

SCOTUS INVITES JACK SMITH TO SUPERSEDE TRUMP WITH INCITING INSURRECTION

The Supreme Court has not only held that states cannot enforce the 14th Amendment for Federal offices,

This case raises the question whether the States, in addition to Congress, may also enforce Section 3. We conclude that States may disqualify persons holding or attempting to hold state office. But States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency.

But it held that Congress must exclude insurrectionists from office.

The respondents nonetheless maintain that States may enforce Section 3 against candidates for federal office. But the text of the Fourteenth Amendment, on its face, does not affirmatively delegate such a power to the States. The terms of the Amendment speak only to enforcement by Congress, which enjoys power to enforce the Amendment through legislation pursuant to Section 5.

It points to the predecessor to 18 USC 2383 as means to exclude someone.

Instead, it is Congress that has long given effect to Section 3 with respect to would-be or existing federal officeholders. Shortly after ratification of the Amendment, Congress enacted the Enforcement Act of 1870.

That Act authorized federal district attorneys to bring civil actions in federal court to remove anyone holding nonlegislative office—federal or state—in violation of Section 3, and made holding or attempting to hold office in violation of Section 3 a federal crime. §§14, 15, 16 Stat. 143–144 (repealed, 35 Stat. 1153–1154, 62 Stat. 992–993). In the years following ratification, the House and Senate exercised their unique powers under Article I to adjudicate challenges contending that certain prospective or sitting Members could not take or retain their seats due to Section 3. See Art. I, §5, cls. 1, 2; 1 A. Hinds, *Precedents of the House of Representatives* §§459–463, pp. 470–486 (1907). And the Confiscation Act of 1862, which predated Section 3, effectively provided an additional procedure for enforcing disqualification. That law made engaging in insurrection or rebellion, among other acts, a federal crime punishable by disqualification from holding office under the United States. See §§2, 3, 12 Stat. 590. A successor to those provisions remains on the books today. See 18 U. S. C. §2383. [my emphasis]

Taken in tandem with SCOTUS' punt on Trump's immunity bid, this seems like an invitation for Jack Smith to supersede Trump with inciting insurrection. After all, SCOTUS has now *upheld* the DC Circuit opinion that says there's no double jeopardy problem with trying someone for something on which they were acquitted after impeachment.

Jack Smith could – today – charge Trump with inciting insurrection in response to this order. It is the one Constitutional means to disqualify him, according to this order.