

TIME

Here Are Some Constitutional Plot Twists Hollywood Should Consider

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Legal experts weigh in

If James Madison were alive today, he might be working as a screenwriter in Hollywood.

TV dramas can't get enough of obscure constitutional scenarios. On *Scandal*, an unsuccessful assassination attempt left the vice president temporarily in charge of the Oval Office. On *Veep*, a tie in the Electoral College sent the election to the House of Representatives. And on *Designated Survivor*, the Secretary of Housing and Urban Development was sworn in after a terrorist attack.

And that's not to mention just about everything on *House of Cards*.

But while these plotlines may seem a bit over the top, legal scholars say they are a useful way to tease out some of the weak points in the U.S. Constitution for a broader audience. Given the events of recent years—an impeachment, the Supreme Court intervening in a crucial election recount and recent talk of contested conventions and faithless electors—they may not be as implausible as they sound.

“It may be one of those areas where reality is getting a little bit ahead of fiction,” notes Ilya Somin, constitutional law professor at George Mason University.

With that in mind, TIME talked with legal experts about their favorite constitutional scenarios. Here's a look at seven that Hollywood could use for dramatic effect, and how we imagine they might be put to good use:

Article II, Section 1

Suggested title: *Faithless*

Suggested plot: After the election leaves a razor-thin margin in the Electoral College, an ordinary man who had agreed to serve as an elector as a favor to a friend finds himself in the national spotlight when he announces he won't back the winner.

Dream casting: Kevin Costner

The constitutional background: Article II, Section 1. There have been 157 faithless electors over the 240-year history of the U.S., but none have ever changed the outcome, according to the nonprofit FairVote. In some states, it's against the law, but the penalties are minimal and no one has ever been prosecuted.

What scholars think: "It's not inconceivable," said historian Mark Weston, who wrote a book about presidents who lost the popular vote. "It's all constitutional. It's outlandish, it's not likely, but it's totally constitutional."

Spoiler alert: This one's hard to game out. If both chambers of Congress agree, it's possible they could overturn the faithless elector's action. If they disagree, it goes to the state's Secretary of State.

Read More: Weston's book *The Runner-Up Presidency* looks at the history of the Electoral College.

Article II, Section 1, Clause 6

Suggested title: *Succession*

Suggested plot: After the president and vice president are killed, the Speaker of the House is next in line to become president. But the Secretary of State pulls rank, arguing that the law establishing the line of succession is unconstitutional.

Dream casting: Cherry Jones as Speaker of the House; Dennis Haysbert as Secretary of State

The constitutional background: Article II, Section 1, Clause 6. The Constitution says that the vice president is first in the line of succession and that Congress can decide who follows after that. But it also says that they should be "officers," which some take to mean congressional leaders shouldn't be on the list.

What scholars think: "It's a very good argument," said Brian Kalt, a professor at the Michigan State University College of Law. "Others disagree, but I think it's a needless risk, especially since it's bad to have the Speaker in line for lots of practical reasons."

Spoiler alert: This one's a mess. The speaker has the political advantage, since that law dates back to the Truman Administration, but the fight likely ends up before the Supreme Court.

Read More: The line of succession is covered in a chapter in Kalt's *Constitutional Cliffhangers*.

Article III, Section 1

Suggested title: *Good Behaviour*

Suggested plot: After her husband dies, a Supreme Court justice goes through a midlife crisis, doing Jell-O shots with her law clerks, attending Burning Man and going on endless Tinder dates.

Dream casting: Julia Louis-Dreyfus

The constitutional background: Article III, Section 1. The Constitution grants lifetime tenure to Supreme Court justices and other federal judges, noting only that they “shall hold their offices during good Behaviour.”

What scholars think: “The Court is not really very dramatic,” Wexler told TIME in an email. “I’ve always thought ... that the way to go with a TV show about the Court is comedy. A *Veep* for the Court, in other words.”

Spoiler alert: Only one Supreme Court Justice has ever been impeached, but he was acquitted in the Senate.

Read More: Wexler’s novel, *Tuttle in the Balance*, explores this very scenario. (He’d like us to note that film rights are still available.)

Section 4 of the 25th Amendment

Suggested title: *Acting President*

Suggested plot: After an ill-tempered president threatens to fire his entire Cabinet and makes other erratic decisions, a scheming vice president convinces them to join him in declaring the president unable to serve so that he can become acting president.

Dream casting: Kevin Spacey

The constitutional background: Section 4 of the 25th Amendment. If the vice president and a majority of Cabinet officials send a written declaration to Congress that the president is “unable to discharge the powers and duties of his office,” the vice president immediately becomes “acting president.”

What scholars think: “If the vice president persuades a majority of the Cabinet that the president is crazy or incapacitated, they could take over the presidency,” said Josh Blackman, constitutional law professor at South Texas College of Law in Houston.

Spoiler alert: If the president objects, Congress has 21 days to decide who’s right, but it takes a two-thirds vote of both the House and the Senate to keep the “acting president” in the Oval Office.

Article I, Section 8, Clause 11

Suggested title: *Reprisal*

Suggested plot: After the military finds itself stymied while fighting a group of terrorists in international waters, Congress decides to authorize a privateer—essentially a government-approved pirate who can go after the bad guys for his own gain.

Dream casting: Nicolas Cage

The constitutional background: Article I, Section 8, Clause 11. The Constitution allows Congress to “grant Letters of Marque and Reprisal,” which are basically permission slips for private boats to fight pirates on behalf of the United States.

What scholars think: “I could imagine a show about some new pirate threat somewhere and the government deciding to fight them with these private boats, which of course would have charismatic and daredevil captains,” said Jay Wexler, a constitutional law scholar at Boston University.

Spoiler alert: Letters of Marque were more important before the U.S. had a standing navy. Then-Rep. Ron Paul floated the idea in 2009 when Somali pirates were a problem, but even if Congress went along it would probably decide pretty quickly to go back to using the military.

The Sixth Amendment

Suggested title: *The Purge: Yellowstone*

Suggested plot: After a court ruling establishes that you can get away with crimes in the small portion of Yellowstone National Park that is in Idaho and Montana, it becomes a lawless zone defended by a lone park ranger.

Dream casting: Ethan Hawke

The constitutional background: The Sixth Amendment. The Bill of Rights guarantees the right to an impartial jury of the “State and district” where the crime was committed, but there’s a well-known loophole because no jurors could come from the uninhabited parts run by Wyoming outside its state borders.

What scholars think: “There are some inherent limits,” Kalt wrote in an email to TIME. “To get away with crimes in Idaho-Yellowstone, they would really need to be spontaneous and not pre-planned.”

Spoiler alert: Congress could easily fix the loophole with a simple law changing the governance of Yellowstone. If any of the people crossed state lines while planning or perpetrating the crimes, they could be charged under federal law, and they’d still be subject to civil cases.

Read More: Kalt’s law journal article on the loophole *The Perfect Crime* inspired the book *Free Fire*.

Article I, Section 6

Suggested Title: *The Long Walk*

Suggested plot: A down-on-his-luck Congressman learns he’s going to be arrested soon, so he begins walking from his home in California to the Capitol.

Dream casting: Tony Goldwyn

The constitutional background: Article I, Section 6. Members of Congress cannot be arrested while “going to and returning” from a legislative session.

What scholars think: Trevor Burrus, a research fellow at the Cato Institute, said there’s not much relevant case law, but it’s possible Congress could stymie something like this by adjourning. “Perhaps the Adjournment Clause would come into play,” he said.

Spoiler alert: It could take as long as three months to walk across the country, but the lawmaker would end up in custody eventually.