

June 15, 2015

Extract from Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law: Substance and Procedure* § 8.12 n.2 & n.7.10 (5th ed. Supp. 2015), citing Tillman's *Originalism & The Scope of the Constitution's Disqualification Clause*

Seth Barrett Tillman

1 Treatise on Const. L. § 8.12, 5th ed., Updated May 2015 (posted on Westlaw)

Treatise on Constitutional Law: Substance & Procedure

Ronald D. Rotunda, John E. Nowak

Chapter 8. Congressional Powers and Privileges

§ 8.12. Sanctions for Impeachment

There are two places where the Constitution directly speaks to the issue of sanctions. Article II provides that all civil officers of the United States “*shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.*” [FN2]

....

Commentators dispute whether an impeached, convicted, removed, and disqualified President, Vice President, or other civil officer of the United States may subsequently be elected to the House or Senate. Some argue that the impeachment only disqualified the individual to federal appointed office, not to an elected office. [FN7.10]

[FN2]

U.S. Const. art. II, § 4 (emphasis added).

Chafetz, *Impeachment and Assassination*, 95 Minn. L. Rev. 347 (2010), which discusses the history and noted that, historically, opponents removed “obnoxious” chief executives by assassinating them. Benjamin Franklin suggested that a different and more civilized procedure for removal (impeachment) would be preferable. For a contrary position, see, Seth Barrett Tillman, *Interpreting Precise Constitutional Text: The Argument for a “New” Interpretation of the Incompatibility Clause, the Removal & Disqualification Clause, and the Religious Test Clause—A Response to Professor Josh Chafetz’s Impeachment & Assassination*, 61 Cleveland St. L. Rev. 285 (2013).

[FN7.10]

See discussion in, Benjamin Cassady, “*You’ve Got Your Crook, I’ve Got Mine*”: *Why the Disqualification Clause Doesn’t (Always) Disqualify*, 32 Quinnipiac L. Rev. 209 (2014); Peter C. Hoffer, *The Pleasures and Perils of Presentism: A Meditation on History and Law*, 33 Quinnipiac L. Rev. 1 (2014); Brian C. Kalt, *The Application of the Disqualification Clause to Congress: A Response to Benjamin Cassady, “You’ve Got Your Crook, I’ve Got Mine”*: *Why the Disqualification Clause Doesn’t (Always) Disqualify*, 33 Quinnipiac L. Rev. 7 (2014); Buckner F. Melton, Jr., *Let Me Be Blunt: In Blount, the Senate Never Said that Senators Aren’t Impeachable*, 33 Quinnipiac L. Rev. 33 (2014); Seth Barrett Tillman, *Originalism & The Scope of the Constitution’s Disqualification Clause*, 33 Quinnipiac L. Rev. 59 (2014).