

117TH CONGRESS
1ST SESSION

H. R. 1405

To provide a cause of action to remove and bar from holding office certain individuals who engage in insurrection or rebellion against the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2021

Mr. COHEN introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Oversight and Reform, House Administration, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide a cause of action to remove and bar from holding office certain individuals who engage in insurrection or rebellion against the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INSURRECTION OR REBELLION BY OFFICE-**
4 **HOLDERS.**

5 (a) IN GENERAL.—No Officeholder may engage in
6 any insurrection or rebellion.

1 (b) CIVIL ACTION.—The Attorney General of the
2 United States may bring a civil action for a declaratory
3 judgement and relief described in subsection (c) against
4 any Officeholder who engages in insurrection or rebellion,
5 including any Officeholder who, after becoming an Office-
6 holder, engaged in insurrection or rebellion prior to the
7 date of the enactment of this Act.

8 (c) RELIEF.—

9 (1) IN GENERAL.—Notwithstanding any other
10 law, an Officeholder that is found pursuant to an ac-
11 tion brought under this section to have engaged in
12 insurrection or rebellion shall be—

13 (A) disqualified from holding any Federal
14 or State office;

15 (B) removed from any Federal or State of-
16 fice held by such Officeholder; and

17 (C) to the extent permitted under the Con-
18 stitution and except as otherwise provided in
19 this subsection, enjoined from receiving any
20 payment of an annuity or retirement pay under
21 title 5 of the United States Code, protection
22 under section 3056 of title 18, United States
23 Code, or any other Federal benefit that would
24 otherwise be received on the basis of such Of-
25 ficeholder previously holding a Federal office.

1 (2) SURVIVOR AND BENEFICIARY BENEFITS
2 FORFEIT.—Notwithstanding any other law and ex-
3 cept as otherwise provided in this subsection, no sur-
4 vivor or beneficiary of a disqualified Officeholder
5 may receive any Federal payment or other Federal
6 benefit on the basis of such disqualified Officeholder
7 previously holding a Federal office.

8 (3) REFUND OF CONTRIBUTIONS.—For each
9 benefit enjoined or forfeit under paragraph (1)(C) or
10 (2), the disqualified Officeholder or the survivor or
11 beneficiary of such disqualified Officeholder, as ap-
12 propriate, shall be refunded an amount equal to the
13 difference between any amounts such disqualified
14 Officeholder paid for or contributed to such benefit
15 less the value of such benefit received (if any) prior
16 to becoming a disqualified Officeholder.

17 (4) APPLICABILITY.—Paragraphs (1)(C) and
18 (2) shall apply only with respect to benefits to the
19 extent to which an individual becomes vested in or
20 entitled to after the date of the enactment of this
21 Act.

22 (d) PROCEDURE.—

23 (1) IN GENERAL.—Any action brought under
24 this section shall be heard and determined by a dis-
25 trict court of three judges in accordance with section

1 2284 of title 28, United States Code. The chief
2 judge of the United States court of appeals for each
3 circuit shall, to the extent practicable and consistent
4 with the avoidance of unnecessary delay, consolidate,
5 for all purposes, in one district court within that cir-
6 cuit, all actions pending in that circuit under this
7 section. Any party to an action under this section
8 shall be precluded from seeking any consolidation of
9 that action other than is provided in this paragraph.
10 In selecting the district court in which to consolidate
11 such actions, the chief judge shall consider the con-
12 venience of the parties and witnesses and efficient
13 conduct of such actions. Any final order or injunc-
14 tion of a United States district court that is issued
15 pursuant to an action brought under this section
16 shall be reviewable by appeal directly to the Supreme
17 Court of the United States. Any such appeal shall
18 be taken by a notice of appeal filed within 10 days
19 after such order is entered; and the jurisdictional
20 statement shall be filed within 30 days after such
21 order is entered. No stay of an order issued pursu-
22 ant to an action brought under this section may be
23 issued by a single Justice of the Supreme Court.

24 (2) EXPEDITED DOCKET.—It shall be the duty
25 of a United States district court hearing an action

brought under this section and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter.

(3) FORUM.—Any action brought under this section against an Officeholder holding a Federal office shall be brought in the Federal district court for the District of Columbia.

(4) STANDARD OF EVIDENCE.—With respect to any action brought under this section, the Attorney General shall demonstrate by clear and convincing evidence that an Officeholder has engaged in insurrection or rebellion.

(e) REMOVAL OF DISABILITIES.—

(1) DISQUALIFICATION FROM HOLDING OFFICE.—

(A) IN GENERAL.—Congress may, upon petition, by a two-thirds vote in each House remove the disability described in subsection (c)(1)(A).

(B) PETITION RULES.—The Senate and the House of Representatives shall each establish rules for the submission and consideration of such petitions.

(2) RESTORATION.—

1 (A) BENEFITS.—Upon the removal of the
2 disability of an individual under paragraph
3 (1)(A), any benefits lost pursuant to paragraph
4 (1)(C) or (2) of subsection (c) with respect to
5 such individual shall be restored to the appro-
6 priate individual, as determined under the laws
7 and regulations providing for such benefit, ex-
8 cept that such benefit shall be reduced by the
9 amount paid (if any) under subsection (c)(3)
10 with respect to such benefit.

11 (B) HONORS AND COMMEMORATIONS.—
12 Upon the removal of the disability of an indi-
13 vidual under paragraph (1)(A), any honor or
14 commemoration lost and any property renamed
15 pursuant to subsection (f) with respect to such
16 individual shall be restored to the extend prac-
17 ticable.

18 (C) CONTRACTS, GRANTS, LOANS, AND CO-
19 OPERATIVE AGREEMENTS.—Upon the removal
20 of the disability of an individual under para-
21 graph (1)(A), any contract, grant, loan, or co-
22 operative agreement terminated pursuant to
23 subsection (g) with respect to such individual
24 shall be restored to the extend practicable.

25 (f) FEDERAL HONORS AND COMMEMORATIONS.—

1 (1) RESCISSION.—

2 (A) IN GENERAL.—Any Federal honor or
3 commemoration, including any medal, decora-
4 tion, or award, awarded to a disqualified Office-
5 holder shall be rescinded.

6 (B) REPAYMENT NOT REQUIRED.—No dis-
7 qualified Officeholder shall be required to repay
8 to the Federal Government any amounts re-
9 ceived as part of any honor or commemoration
10 rescinded under subparagraph (A).

11 (2) FUTURE HONORS AND COMMEMORA-
12 TIONS.—A disqualified Officeholder shall be ineli-
13 gible to receive any Federal honor or commemora-
14 tion.

15 (3) RENAMING.—No Federal building, park,
16 award, or other property of the United States may
17 be named in honor of a disqualified Officeholder and
18 any such property named in honor thereof shall be
19 renamed.

20 (g) FEDERAL CONTRACTS, GRANTS, LOANS, AND CO-
21 OPERATIVE AGREEMENTS.—Notwithstanding any other
22 law, a disqualified Officeholder and any entity in which
23 such disqualified Officeholder holds, directly or indirectly,
24 a controlling interest shall be ineligible to—

1 (1) receive any Federal funds under any grant
2 or loan provided or guaranteed by the Federal Gov-
3 ernment;

4 (2) be awarded a contract by the Federal Gov-
5 ernment;

6 (3) be a subcontractor, at any tier, under such
7 a contract; or

8 (4) enter into a cooperative agreement with the
9 Federal Government.

10 (h) INSURRECTION OR REBELLION.—Pursuant to
11 section 5 of the 14th Amendment, for the purposes of sec-
12 tion 3 of the 14th Amendment the term “insurrection or
13 rebellion” has the meaning given such term in this section.

14 (i) DEFINITIONS.—In this Act:

15 (1) CONTROLLING INTEREST.—The term “con-
16 trolling interest” means owning, controlling, or hold-
17 ing not less than 20 percent, by vote or value, of the
18 outstanding amount of any class of equity interest in
19 an entity.

20 (2) DISQUALIFIED OFFICEHOLDER.—The term
21 “disqualified Officeholder” means an Officeholder
22 who is found, pursuant to an action brought under
23 this section, to have engaged in insurrection or re-
24 bellion and whose disqualification from holding office

1 under subsection (c)(1)(A) has not been removed
2 pursuant to subsection (e).

3 (3) EQUITY INTEREST.—The term “equity in-
4 terest” means—

5 (A) a share in an entity, without regard to
6 whether the share is—

7 (i) transferable; or

8 (ii) classified as stock or anything
9 similar;

10 (B) a capital or profit interest in a limited
11 liability company or partnership; or

12 (C) a warrant or right, other than a right
13 to convert, to purchase, sell, or subscribe to a
14 share or interest described in subparagraph (A)
15 or (B), respectively.

16 (4) FEDERAL OFFICE.—The term “Federal of-
17 fice” means—

18 (A) the office of the President;

19 (B) the office of the Vice President;

20 (C) a Member of Congress;

21 (D) a Justice of the Supreme Court;

22 (E) a Federal court judge;

23 (F) the head of an executive agency (as de-
24 fined in section 105 of title 5, United States
25 Code);

1 (G) a position in the executive branch to
2 which an individual must be appointed by the
3 President with the advice and consent of the
4 Senate;

5 (H) a position created by Federal law to
6 which an individual is appointed by—

7 (i) an Officeholder holding a Federal
8 office to which such Officeholder was elect-
9 ed; or

10 (ii) an Officeholder who holds a posi-
11 tion to which an individual must be ap-
12 pointed by the President with the advice
13 and consent of the Senate;

14 (I) a position created by Federal law with
15 a non-delegable duty assigned to such position
16 by Federal law;

17 (J) a position in any level of government
18 that has the authority to—

19 (i) create Federal law, including pro-
20 mulgating rules and regulations or issuing
21 binding orders;

22 (ii) provide legally binding interpreta-
23 tions of such law, judicial order, or any ad-
24 ministrative order directly reviewable by,
25 or appealable to, a Federal court;

1 (iii) enforce such Federal law, includ-
2 ing issuance of citations or fines, affecting
3 custodial arrests, and executing warrants,
4 if such enforcement is a significant compo-
5 nent of the duties of the position;

6 (iv) authorize the obligation or ex-
7 penditure of Federal funds; or

8 (v) award or manage compliance with
9 contracts on behalf of the Federal Govern-
10 ment;

11 (K) a position in the Federal Government,
12 civil or military, for which an individual has,
13 pursuant to a requirement of law or custom,
14 taken an oath to the support the Constitution
15 upon assuming such position; or

16 (L) a position that supervises a position
17 described in any of subparagraphs (A) through
18 (K).

19 (5) INSURRECTION OR REBELLION.—The term
20 “insurrection or rebellion” means—

21 (A) any violent act, or act supported by a
22 threat of violence, intended to impede any con-
23 stitutional function of the United States; and

1 (B) any attempt or conspiracy to commit,
2 or incitement of, an act described in subpara-
3 graph (A).

4 (6) MEMBER OF CONGRESS.—The term “Mem-
5 ber of Congress” means Senator or a Representative
6 in, or Delegate or Resident Commissioner to, the
7 Congress.

8 (7) OFFICEHOLDER.—The term “Officeholder”
9 means any individual who—

10 (A) holds or previously held a Federal or
11 State office;

12 (B) is or was an elector for President of
13 the United States; or

14 (C) is or was a member of the armed
15 forces or national guard (as such terms are de-
16 fined in section 101 of title 10, United States
17 Code) and who, as a member, took an oath to
18 support the Constitution.

19 (8) STATE.—The term “State” means a States
20 of the United States, the District of Columbia, and
21 the territories of the United States.

22 (9) STATE OFFICE.—The term “State office”
23 means—

24 (A) the office of the chief executive of a
25 State;

- 1 (B) a member of a State legislature;
- 2 (C) a Justice or judge of a State court;
- 3 (D) the head of state executive agency;
- 4 (E) a position created by State law to
- 5 which an individual must be elected;
- 6 (F) a position in a State government to
- 7 which an individual must be appointed by, or
- 8 with the consent of, an elected State official of
- 9 that State or a body of elected or appointed
- 10 State officials of that State;
- 11 (G) a position in a State government spe-
- 12 cifically created by the law of such State;
- 13 (H) a position in any level of government
- 14 that has the authority to—
 - 15 (i) create State law, including promul-
 - 16 gating rules and regulations or issuing
 - 17 binding orders;
 - 18 (ii) provide legally binding interpreta-
 - 19 tions of such law, judicial order, or any ad-
 - 20 ministrative order directly reviewable by,
 - 21 or appealable to, a State court;
 - 22 (iii) enforce such law, including
 - 23 issuance of citations or fines, affecting cus-
 - 24 todial arrests, and executing warrants, if

1 such enforcement is a significant compo-
2 nent of the duties of the position;

3 (iv) authorize the obligation or ex-
4 penditure of State funds; or

5 (v) award or manage compliance with
6 contracts on behalf of a State;

7 (I) a position in a State government for
8 which an individual has, pursuant to a require-
9 ment of law or custom, taken an oath to the
10 support the Constitution upon assuming such
11 position; or

12 (J) a position that supervises a position
13 described in any of subparagraphs (A) through
14 (I).

15 **SEC. 2. FORMER PRESIDENT'S ACT BENEFITS.**

16 Subsection (f) of the Act entitled “An Act to provide
17 retirement, clerical assistants, and free mailing privileges
18 to former Presidents of the United States, and for other
19 purposes”, approved August 25, 1958 (commonly known
20 as the “Former Presidents Act of 1958”; 3 U.S.C. 102
21 note), is amended—

22 (1) in paragraph (2), by striking “; and” and
23 inserting a semicolon;

24 (2) in paragraph (3), by striking the period at
25 the end and inserting “; and”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(4) who is not disqualified pursuant to section
4 3 of the 14th amendment to the Constitution of the
5 United States from holding any civilian or military
6 office of the United States or of any State.”.

7 **SEC. 3. SEVERABILITY.**

8 If any provision of this Act, or the application thereof
9 to any person or circumstance, is held invalid, the remain-
10 der of the Act, and the application of such provision to
11 other persons or circumstances shall not be affected there-
12 by.

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