

The Greene Deal

by [Joseph DeMaio](#), ©2022



<https://www.c-span.org/video/?519623-101/rep-marjorie-taylor-greene-testifies-administrative-hearing-part-1&event=519623&playEvent>

(Apr. 23, 2022) — No, Virginia, nothing related to “climate change.”

U.S. District Court Judge Amy Totenberg – appointed to the federal bench by the Second Usurper in Chief (“SUC”) Barack Obama in 2011 – has recently issued a [ruling](#) that a lawsuit seeking to remove from the Georgia primary election ballot next month House of Representatives Member Marjorie Taylor Greene can [proceed](#). No preliminary injunction will be ordered after she produced a 73-page opinion.

And you expected a different ruling? From a SUC appointee? Really?

To begin with, Greene’s lawyers have filed an [appeal](#) to the U.S. Court of Appeals for the Eleventh Circuit. The Totenberg ruling merely denied Greene’s effort to secure a preliminary injunction (or alternative temporary restraining order) against the lawsuit pending the actual primary election, now set for May 24, 2022.

In denying Greene’s request, Totenberg concluded that Greene (more precisely, her lawyers) had failed to show a “strong likelihood of prevailing on the merits of [Greene’s] legal claims” and thus, successfully carry the “burden of persuasion with respect to this important and essential prerequisite” to securing injunctive relief.

Legalese mumbo-jumbo translation: because Totenberg believed that there was *no* “strong likelihood” that Greene would likely prevail on the merits of her claim – *i.e.*, that

the lawsuit seeking to exclude her from the upcoming Georgia primary election ballot was meritless – injunctive relief would be denied. We will see what the Eleventh Circuit has to say, hopefully within the next few days.

However, turning to the substantive issue at hand: can the provisions of § 3 of the 14th Amendment even properly be invoked and applied against Representative Greene? That provision states: “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.”

While your humble servant has not examined the legal memoranda submitted in the Greene litigation, after reading Judge Totenberg’s opinion denying the injunctive relief Greene sought, one question remains: because § 3 of the 14th Amendment mandates that anyone who has “engaged in insurrection or rebellion” against the United States is rendered ineligible to hold, among other public offices, a seat as a “Representative in Congress,” is Greene an “insurrectionist?”

Before GORSUCH, Circuit Judge, BRORBY, Senior Circuit Judge, and HOLMES, Circuit Judge.

Abdul Karim Hassan is a naturalized citizen who wishes to run for the Presidency of the United States. This even though the Constitution says “[n]o person except a natural born Citizen . . . shall be eligible to the Office of President.” ² U.S. Const. art. II, § 1, cl. 5. After the Colorado Secretary of State informed him that his ineligibility for office precluded his placement on the

<https://casetext.com/case/hassan-v-colorado>

Totenberg’s ruling also recognizes, correctly, that the states have a constitutional right to challenge the eligibility and related “bona fides” of aspirants to public office as a condition of being placed on an election ballot in the first place. Interestingly, Totenberg cites a decision of then-Tenth Circuit Judge Neil Gorsuch – *Hassan v. Colorado*, 495 F. App’x 947 (10th Cir. 2012) – confirming the right of a state to exclude from the ballot a person who was ineligible to the presidency as a naturalized citizen, rather than a “natural born Citizen,” as required by the Constitution.

Judge Gorsuch noted that “a state’s legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot

candidates who are constitutionally prohibited from assuming office.” Ummmm..., then how, one might ask, did the SUC get on the ballots of every state in the Union back in 2007? Oh, wait..., yeah..., that was then, and now is now... right. No standing..., right.

As a consequence of Judge Totenberg’s refusal to grant preliminary injunctive relief, the “trial” (actually, an evidentiary hearing before an administrative law judge) was held April 22, 2022 in the Georgia Office of Administrative Hearings. The hearing, streamed by C-SPAN, can be viewed [here](#). From the perspective of your humble servant, and based on the evidence and testimony adduced at the evidentiary hearing, the case for concluding that Representative Greene’s name should be allowed to remain on the ballot is the stronger one. She is not a 14th Amendment “insurrectionist.” But if your servant is wrong, it would not be the first time.

Following the filing of closing briefs by the parties next week, Administrative Law Judge Charles Beaudrot will issue a decision and recommendation as to whether he believes Greene’s name should be allowed to remain on the ballot or be stricken from same if he concludes that she “engaged in insurrection or rebellion” against the United States.



Georgia Secretary of State [Brad Raffensperger](#) is seeking reelection this fall as a “real conservative” and champion of “[election integrity](#)”

Beaudrot’s decision will be forwarded to Georgia Secretary of State Brad Raffensperger, a Republican. Under Georgia law, the final decision as to whether Greene can remain on the ballot for the primary election lies with him. And since the ballots need to be finalized and printed early in May before the actual election date, whoever loses may not have time to successfully appeal. On the other hand, courts have been known to “fast-track” disputes of this nature.

The impact of the decision will reach far beyond Georgia and Representative Greene, as the Democrats’ strategy seems to be to use the case as a “stalking horse” to try to keep other GOP candidates off the ballot elsewhere across the nation as a preemptory gambit to head off what the polls are indicating may be a cataclysmic mid-term election bloodbath for Democrats.

It is always perilous to predict what a judge – even an administrative law judge – will do. One can only hope that both ALJ Beaudrot and Mr. Raffensperger will consider long and hard what impact their ultimate decisions regarding Representative Greene may have not only in Georgia, but elsewhere. No one said that Democracy was always pretty.

Stay tuned.