

ALAN DERSHOWITZ: Colorado's unconstitutional anti-Trump judicial power grab will trigger Republican retaliation and plunge the 2024 election into chaos

-By Alan Dershowitz for the Daily Mail, December 20, 2023

The decision by the all-Democrat [Supreme Court](#) of [Colorado](#) to remove [Donald Trump](#) from the ballot is among the most undemocratic and unconstitutional rulings that I have ever read in my 60 years of teaching and practicing law.

The 4-3 judgment purports to derive its authority from Section 3 of the 14th Amendment, which was enacted after the Civil War. The measures were designed to prevent individuals who had engaged in the insurrection and rebellion of 1861-1864 from running for certain political offices.

But authors of the 14th Amendment never intended for it to be used to deny voters the right to decide who their next president would be in all future elections.

To the framers of this amendment that would have been utterly ridiculous.

Consider the historical context of the 14th Amendment's passage.

At the time, United States included confederate states that had recently been put down by force.

Why would the [Congress](#) have wanted to empower the former rebel states? If given the power to boot candidates off the ballot they might well do mischief.

In fact, the 14th Amendment explicitly provides that 'The Congress shall have the power to enforce by appropriate legislation, the provisions of this article.'

It's clear that this measure was never intended to turn the enforcement mechanisms over to individual states and their courts.



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How could this be read otherwise?

Furthermore, the 14th Amendment was not designed to circumvent the impeachment provisions of the U.S. Constitution which also authorize disqualification from the ballot, but require a two-thirds vote of the U.S. Senate and other procedural safeguards.

Under the Colorado court's power-grab, there are no safeguards. Due process has been thrown out of the courthouse window.

In the opinion of these Colorado judges, a candidate need not even be convicted by a jury of the crimes of insurrection or rebellion before their rights are stripped away.

But even if Trump were to be convicted in Washington DC or Georgia for the crime of attempting to overthrow an election that still would not justify invoking the 14th Amendment, because the text does not make the disqualification provisions applicable to a presidential candidate.

The language of the amendment only applies to politicians who have taken the congressional oath -- not the presidential oath. The text specifies an oath to 'support' the Constitution, which is the operative word in the congressional oath. The operative words in the presidential oath are 'preserve, protect and defend' the Constitution.

This is a technical distinction but coupled with the absence of the word 'president' and the presence of the words 'senator or representative', it cannot be said with certainty that the framers of the amendment intended for it to provide for the disqualification of candidates for the highest office in the land.

At least equally likely, the framers believed that candidates for that singular office should be judged by the voters based on the totality of their record.

Finally, there is no legal precedent for such a momentous judicial fiat. If presidential candidates can be disqualified, there must be a clearly established mechanism. It's utterly ridiculous to accept that state courts are empowered to jerry-rig an ad hoc, previously unknown process that can be manipulated in a result-oriented manner.

It is this common-sense thinking that provides the strongest argument against the Colorado court's decision.

The 14th Amendment does not empower individual states to make such important decisions regarding the right to vote for presidential candidates. Rather, it is a time-bound provision rooted in post-Civil War fears that confederates would meddle in state reconstruction efforts.

The U.S. Supreme Court will almost certainly review the case and delay a decision past Colorado's March 5th primary.

But regardless of what the high court does, the Republicans will fight back in a tit-for-tat manner.

Outraged – and perhaps emboldened – by this obvious misuse of the 14th Amendment some may try to disqualify President Joe Biden in some states or attempt other anti-democratic means to restrict access to the ballot.

The end result will be more disarray in our electoral system in the 2024 presidential election and beyond.

Make no mistake - the Colorado Supreme Court has damaged American democracy and violated our constitution.

And the American people will pay the price – as the country inevitably become more bitter, distrustful and divided.

