

JUDGE RULES TRUMP HAD THE PURPOSE OF INCITING INSURRECTION ON JANUARY 6

Thus far, I haven't engaged with the lawsuits attempting to keep Trump off the ballot under the Fourteenth Amendment. I think people absolutely have the right to make the case Trump's actions on January 6 disqualify him from being President. But the only decisions that will matter on this front are what various Supreme Courts have to say and whether the Republican Party chooses to nominate Trump notwithstanding the risk he'll be disqualified (to say nothing of whether Trump is disqualified in one of the six states that will really decide the election).

But Colorado Judge Sarah Wallace's opinion finding that Trump did engage in incitement, but can't be disqualified because the President is not clearly an "officer" under the Fourteenth Amendment, is worth reading.

The Court concludes, based on its findings of fact and the applicable law detailed above, that Trump incited an insurrection on January 6, 2021 and therefore "engaged" in insurrection within the meaning of Section Three of the Fourteenth Amendment. First, the Court concludes that Trump acted with the specific intent to disrupt the Electoral College certification of President Biden's electoral victory through unlawful means; specifically, by using unlawful force and violence. Next, the Court concludes that the language Trump employed was likely to produce such lawlessness.

[snip]

The Court concludes that Trump acted

with the specific intent to incite political violence and direct it at the Capitol with the purpose of disrupting the electoral certification. Trump cultivated a culture that embraced political violence through his consistent endorsement of the same. He responded to growing threats of violence and intimidation in the lead-up to the certification by amplifying his false claims of election fraud. He convened a large crowd on the date of the certification in Washington, D.C., focused them on the certification process, told them their country was being stolen from them, called for strength and action, and directed them to the Capitol where the certification was about to take place.

[snip]

His inaction during the violence and his later endorsement of the violence corroborates the evidence that his intent was to incite violence on January 6, 2021 based on his conduct leading up to and on January 6, 2021. The Court therefore holds that the first Brandenburg factor has been established.

[snip]

The Court holds there is scant direct evidence regarding whether the Presidency is one of the positions subject to disqualification. The disqualified offices enumerated are presented in descending order starting with the highest levels of the federal government and descending downwards. It starts with "Senator or Representatives in Congress," then lists "electors of President and Vice President," and then ends with the catchall phrase of "any office, civil or military, under the United States, or under any State." U.S. CONST. amend. XIV, § 3.

[snip]

As a result, the Court holds that Section Three of the Fourteenth Amendment does not apply to Trump.

Wallace's opinion is best understood as a punt to Colorado's Supreme Court: a finding of facts which they will eventually decide how to apply. She says as much in a footnote: She made the finding of fact that Trump did engage in insurrection so the Colorado Supreme Court can resolve any appeal without coming back to her.

The Court is denying Petitioners the relief they request on legal grounds. Because of the Parties' extraordinary efforts in this matter, the Court makes findings of facts and conclusions of law on all remaining issues before it. The Court does so because it is cognizant that to the extent the Colorado Supreme Court decides to review this matter, it may disagree with any number of the legal conclusions contained in this Order and the Orders that precede it. The Court has endeavored to give the Colorado Supreme Court all the information it needs to resolve this matter fully and finally without the delay of returning it to this Court.

But it's also a preview of Trump's January 6 trial.

Perhaps the most interesting aspect of Wallace's ruling is that she found, over and over, that Trump's side did not present evidence to fight the claim of insurrection. Trump's legal expert, Robert Delahunty (who contributed to some of the most outrageous War on Terror OLC opinions), presented no definition of insurrection that wouldn't include January 6. Kash Patel presented no evidence to back his claim that Trump intended to call out 10,000 members of the National Guard. Trump presented no evidence that

criminal conviction was required before disqualification. There was no evidence presented that Trump did not support the mob's purpose.

Once Wallace dismissed Kash (and Katrina Pierson's) claims that Trump intended to call the National Guard, all Trump had left was *Brandenburg*: a claim that his speech did not count as incitement, the same claim Trump has made in his efforts to defeat gags, the same claim Trump attempted to use to get Judge Chutkan to throw out any reference of the mob in his January 6 indictment.

Wallace used three things to show that Trump did intend to incite the mob.

First, she relied heavily on the testimony of Chapman University (!!!) professor Peter Simi, who described how Trump used the coded language of the far right to endorse violence. She mapped out what Trump added into his January 6 speech. And she talked about how Trump's later statements – about Pence, and telling the mob he loved them – ratified their violence (an argument Amit Mehta also made), which Wallace used to distinguish Trump from Charles Evers.

As I have shown, Trump has tried to simply wish away the role of the mob in his indictment, a wish that Tanya Chutkan already rejected. Judge Wallace's opinion makes it clear that's all Trump has.