush over McCain.

Trump lost by a small margin in 2016. The caucus is closed, so only Republicans can vote for Trump. It appears that many registered to vote for the first time in 2016 to vote for Trump so it is not surprising that he won for this race now that he has a much larger following.

https://www.npr.org/2024/01/11/1222881162/how-does-iowa-caucus-work
Iowa Caucus: What the Results Mean for Trump, DeSantis and Haley Going Into New Hampshire

Legislative Report

by Gina LIbby

Much has been going on at the federal level with negotiations on bills addressing the southern border and continued funding of the federal government. Speaker Johnson is reported to have honored certain arrangements made by Kevin McCarthy in approving the continuing resolution that honored current spending levels

through February 2024. Some Congressional conservatives are holding the line, denouncing the lack of border security in the funding package, as leverage. Members like Kevin Kiley won't sign the huge spending package without including H.R. 2 to strengthen and secure the border.

Our voices need to be heard at the Congressional level. Call your representatives in support of H.R. 2. Informative talking points are provided on the Heritage Foundation's Sentinal Nation website:
https://heritageaction.com/key-votes

At the state level, Kiley is introducing legislation reversing Newsom's disastrous AB 5, under state Labor Secretary Julie Su. Su is now acting as federal Labor Secretary despite NOT being confirmed by Congress. Lawlessness abounds under the Biden Administration. Kiley continues to expose Newsom's incompetence. As such, he's now a target under huge fire to be replaced.

The left is supporting Newsom's top aid to take over Kiley's district. Kiley has demonstrated his success; he chairs and sits on several important Congressional committees and his questioning of Secretaries Mayorkas, Garland, Su, has forced them to perjure themselves under oath repeatedly. Almost single-handedly, Kiley has exposed Newsom's "model for the nation" lies. His campaign is worth supporting:
https://kiley.house.gov/

The public comment period just closed in the Federal Register related to the United States' agreement to sign on to the WHO/WEF's Pandemic Prevention Initiative—giving up US sovereignty to the WHO's decision-making during the next disaster. Apparently, the US didn't have a confirmed health authority to participate in development of the agreement, so our voices haven't been heard in a matter that affects every individual.

Call your representatives to Exit the WHO: https://jamesroguski.substack.com/p/exit-the-who

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The 'Unexploded Bomb' in the Constitution That's Threatening the 2024 Election

The history behind Section 3 of the 14th Amendment, which is being used to dislodge Trump from election ballots and is set to be heard by the Supreme Court.

The Epoch Times
By Petr Svab | January20,2024
Updated:January 23, 2024

In a great historical irony, one of the least studied parts of the U.S. Constitution is poised to unleash on the country a whirlwind of political vendetta.

However, the Supreme Court may still block such a consequence.

Section 3 of the 14th Amendment, the disqualification clause, was originally designed to punish rebels of the Civil War and generally overlooked as irrelevant since.

In recent years, however, it has been dusted off by some scholars and wielded by Democrat activists and officials who say it bars former President Donald Trump from returning to office because of his role in the riot at the U.S. Capitol on Jan. 6, 2021.

The Colorado Supreme Court has already concluded that President Trump engaged in insurrection and is thus disqualified under Section 3.

Maine Secretary of State Shenna Bellows made a similar finding. Similar efforts are underway in other states, including New York, California, and Pennsylvania.

The Supreme Court has agreed to hear the matter on an accelerated timetable, setting a hearing for Feb. 8.

The text of Section 3 is sweeping and open-ended and needs to be interpreted with caution, multiple constitutional experts say. The Epoch Times reviewed thousands of pages of legal, academic, and historical texts on the matter.

Perilously, the historical record suggests that the clause was written with virtually no foresight of how it may be applied outside the Civil War context—an "unexploded bomb" left dormant in the Constitution, as one expert put it.

Republicans, the original authors of the law, face being hoist with their own petard, although on a fuse more than 150 years long.

The repercussions may ripple back, however, as some already pursue the thought that, as applied to President Trump, Section 3 may well apply to many a Democrat, including President Joe Biden himself.

Tumultuous Times

The 14th Amendment arose from the political consequences of the just-concluded Civil War. The 39th Congress, with a Republican majority, assembled in 1865 at extraordinarily fraught times.

"They were meeting just months after the end of the Civil War and Abraham Lincoln had been assassinated just a few months earlier," said Kurt Lash, a constitutional law professor at the University of Richmond and a leading authority on the history of the 14th Amendment.

Immediately, the Republicans faced a political crisis, he told The Epoch Times.

For one thing, freeing millions of slaves had unintended consequences.

During the founding, northern states sought to diminish what they saw as the South's unfair political advantage —the slave population would be counted in the census for apportionment in the House of Representatives and the Electoral College but wouldn't be allowed to vote, boosting the voting power of free southerners.

That's why the North insisted that slaves shouldn't count, while the South wanted them counted. A compromise was eventually reached to count slaves as three-fifths of a person.

Once freed, former slaves would be counted as whole persons again which would "amplify the political power of the slave-owning states once they returned to Congress," according to Mr. Lash.

After the war, southern Democrats immediately instituted the "Black Codes," which de facto blocked black Americans' rights, including the right to vote, and forestalled a Republican bloc forming in the South.

Southern and northern Democrats were on the cusp of teaming up to claim a majority in Congress, upending the Republican "Reconstruction" program, according to Mr. Lash.

"This was an immediate danger to the Republicans and to the Union," he said.

Republicans were ready to employ radical measures to prevent such a hazard. When southern Democrats returned to Congress at the onset of the 39th Congress in December 1865, the Republican majority in the House simply refused to read their names and seat them.

Rep. James Brooks (D-N.Y.), a prominent northern Democrat, demanded an explanation from the clerk of the House, but Rep. Thaddeus Stevens (R-Pa.) interjected: "It is not necessary. We know all."

Mr. Lash said, "It was incredibly tense."

President Andrew Johnson, a Tennessee Democrat who ran with President Lincoln in 1864 on a National Union Party ticket, disagreed with the exclusion of Southern congressmen. The rift between Democrats and Republicans grew so wide that a schism loomed over the nation, according to Mr. Lash.

If northern and southern Democrats combined to forge a majority in the 1866 midterms, there was a possibility that President Johnson would meet with them and set up a new Congress that would refuse to seat Republicans and "cut the Republican Congress out of the loop altogether," he said.

"It was possible that we were going to have two competing governments after the election in 1866 and that was going to lead to a second civil war," Mr. Lash said.

Seeking a solution, Republicans in both the House and Senate formed the Joint Committee on Reconstruction to quickly draft constitutional amendments that would ensure that southern freedmen were allowed to exercise their rights.

They also saw a need to keep former Confederates from positions of power, largely as a punishment for the immense bloodshed of the war and also as a rebuke of President Johnson, who was liberally issuing pardons to former rebels.

Section 3 barred members of the Confederate rebellion from voting for Congress and for the Electoral College. Congress didn't like it.

The committee came up with a series of proposals but all failed. Not only did Democrats vigorously oppose the plan, but even Republicans were divided. Radicals sought to severely punish the South for what they saw as treachery, while moderates sought leniency in pursuit of reconciliation. A new wing of Liberal Conservatives emerged, pushing yet more leniency toward the south.

Finally, Republican activist Robert Owen proposed to Mr. Stevens a different approach—bundle all the proposals together and use the threat of scuttling the whole endeavor to bring dissenters in line.

The committee did so, coming up with a draft that ended up being close to the final text of the amendment, except for Section 3.

Section 3 barred members of the Confederate rebellion from voting for Congress and for the Electoral College. Congress didn't like it. Some members thought it disenfranchised too many Americans. Others thought the Electoral College provision was easy to dodge as states could pass laws to appoint their electors rather than vote for them.

"It got shot to pieces," Mr. Lash said.

Unwilling to jeopardize the rest of the proposal, the House passed the draft amendment anyway.

However, Senate Republicans wouldn't have it. They insisted Section 3 must be nixed and replaced. After an impasse on the floor, Republicans retreated to continue the discussion in private. The supposedly "secret" deliberations were anything but. Senators kept the press abreast of their negotiation progress—or rather lack thereof. In the end, five senators, those who served on the original Joint Committee, were asked to hammer out new language for Section 3, with the understanding that whatever they came up with would be accepted.

Sen. William Fessenden (R-Maine) delivered the result to the caucus, giving credit to his two colleagues, Sen. Jacob Howard (R-Mich.) and Sen. James Grimes (R-Iowa), for phrasing the draft, which was then unanimously approved by the caucus with only a few adjustments. Back on the Senate floor, Republicans then shot down all objections and approved the whole amendment.

The final version of Section 3 represented a major defeat for the radical Republicans. Far from disenfranchising Confederate rebels, it merely banned from certain offices those who previously took an oath to the Constitution, Mr. Lash wrote in his recent paper, "The Meaning and Ambiguity of Section Three of the Fourteenth Amendment."

"[It was] intended to put some sort of stigma, some sort of odium upon the leaders of this rebellion," Sen. Lyman Trumbull (R-Ill.) told the press back then.

"No other way is left to do it but by some provision of this kind."

Back in the House, Mr. Stevens panned the new Section 3 as inadequate, and beseeched Congress to pass "proper enabling acts" to put the Amendment in effect, lest it "may give the next Congress and President to the reconstructed rebels."

Despite his objections, he backed the Amendment, and the House passed it shortly thereafter, handing it to the states for ratification.

However, most of the southern states refused to ratify.

Republicans, bolstered by a decisive win in the 1866 midterms, responded by passing two Reconstruction Acts that imposed on the South a set of requirements as a condition to readmitting them into the union and allowing their congressmen to be seated.

The conditions included the abolition of the Black Codes, passing new state constitutions, moving the states under formal military

oversight, and ratifying the 14th Amendment. President Johnson vetoed the bills, but Republicans overrode him.

Still, the South wouldn't cooperate.

The Reconstruction Acts directed the military to oversee voting and voter registration in the South, allowing blacks to get on the rolls. These new voters then helped to trigger Constitutional Conventions, adopted new state constitutions, instituted new governments, and enough of these then ratified the amendment to push it past the requisite approval of three-quarters of states.

Finally, on July 9, 1868, the 14th Amendment was adopted.

Finally, on July 9, 1868, the 14th Amendment was adopted.

Section 3 reads: "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."

Limited Record

To interpret the Constitution, it's often helpful to examine the debate that preceded its passage and ratification. In the case of Section 3, however, the congressional record is limited, according to Dave Kopel, research director of the Independence Institute and an expert on the Constitution and the 19th-century legal landscape.

"It certainly doesn't answer everything and it's not that large," Mr. Kopel said. "We've got some information on early application and that's almost all we've got."

Lack of historical clarity and general lack of research on the topic complicate interpretation, according to Mr. Lash.

"There are no experts on Section 3," he said. "We're catching up on this as we go."

A creature of compromise, the text of Section 3 was influenced by several competing pressures. The radicals wanted it to punish former rebels and stop them from reaching the halls of Congress.

Without it, Mr. Stevens claimed, "that side of the House will be filled with yelling secessionists and hissing copperheads."

Yet it couldn't be too sweeping either, as it would push away the moderates and liberals.

It needed to be formulated quickly as it was holding up the whole 14th Amendment.

Under these constraints, virtually all debate about Section 3 focused on the most immediate issues— preventing former rebels from entering Congress and keeping them from influencing the Electoral College in the upcoming 1868 election, according to Mr. Lash and historical records.

"That's where everyone's focus was. Everyone looked at this in terms of: 'How do we deal with the mass murderers of the Civil War who ran the prisons and starved our prisoners of war to death, who were responsible for 600,000 deaths of North and South and who now constituted thousands of rebels in waiting,'" he said.

There was virtually no debate on the broader consequences of the clause. Did it only apply to the Confederacy or to any future rebellions, too? How exactly was it supposed to be enforced? Did it apply to the president and vice president?

On most of such questions, "there are respectable arguments both ways and it's not a clearly settled matter of law," according to Mr. Kopel.

Poorly Written

As Mr. Lash acknowledged, Section 3 wasn't a particularly well-written law.

"The text could have been written much more clearly," he said in an email response, noting that the original draft, which took months to produce, "was terribly written and criticized by both Democrats and Republicans."

Republican Senators then rewrote the whole section in just a few days and quickly pushed it through.

> **The whole 14th Amendment, despite its loftiness, was an exercise in poor legal writing, said constitutional scholar Rob Natelson.**

"No public debate, no explanation. Nothing. They then returned to the Senate intent on passing it without any changes regardless of additional criticism," Mr. Lash said.
"This is not the best way to produce a clear and effective text."

Rob Natelson, a constitutional scholar who's one of the top experts on the original meaning of the document and an Epoch Times contributor, was even less generous in his assessment.

"The sponsors of the amendment often didn't know what they were doing," he said.

The whole 14th Amendment, despite its loftiness, was an exercise in poor legal writing,

"They did such a bad job, we have argued over its most important terms ever since," he said. "The 39th Congress simply couldn't hold a candle as drafters to the Constitutional Convention."

Mr. Natelson pointed out that some parts of the law were unenforceable from the get-go, such as "representation of a state in the House of Representatives would be reduced if the state disenfranchised a portion of its male population."

"That provision is, and always has been, a dead letter," he said.

The equal protection clause in Section 1 of the Amendment was used "to grant blacks equal rights with whites, but without any understanding of the wider ramifications of how the clause was worded," according to Mr. Natelson.

"When a sponsor was asked if it gave women the vote, the congressional sponsor hemmed

and hawed in an unconvincing way," he said. "He thought not, but they didn't amend the clause to clarify that."

"[The clause] has turned into an invitation for judicial activism."

Legal analysis of the amendment seldom includes such critique, Mr. Natelson suggested.

"I've never encountered a legal scholar who writes on the 14th amendment who is willing to say the emperor has no clothes," he said.

Future Rebellions

The debate on Section 3 focused squarely on the Confederacy. Nonetheless, Mr. Lash found several comments indicating that at least some legislators at the time understood it as applying to future insurrections, too.

"This section is so framed as to disenfranchise from office the leaders of the past rebellion as well as the leaders of any rebellion hereafter to come," said Sen. John Henderson (R-Mo.).

Rep. Schuyler Colfax (R-Ind.), speaker of the House at the time, suggested that the 14th Amendment was "[embedded] in the imperishable bulwarks of our national Constitution, against which the waves of secession may dash in future but in vain."

There's nothing in the plain text of the clause that would restrict it to the past. And plain text is where the Supreme Court starts its analysis, several experts acknowledged.

Even if Republicans intended for Section 3 to only apply to the Confederacy, they likely didn't want to phrase it that way as it would be attacked as a bill of attainder—a law that declares a person or a group of people guilty of a crime.

Article 1, Section 9 of the Constitution prohibits such bills.

In the sparsely documented cases in which Section 3 was enforced, the bill of attainder objection was raised, but it was an unsuccessful argument.

Self-Enforcement

Section 3 is written in a way that suggests that it's "self- executing," which means it doesn't need Congress to pass separate legislation to implement it, according to William Baude, a law professor at the University of Chicago, and Michael Paulsen, a law professor at the University of St. Thomas, both eminent experts on constitutional interpretation.

Section 5 of the 14th Amendment states that "the Congress shall have power to enforce" it "by appropriate legislation."

However, that doesn't mean that Congress had to do so for the amendment to have effect, the professors opined in a 2023 paper, "The Sweep and Force of Section Three."

It's a "fair argument," according to Mr. Lash.

As "self-executing," Section 3 could be enforced by "anybody who possesses legal authority (under relevant state or federal law) to decide whether somebody is eligible for office," the Baude–Paulsen paper said. "Section Three thus functions as a sort of constitutional immune system, mobilizing every official charged with

constitutional application to keep those who have fundamentally betrayed the constitutional order from keeping or reassuming power," the paper reads.

Under this interpretation, any lone official tasked with verifying, for instance, whether a presidential candidate is at least 35 years of age could automatically also adjudicate whether such a candidate engaged in insurrection.

Maine's secretary of state, placed in just such a position, indeed did so and declared that President Trump should be excluded from the ballot.

Mr. Lash cautioned against such an interpretation. He pointed out that Mr. Stevens twice publicly said during the drafting process that the provision would require implementing legislation.

"It will not execute itself," Stevens said of the House draft.

Mr. Lash said, "No one at that time, or any time prior to final passage, disagreed with Stevens's declaration that the provision would not execute itself, or suggested it be redrafted so that it could be enforced even in the absence of congressional legislation."

However, what the drafters intended isn't that important in contrast to what they actually passed, the Baude– Paulsen paper argues.

Just because some consequences of Section 3's language were "unintended by some of those who voted for it" doesn't mean "that these consequences were not entailed by what they voted for," the authors said.

> **Section 3 takes rights away and taking rights away is something which calls into consideration questions of due process and fair process.**
>
> *Kurt Lash, constitutional law professor, University of Richmond*

The Constitution is properly interpreted based on what its plain text meant at the time of its ratification, rather than what lawmakers had in mind when passing it, they explained, calling it "a classic blunder: swapping in original intent for original meaning."

Yet how a text was understood by the ratifiers was also influenced by how it was presented by the drafters, Mr. Lash pointed out.

"This is why most of the congressional debates are relevant—they were published in newspapers on a daily basis," he said.

Mr. Kopel said, "The Constitution proceeds from the people. It's the people's original understanding that is governing."

Some scholars have argued that Section 3 must be self- executing because other parts of the 14th Amendment, especially Section 1, are self-executing.

Not necessarily, according to Mr. Lash.

"These were all separate amendments to begin with that were just bundled together at the last minute. So I think it's quite possible that you would have one that is self- executing and one that is not," he said.

The function of each section may also play a role.

"These different sections of the 14th Amendment do different things. Section 1 grants rights and it makes sense that that could be self-executing. But Section 3 takes rights away and taking rights away is something which calls into consideration questions of due process and fair process," Mr. Lash said.

"In fact, the importance of that particular principle is announced in Section 1 as well. And so to be consistent with Section 1's requirement of due process, we should ensure that Section 3 doesn't take away any rights without due process."

Due Process

The Baude–Paulsen paper notes that the due process clause protects "life, liberty, or property."

"It is far from clear that the right to hold public office is a form of life, liberty, or property," it states. "It is a public privilege, a public trust, to be vested with the power of the people."

But Mr. Natelson commented that, based on Supreme Court precedent, "disqualification from political office is a quasi-criminal penalty, as serious as disqualification for impeachment" and as such invokes due process. However, he acknowledged that "probably conviction need not be beyond a reasonable doubt" as in a criminal trial.

Even if some measure of due process applies, the Baude– Paulsen paper states that "so long as Section Three is applied through the established and customary procedures for determining qualifications for office, many due process objections would seem to disappear."

"Anybody who wishes to argue that his conduct is not covered by the substantive sweep of Section Three is free to litigate that point through all relevant channels. Section Three is therefore not in conflict with any requirements of fair notice or an opportunity to be heard," the authors said.

Mr. Natelson expects the Supreme Court will drill down on the due process issue.

It's an open question as to how much due process is in order, according to Mr. Kopel.

On the most demanding side, it would require that one first be convicted of the federal crime of insurrection, he suggested.

"That's definitely good enough," Mr. Kopel said.

On the other side would be a unilateral decision, such as in Maine, or even the expedited proceeding used in Colorado—"a fairly long trial being shoehorned into an election ballot challenge thing that's supposed to be done in like 72 hours," Mr. Kopel said.

"Is that due process?" he asked.

Application to President

Mr. Lash presented perhaps the most detailed argument as to why Section 3 may not apply to the president or vice president.

He pointed out that one of the earliest drafts of a disqualification clause, an amendment proposed by Rep. Samuel McKee (U-Ky.), specifically referred to "the office of President or vice president." But the final draft omitted such

language, only referring to "any office, civil or military, under the United States."

At the time, Mr. Lash argued, the president isn't legally considered a "civil officer of the United States."

He gave the example of the impeachment of Sen. William Blount in 1799, in which his lawyer argued that "it is clear that a Senator is not an officer under the Government."

"The Government consists of the President, the Senate, and House of Representatives, and they who constitute the Government cannot be said to be under it," Mr. Lash said.

Supreme Court Justice Joseph Story, in his famous 1833 "Commentaries on the Constitution," said that based on the Blount case, "the enumeration of the president and vice president, as impeachable officers, was indispensable; for they derive, or may derive, their office from a source paramount to the national government."

"It does not even effect to consider them officers of the United States," the justice is quoted as saying in an 1868 editorial.

Justice Story's analysis wasn't necessarily correct, but it was considered authoritative at the time, according to Mr. Lash.

"At the time of the framing and ratification of the Fourteenth Amendment, the precedent of Blount's Case and Story's analysis were accepted and well known both in and out of Congress," his paper reads.

The Colorado Supreme Court majority solved this issue by claiming that the president isn't under the government, but he's under the United States, which represents even higher authority—the people.

But Mr. Lash pointed out that at the time of the framing the phrase "under the United States" would have been legally understood as equivalent to "under the government of the United States."

The record of the Senate debate on Section 3 captures a moment in which Sen. Reverdy Johnson (D-Md.), a former U.S. attorney general, questioned why the clause doesn't apply to the president and vice president.

Sen. Lot Morrill (R-Maine) responded, "Let me call the Senator's attention to the words 'or hold any office, civil or military, under the United States.'"

Sen. Johnson replied, "Perhaps I am wrong as to the exclusion from the Presidency; no doubt I am; but I was misled by noticing the specific exclusion in the case of Senators and Representatives."

The Baude–Paulsen paper capitalizes on this exchange, pointing to "the seeming absurdity" of not applying Section 3 to the president.

Here, however, the authors seem to resort to reasoning they previously disavowed. Based on their logic, it should be the meaning of the text that guides interpretation, not what the framers thought the text should mean, Mr. Lash noted.

"They can't have it both ways," he said. "Either text controls or it doesn't."

Mr. Baude and Mr. Paulsen didn't respond by press time to a request by The Epoch Times for comment.

In Mr. Lash's view, the framers' intent counts insofar as it influences the ratifiers' understanding. But that wasn't the case in the Johnson–Morill exchange.

"It was not published in any newspaper," Mr. Lash said.

Rather than "absurd," it was understandable that the framers didn't dwell on including the president, he said.

> **Scholars have yet to identify a single ratifier who described Section Three as applying to persons seeking the office of the President of the United States.**
>
> *Kurt Lash, constitutional law professor, University of Richmond*

At the time, there was no appetite among northern Democrats to nominate a former rebel, and it was even more preposterous that the nation would have elected such a candidate.

"Scholars have yet to identify a single ratifier who described Section Three as applying to persons seeking the office of the President of the United States," his paper reads.

"Whether such a person exists, it is clear the issue was of little (or no) interest to the vast majority of ratifiers who discussed the third section of the Fourteenth Amendment. The evidence, or lack thereof, is what one would expect if neither the framers nor the ratifiers thought the possibility important enough to make it part of the Fourteenth Amendment."

If Section 3 applies to the president, Republicans had a chance to say so in 1872 when Horace Greeley ran against their nominee, incumbent President Ulysses Grant.

"Despite their repeated claims that Greeley had given 'aid and comfort' to the 'enemies' of the United States who had engaged in insurrection and rebellion against the United States, no one seems to have raised a possible Section Three disqualification claim," Mr. Lash said.

Shoehorning the president into Section 3, on the other hand, would be a needless and radical "change in the democratic process," he said.

"You're not just disenfranchising disloyal people in the south," Mr. Lash said. "You're disenfranchising the loyal people of the United States of America and saying they cannot vote for an accused person unless Congress gives them permission."

It's true that the Constitution imposes some qualifications on presidential candidates, such as age and country of birth.

"[However,] that's completely different," he said.

"Those restrictions on the democratic process are expressly announced in the text of the Constitution and they were robustly vetted and debated by the people in the Ratification Assemblies at the time of the original Constitution," Mr. Lash said.

"You're talking about adding a new restriction as a matter of implication and to do so despite knowing that it received no national vetting and discussion by the ratifiers whatsoever. That's an extraordinary proposition and one that I think

just can't be supported by the historical evidence."

Broad Sweep

When Congress started to apply Section 3, it did so within its own body. If an incoming member was to be disqualified, lawmakers heard evidence, allowed the accused to speak in his defense, and then voted on whether disqualification was in order.

In 1870, Congress passed a law that implemented the 14th Amendment, including Section 3. It said it "shall be the duty" of local federal prosecutors to challenge in civil court officials that they deemed to be disqualified and bring misdemeanor criminal charges against those knowingly taking office despite disqualification.

> **It certainly suggests that the Maine Secretary of State was out of line when she acted unilaterally.**
>
> *Rob Natelson, constitutional scholar*

The law excluded Congress members and state legislators from such enforcement—at the time, it was already the practice in Congress to enforce Section 3 by vote.
The act and its enforcement may provide hints on how Section 3 was understood.

"It suggests that disqualification was to be after due process—followed in the event of a quo warranto procedure," Mr. Natelson said. "It certainly suggests that the Maine secretary of state was out of line when she acted unilaterally."

Based on the instances in which an official was, in fact, challenged under Section 3, it appears the bar for disqualification was low, the Baude–Paulsen paper states.

"Section Three's disqualification for having 'engaged' in insurrection covered a wide swath of voluntary participatory acts supporting or assisting rebellion, some bordering on near-passive acquiescence," the authors said.

In one case, a Southern Congress member was rejected because he wrote a fiery letter saying that every man trying to join the Union Army ought to be shot.

In another case, an appointed sheriff was charged because he "furnished a substitute for himself to the Confederate army." His defense was that he was just trying to dodge the Confederate draft. But the judge instructed the jury to scrutinize the man's motivations for dodging the draft.

"Defendant's conduct must have been prompted by a well-grounded fear of great bodily harm and the result of force, which the defendant was neither able to escape nor resist," the judge said.

"And further, the defendant's action must spring from his want of sympathy with the insurrectionary movement, and not from his repugnance to being in an army, merely."

The authors opined that this broad interpretation could be applied to any other insurrection or rebellion.

Mr. Kopel agreed.

"As a matter of enforcement discretion, supporting a tiny insurrection that does little

damage might be ignored for enforcement purposes. Just as many other low-effect misdeeds are sometimes overlooked. But the [14th Amendment] certainly doesn't require that they be overlooked," he said.

Some experts weren't so sure.

"[The framers'] target was specifically the Confederacy. Their target was not anyone who supported the French in the French–Indian War. Their target was not anyone who supported the British in the British–American War. Even though the language isn't written in a way to limit those, the rationale was the Confederacy," said Horace Cooper, senior fellow with the National Center for Public Policy Research, who formerly taught constitutional law at George Mason University.

"The further away you get from a construction involving actual people who had engaged in military rebellion against the government, the more careful you're going to have to be about your reading."

Mr. Natelson warned that enforcement of a constitutional provision isn't necessarily constitutional itself.

"Such actions have little, if any, meaning for an originalist," he said.

Mr. Natelson also noted that "actions taken during or in the immediate aftermath of war are often the worst guides to constitutionality."

What's Insurrection?

Missing from the Section 3 drafting and early enforcement actions are any explanations of what constitutes an insurrection, rebellion, and who constitutes the enemies of the United States. The law was applied solely to the Confederacy, where there was no doubt the terms applied.

Victor Berger, a newspaper publisher and co-founder of the Socialist Party of America. (Public Domain)

Its enforcement was soon defanged when, in May 1872, Congress issued an amnesty, removing the disqualification penalty from nearly all former Confederates, "except Senators and Representatives of the thirty-sixth and thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of departments, and foreign ministers of the United States."

Since then, Section 3 has been virtually a dead letter, save for one case in 1919.

Victor Berger, newspaper publisher and co-founder of the Socialist Party of America, won one term in Congress in 1910 and was subsequently indicted in 1918 under the Espionage Act for opposing U.S. intervention in World War I.

Later that year, he won a congressional race but was sentenced to 20 years before his term started. Out on bail, he tried to take his seat, but Congress used Section 3 to block him. In 1921, the Supreme Court overturned Berger's conviction based on his affidavit that the trial judge was biased against him, even though the record indicated that the affidavit was false.

The Baude–Paulsen paper states that Section 3 didn't apply to Mr. Berger and Congress overreached.

The authors looked at how the terms "insurrection" and "rebellion" were used in the Constitution and in legal documents of that time. The only instance where a court at least briefly defined the terms came from The Prize Cases in 1863, where the Supreme Court affirmed President Lincoln's blockade of Southern ports early in the war.

"Insurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of Government," the court stated.

The opinion gave one example of an insurrection: The 1794 Whiskey Rebellion in Pennsylvania, in which some armed locals, opposed to excise tax on spirits, terrorized tax collectors and eventually engaged in a shootout with a group of soldiers protecting a tax collector's house.

A small group of locals then managed to summon a militia of several thousand men under the false pretense of discovering unspecified secrets. They planned to use the militia to march on Pittsburgh, storm Fort Fayette, and perhaps even declare independence from the United States.

Others managed to dissuade the leaders from the plan. After marching through the town, the militia dispersed.

"In a nutshell: insurrection or rebellion were forms of active resistance to the lawful authority of the government. An insurrection might be something short of outright rebellion. But an insurrection against government authority sometimes grows into full-on 'rebellion,'" the Baude–Paulsen paper reads.

January 6

The Colorado Supreme Court heavily borrowed from the Baude–Paulsen analysis to conclude that President Trump engaged in an insurrection and was thus disqualified.

Consulting 19th-century dictionaries, the justices came up with the definition: "a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish the peaceful transfer of power in this country."

They also relied on a definition adopted in the case by a lower Colorado court: "A public use of force or threat of force ... by a group of people ... to hinder or prevent execution of the Constitution of the United States."

They concluded that the group of people who entered the Capitol was sizable, "armed with a wide array of weapons," and "chanting in a manner that made clear they were seeking to inflict violence against members of Congress and Vice President [Mike] Pence."

"The required force or threat of force need not involve bloodshed, nor must the dimensions of the effort be so substantial as to ensure probable success," the justices argued.

"Soon after breaching the Capitol, the mob reached the House and Senate chambers,

where the [election] certification process was ongoing. This breach caused both the House and the Senate to adjourn, halting the electoral certification process."

The justices concluded that since there was a group of people that threatened force and because of their actions, the certification was hindered and because President Trump riled up his supporters with words such as "we fight like hell," he therefore engaged in insurrection.

The chief issue with this conclusion is that the court relied on "a highly selective version of what went on on January 6" lifted from a report by the Congressional Jan. 6 Committee, Mr. Natelson said.

Normally, such reports are considered rumor and inadmissible as evidence. But the court relied on an exception for government reports.

Even in that case, the court is supposed to examine the reliability of such reports, Mr. Natelson said.

The court did so, concluding the report wasn't biased because Republicans had a chance to put their members on the committee.

They failed to mention, however, that Democrats refused to allow on the committee Republican supporters of President Trump and instead included two of his most ardent Republican critics.

While government reports can hardly be free from political influences, at least they should involve a measure of rigor, according to Mr. Natelson.

"These official investigations are not a courtroom, but still, generally speaking, good practice is that you cast your net widely, you get as much evidence as you possibly can, you allow people to rebut, and so forth," he said.
"None of that was done on the January 6 Committee. All the members of the January 6 Committee already voted to convict President Trump when he was impeached. Republicans who were supporters of President Trump were kept off the panel. There was no right to cross-examination, and there was no right by the Trump people to present evidence. It was a carefully scripted show trial."

A more complete view of the Jan. 6, 2021, incident reveals that only a fraction of those at the Capitol engaged in any violence, vandalism, or intimidation. An even smaller subset carried any weapons at all, and they weren't firearms, but mostly sticks.

Mr. Kopel predicts that if successfully used against President Trump, Republican officials will start to invoke Section 3, too.

"My impression is that what many of the January 6 rioters wanted to do is they just wanted an opportunity to talk to their members of Congress and to try to persuade them to postpone the hearing," Mr. Natelson said.

Some of the people did engage in inflammatory chants, such as "hang Mike Pence," but those were highly irregular.

It would be a stretch to argue "President Trump was guilty of that," Mr. Natelson said.

Tit-for-Tat

Mr. Kopel predicted that if successfully used against President Trump, Republican officials would start to invoke Section 3, too.

"Expect some secretaries of state to disqualify from the ballot [Vice President] Kamala Harris and others who gave aid, comfort, and encouragement to the rioters in the summer of 2020," he said.

Mr. Natelson affirmed the same sentiment.

"If we apply the standard some use for disqualifying President Trump, then many leftwing politicians should be disqualified also," he wrote in a recent Epoch Times op-ed.

Republicans in at least six states, including Texas, Missouri, Florida, Pennsylvania, Arizona, and Georgia have floated the idea of removing President Biden from the ballot for his handling of the southern border.

Rather than engaging in insurrection, the question would be whether the President gave "aid or comfort" to the enemies of the United States.

In an ironic twist, it was a Democrat opponent of Section 3 who warned that it would lead to political recriminations.

During the Pennsylvania Ratification Debates that began in 1787, state Rep. Thomas Chalfant observed:

"Look over this section carefully and tell me if you can find anything which requires that an individual shall not be ineligible to office until he has been tried and convicted of treason, or of the crime mentioned in said act, by a court of competent jurisdiction? There is nothing of the kind in it. How then is the person charged to be tried? Before what tribunal can he be required to appear to meet the charge of treason or disloyalty? What opportunity is to be afforded to him to exculpate himself?"

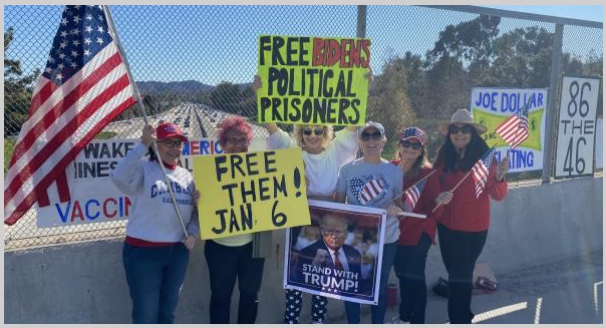
Mr. Chalfant suggested that Republicans would come to rue the day they unleashed the clause.

"Tomorrow, that same people, enlightened as to your designs, may hurl you from your proud position, and make you suppliants at the hands of those you have so wronged and persecuted," he said.

Correction: A previous version of this article incorrectly described the qualifications of David Kopel as well as the home state of President Andrew Johnson. Mr. Kopel is an expert on the 19th-century legal landscape. President Johnson's home state was Tennessee. The Epoch Times regrets the errors.

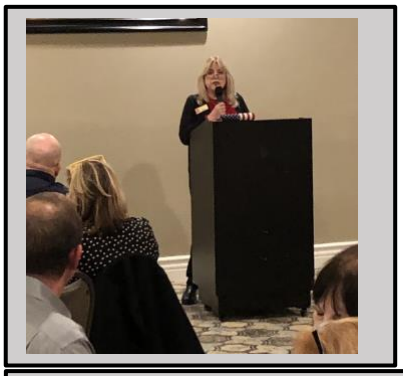
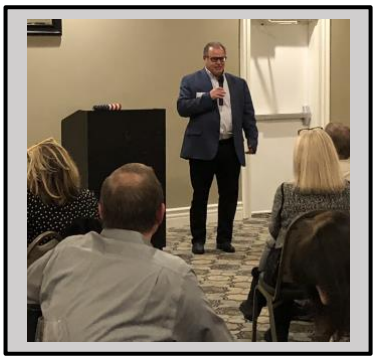
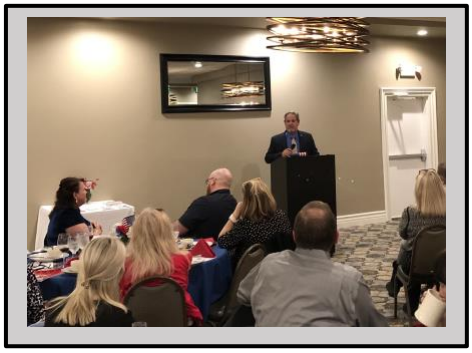
https://www.theepochtimes.com/article/the-unexploded-bomb-in-the-constitution-thats-threatening-the-2024-election-5569216?utm_source=Morningbrief&src_src=Morningbrief&utm_campaign=mb-2024-01-21&src_cmp=mb-2024-01-21&utm_medium=email&est=vIIc1XDe%2B3e8QwiXZkDjFvRirEJqOhx%2F92CEJoSboizl8fkfxZkWOHiDOQ%3D%3D

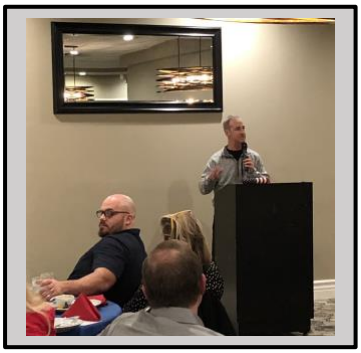
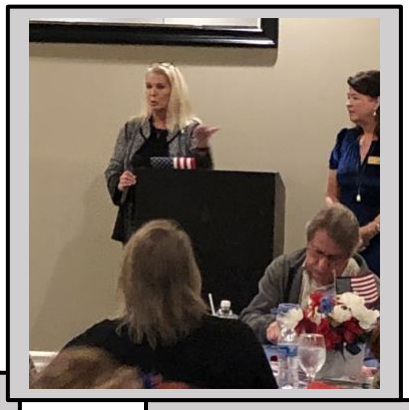
Some CRVW members participating in the J6 March

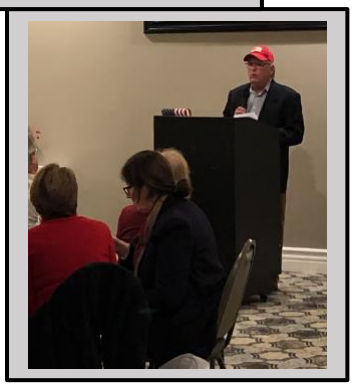
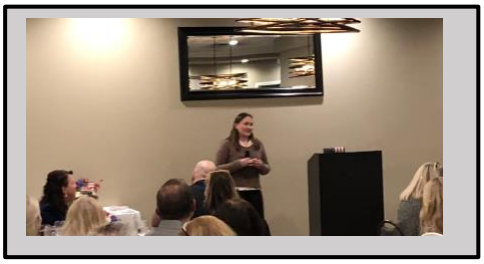


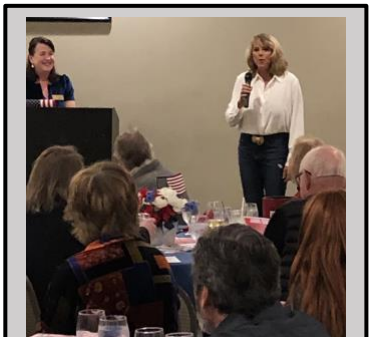
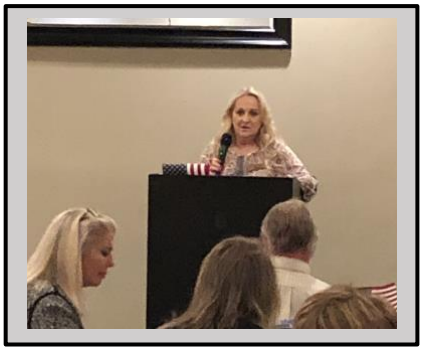
CVRW JANUARY GENERAL MEETING

Candidates for the 2024 election of the Ventura County Republican Central Committee District 2 representing Conejo Valley presented their platform and answered questions.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