

**POTOMAC RESEARCH GROUP**  
BY HEDGEYE

# Supreme Court Considers Trump Disqualification

The Existential Threat to the Candidacy  
of Former President Donald Trump

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## Macro Policy & Legal Catalysts

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\*Answered at the end of the call

# Constitutional Qualifications for the Presidency

- Must be at least 35 years old (Art. II)
- Must be a natural born citizen (Art. II)
- Cannot be elected President more than twice (22<sup>nd</sup> Amendment)
- Cannot have engaged in insurrection against the Constitution after taking an oath as an officer of the United States to support the Constitution (14<sup>th</sup> Amendment, Section 3)

# The Constitutional Question

## Did Donald Trump Engage in Insurrection against the Constitution of the United States?

**Fourteenth Amendment, Section 3 (ratified in 1868):** *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.*

**Colorado Supreme Court Decision, Dec. 19, 2023:** “[W]e conclude that because **President Trump is disqualified from holding the office of President under Section Three**, it would be a wrongful act under the Election Code for the Secretary to list President Trump as a candidate on the presidential primary ballot. Therefore, the Secretary may not list President Trump’s name on the 2024 presidential primary ballot, nor may she count any write-in votes cast for him.”

>>> **Will the Court dodge the ultimate disqualification question?** Multiple briefs urge the Court to resist any temptation to take an “off ramp” to avoid resolving the fundamental Fourteenth Amendment issue.

- For example, an insurrectionist is constitutionally prohibited from **holding** office. Technically, the Court could rule the issue is not ripe for decision unless Trump ultimately wins the general election. Dodging the issue now, however, would leave Trump supporters unsure whether their votes are wasted on an ineligible candidate.

# The Primary Legal Issues

## 1 Is Section 3 of the Fourteenth Amendment enforceable without legislation?

Section 3 articulates criteria for disqualification from holding office but does not specify a process for its enforcement. Trump argues Section 3 is not enforceable absent implementing legislation.

## 2 Was Donald Trump an “officer of the United States”?

Trump argues Section 3 does not explicitly disqualify the President or Vice President for engaging in insurrection and its application to “officers of the United States” does not encompass the Presidency.

## 3 Did Donald Trump “engage in insurrection”?

Trump contends he neither incited nor participated in the riot at the Capitol Building on January 6, 2021.

## 4 Can Section 3 be enforced in state administrative or judicial proceedings?

Trump argues the Colorado court ruling usurps the exclusive constitutional authority of state legislatures to determine procedures and rules for the appointment of Presidential Electors under Art. II Sec. 1.

# “Political” Speculation and Conjecture Favoring Trump

## 1 Outrage for “disenfranchising” millions of Trump supporters

The Court could jeopardize its stature and institutional respect if it deprives millions of voters of the right to support their candidate of choice for the Presidency. Given Donald Trump’s apparent glide path to the GOP nomination, can the Court weather public criticism that it derailed the leading GOP candidate for President?

## 2 Avoiding turmoil, protests and possible violence

Will there be concerns that Trump disqualification could trigger riots and potentially violent uprisings?

## 3 Will conservative Justices protect the leading GOP candidate?

A conservative majority issued a 5-4 ruling to resolve the Florida recount dispute in favor of Republican nominee George W. Bush over VP Al Gore in the 2000 election. Will a conservative majority, including three Trump appointees, rule for Trump and overturn the Colorado Supreme Court?

## 4 “Insurrection” could be weaponized by partisan state officials

Will partisan state election officials routinely assert insurrection challenges to deny ballot access to opposition party Presidential candidates?

## 1 Trump disqualification enhances credibility of a conservative Court

After overturning *Roe v. Wade*, affirming Trump disqualification could reinforce perception of objectivity and political neutrality of conservative Court members.

## 2 Potential Trump defiance of court orders would be avoided

- Trump’s verbal attacks against Judges and staff in other courts have triggered threats and harassment
- Potential for future defiance of federal court orders (e.g. Texas razor wire to stop migrant “invasion”)

## 3 Avoid politically volatile disputes unique to Donald Trump

If Trumps wins in November, will the Court be forced to decide whether a President can pardon himself?

## 4 Would an alternative GOP candidate perform better against Biden?

Broader support among independents and swing voters could improve prospects for a Republican victory, ensuring Republican-appointed replacements if any conservative members retire from the Court.



# Timing and Subsequent Action

## The case is on a fast track

- Oral arguments will be held Thursday, February 8.
- There is no Supreme Court precedent addressing Sec. 3 of the Fourteenth Amendment. Outcome predictions are pure guesswork.
- A decision should issue before the March 5 “Super Tuesday” primaries. Colorado is a Super Tuesday primary. A quick decision -- perhaps within a week -- would not be surprising, i.e. around mid-February.
- If the Colorado Supreme Court’s disqualification of Trump is affirmed, the decision would only remove Trump from the ballot in Colorado. But affirmance (resolving the 14<sup>th</sup> Amendment legal issues) would likely accelerate similar cases in states with laws allowing candidate qualification challenges. The floodgates would open.
- If disqualification is upheld, the baton passes to Congress to restore Trump’s eligibility to hold office, but winning supermajorities in both houses of congress (two-thirds vote) to restore eligibility is probably an uphill fight for Trump.
- >> Apart from state-by-state proceedings, established rivals (i.e. Gov. Nikki Haley, possibly a third party candidate) would likely have standing to seek a federal court order declaring Trump ineligible in all states.

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