

Disqualification of a Candidate for the Presidency, Part II: Examining Section 3 of the Fourteenth Amendment as It Applies to Ballot Access

Updated April 4, 2024

On March 4, 2024, the U.S. Supreme Court in *Trump v. Anderson* issued a per curiam opinion that unanimously held that the Colorado Supreme Court erred in ordering former President Trump excluded from the 2024 presidential primary ballot and that Congress, not the states, is responsible for enforcing Section 3 of the Fourteenth Amendment (Section 3) against federal candidates and officeholders. The Court held that Section 5 of the Fourteenth Amendment “empowers Congress” to determine “who” Section 3 applies to for purposes of federal officeholders and candidates, as Section 5 enables Congress to pass “appropriate legislation” to enforce the Fourteenth Amendment. As a result of the Supreme Court’s ruling, states do not have the authority under Section 3 to exclude candidates for federal offices from election ballots. The Court’s opinion did not rule on several issues addressed by the Colorado Supreme Court, including whether, under Section 3, the President is “an officer of the United States” who had “previously taken an oath ... to support the Constitution,” whether the political question doctrine precludes judicial review, and what actions constitute insurrection under the Fourteenth Amendment.

In numerous [lawsuits](#) and administrative actions across the country, challengers had sought to prevent former President Trump from appearing on state ballots. Specifically, the lawsuits, filed in both state and federal courts, requested that various secretaries of state exclude the former President from the states’ ballots for the 2024 presidential primary and general elections. The challengers alleged that Mr. Trump’s efforts to impede the congressional certification of the 2020 electoral college vote by, among other things, urging his supporters to march to the U.S. Capitol on January 6, 2021, amounted to “engag[ing] in insurrection” within the meaning of [Section 3](#). The challengers contended that the former President was therefore disqualified as a candidate for the presidency.

Many of the lawsuits challenging former President Trump’s ability to be placed on state ballots were dismissed by courts on jurisdictional grounds without reaching the merits of the constitutional claims. On December 19, 2023, the [Colorado Supreme Court](#) became the first court to hold former President Trump ineligible to appear on the ballot, finding that he was constitutionally disqualified from holding the office

Congressional Research Service

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LSB11096

of the President, and directing the Colorado secretary of state to exclude the former President's name from the state's 2024 presidential primary ballot. In a similar case, the secretary of state of Maine [determined](#) on December 28, 2023, that Mr. Trump was ineligible to appear on Maine's presidential primary election ballot, and Trump appealed that decision to the Maine Superior Court. On February 28, 2024, Illinois became the third state to [determine](#) that Mr. Trump was ineligible to appear on the presidential ballot because he had engaged in an insurrection. The Supreme Court's ruling in *Trump v. Anderson* effectively invalidates multiple state decisions, including those in [Illinois](#) and [Maine](#), and it precludes any [related litigation](#) that was pending at the time of the Court's ruling.

This Legal Sidebar is Part 2 in a two-part series examining Section 3 of the Fourteenth Amendment and its application to ballot access by a presidential candidate. It begins by discussing the justiciability of various lawsuits that challenged ballot access. Next, it discusses the Colorado Supreme Court's decision and the Supreme Court ruling in *Trump v. Anderson*, as well as other related state court decisions and administrative actions relating to Section 3 of the Fourteenth Amendment. [Part 1](#) focuses on the meaning of Section 3 as it applies to the presidency. For further background on Section 3, see [this Legal Sidebar](#).

Eligibility to Be Placed on the Ballot for the Presidency

Federal elections are administered primarily according to state laws. Article I, Section 4, clause 1, of the U.S. Constitution, known as the [Elections Clause](#), gives the states the initial and principal authority to administer "the times, places and manner of" congressional elections within their jurisdictions. For presidential elections, a parallel constitutional provision, known as the [Electors Clause](#) in Article II, Section 1, clause 2, provides that "[e]ach state shall appoint" electors for President and Vice President "in such Manner as the Legislature thereof may direct." In addition, the Qualifications Clause of the Constitution in Article II, Section 1, [clause 5](#), requires the President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years.

Under these constitutional authorities, states have enacted [varying laws](#) that specify prerequisites for presidential candidates to appear on election ballots, which are known as [ballot access](#) requirements. Generally, states enact ballot access requirements to prevent ballot overcrowding, [voter confusion](#), and election fraud and to facilitate election administration. While recognizing that ballot access laws affect voters' "[basic constitutional rights](#)," the Supreme Court has determined that states have "an interest, if not a duty, to protect the integrity of [their] political processes from [frivolous or fraudulent](#) candidacies."

Procedural History and Colorado Supreme Court Ruling in *Anderson v. Griswold*

The litigation in the Colorado case, first called *Anderson v. Griswold*, began when several Colorado voters [petitioned](#) the Colorado Supreme Court to [direct](#) the Colorado secretary of state to prevent Trump from appearing on the primary or any subsequent ballot as a candidate for President in 2024. The former President moved to transfer the case to federal court, which was [denied](#). He and the Colorado State Republican Central Committee [moved](#) to dismiss the case on a number of grounds, including that the secretary of state "does not have authority to preclude the placement of Defendant Trump on Colorado's ballot pursuant to U.S. Const. amend. XIV, Sec. 3" under relevant state statutes. On October 20, 2023, the district court judge, in an [omnibus ruling](#), discussed the [legal framework](#) pertinent to Colorado ballot access law and [held](#) that "C.R.S. § 1-1-113 is the exclusive vehicle for ... challenges" to a candidate's qualification to hold office under the Constitution.

On November 17, 2023, a state district court [held](#) that then-President Trump engaged in an insurrection as defined under Section 3 but determined that Section 3 does not apply to Mr. Trump, therefore declining

the petition to bar Trump's name from appearing on the ballot. The plaintiffs and Mr. Trump appealed to the Colorado Supreme Court. On December 19, 2023, by a 4-3 vote, the Colorado Supreme Court partially affirmed and partially reversed the district court. The court [held](#) that former President Trump is disqualified under Section 3 from again holding the office of President.

Before reaching the merits in this case, the Colorado Supreme Court held that Sections [1-4-1204](#) and [1-1-113](#) of the Colorado election code permit plaintiffs to challenge Mr. Trump's status as a candidate based on Section 3. According to the court, a state has the constitutional authority to evaluate presidential qualifications so long as its legislature has statutorily provided for such authority. [Quoting](#) future Justice Neil Gorsuch in an opinion [written](#) when he was a judge on the U.S. Court of Appeals for the Tenth Circuit, the court observed that it is "a state's legitimate interest in protecting the integrity and practical functioning of the political process [that] permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." Further, the court concluded that the electors in this case properly stated a claim under Colorado law and that, notwithstanding "the expedited procedures" of Section 1-1-113, the law "[provides sufficient due process](#) for evaluating whether a candidate satisfies the [requisite] constitutional qualifications." The court also held that Section 3 is [self-executing](#) and does not require Congress to enact implementing legislation and that the political question doctrine [does not](#) preclude judicial review of a candidate's qualifications for office under Section 3.

Turning to the merits, the court held that Section 3 applies in this case because, based on a textual analysis of Section 3, the President is an [officer of the United States](#) and the presidency [constitutes an office](#) under the United States. The court also determined that the district court did not err in determining that President Trump committed an insurrection. (For further discussion of the Colorado court's analysis of the merits, see [Part 1](#) of this Sidebar.)

Three justices each wrote separate dissents, with two justices arguing that Section 1-1-113 of the Colorado election code does not provide for adequate due process. Specifically, Colorado Chief Justice Brian Boatright criticized the electors' claim for being made "without a determination from a proceeding (e.g., a prosecution for an insurrection-related offense) with more rigorous procedures to ensure [adequate due process](#)." In addition, Colorado Justice Carlos Samour characterized the district court proceeding in this case as lacking "[basic discovery](#)," the power to compel witnesses and subpoena documents, "workable timeframes," and "the opportunity for a fair trial." Justice Samour further argued that most other states will not be able to enforce Section 3 because they lack similar election laws, which will result in Mr. Trump's disqualification from the ballot in only *some* states, "thereby risking chaos in our country."

In deciding that former President Trump was disqualified from holding future office, the Colorado Supreme Court held that "it would be a wrongful act under the Election Code" for the Colorado secretary of state to include his name as a candidate on the 2024 presidential primary ballot. However, the court [stayed](#) its decision until January 4, 2024 (the day before the Colorado secretary of state is required to finalize the ballot), or, if the decision was appealed, until the U.S. Supreme Court issued a ruling. On December 27, 2023, the Colorado Republican Party [appealed](#) the ruling to the U.S. Supreme Court, arguing, among other things, that the President is not covered by Section 3 and that Section 3 is not self-executing. On January 3, 2024, Mr. Trump likewise [appealed](#) the court's ruling to the Court, arguing, among other things, that Congress is the appropriate body to decide the eligibility of a presidential candidate and not a state court. On January 5, 2024, the Supreme Court [agreed](#) to hear the case and ordered an expedited briefing schedule. The Colorado secretary of state [announced that](#), as a result of the U.S. Supreme Court agreeing to review the case, Mr. Trump would be on the state's 2024 presidential primary ballot but indicated that the Court's decision may determine if votes for the former President are counted. On February 8, 2024, the U.S. Supreme Court heard [oral arguments](#) in the case.

Supreme Court Ruling in *Trump v. Anderson*

In a per curiam decision issued on March 4, 2024, the Supreme Court unanimously [ruled](#) in *Trump v. Anderson* that Congress is responsible for enforcing Section 3 of the Fourteenth Amendment against federal candidates and officeholders. In reaching its decision, the Court emphasized that the enactment of the Amendment increased federal authority “at the expense of state autonomy.” The Court held that Section 3, which provides for the disqualification of certain individuals from holding various offices rather than grants rights to all individuals, “was designed to help ensure an enduring Union by preventing former Confederates from returning to power in the aftermath of the Civil War.” The Court underscored that Section 5 of the Fourteenth Amendment “enables Congress, subject of course to judicial review, to pass appropriate legislation to enforce” the Amendment, including the provisions of Section 3. Characterizing Section 5 as “critical when it comes to Section 3,” the Court [quoted](#) a Senator who stated at the time the Amendment was crafted that Section 5 “[casts upon Congress](#) the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith.”

The Court further explained that permitting a state rather than Congress to enforce the provisions of Section 3 “raises serious questions” about the scope of Congress’s power under Section 5. The Court held that Section 5’s remedial nature in limiting congressional legislation to enforce Section 3 necessarily requires that Congress “tailor its legislative scheme to remedying” the prohibitive conduct and that any enforcement legislation must “reflect ‘congruence and proportionality’ between preventing or remedying that conduct ‘and the means adopted to that end.’” The Court held that any state enforcement of Section 3 against a candidate seeking federal office would not be derived from Section 5, as this section confers power only to Congress. The Court asserted that any notion to the contrary “is simply implausible.”

While states have the authority to enforce Section 3 against *state* candidates and officeholders, the Court held that states do not enjoy such power over federal candidates and officeholders and particularly not over the President. [Quoting](#) its 1995 ruling in *U.S. Term Limits v. Thornton*, the Court observed that federal officeholders “owe their existence and functions to the united voice of the whole, not of a portion, of the people” and hence, “powers over their election and qualifications must be specifically delegated to, rather than reserved by, the States.” The Court observed that the Constitution fails to provide the states with any such authority to enforce Section 3 over federal officeholders and candidates and that state enforcement of Section 3 with respect to the office of the President raises “heightened concerns.”

Further, the Court [warned](#) of the resulting “patchwork” if each state could enforce Section 3. Such disparities in enforcement, the Court announced, “would sever the direct link that the Framers found so critical between the National Government and the people of the United States as a whole.” For example, states could reach conflicting decisions regarding a candidate’s eligibility, under different state laws, standards of proof, and rules of evidence. In presidential elections, the votes cast or not permitted to be cast in one state affects the votes cast in other states, the Court observed, and such an “evolving electoral map could dramatically change” how voters, political parties, and states behave. The resulting “disruption” would be worse, the Court said, if enforcement of Section 3 occurred after the election.

The Court [disagreed](#) with the notion that the Elections Clause and the Electors Clause, discussed above, “implicitly” delegate Section 3 authority to the states, determining that such an interpretation “would invert” the Fourteenth Amendment’s balance of power between the states and the federal government. In support of its determination, the Court observed that Section 3 provides *Congress* with the power to “remove” a Section 3 “disability” by a vote of two-thirds in the House and Senate and does not provide limits on that power. The Court held that interpreting Section 3 to authorize the states to exclude candidates from the ballot would lead to the “implausible” result that Congress could exercise its authority to remove a Section 3 disability only *before* the election to have any meaningful effect.

Justice Barrett [wrote](#) a partial concurrence and concurred in the judgment, joining all but [part II-A](#) of the Court's opinion. While agreeing with the Court's holding that states do not have the power to enforce Section 3 against a presidential candidate, Justice Barrett emphasized that, unlike the Court majority, she would have made no further determinations. Specifically, Justice Barrett deemed it unnecessary for the Court to answer "the complicated question whether federal legislation is the exclusive vehicle through which Section 3 can be enforced."

Justices Sotomayor, Kagan, and Jackson [wrote](#) separately to concur in the judgment. The three Justices agreed with the Court's decision, observing that permitting the states to exclude a presidential candidate from the ballot would "create a chaotic state-by-state patchwork, at odds with our Nation's federalism principles." The three Justices believed that this conclusion was "enough to resolve this case" but that the majority chose to resolve "novel constitutional questions to insulate this Court and petitioner from future controversy." The Justices, who characterized the Court's ruling as announcing that "a disqualification for insurrection can occur only when Congress enacts a particular kind of legislation pursuant to Section 5 of the Fourteenth Amendment," believed that the per curiam decision precluded other potential methods for federal enforcement of Section 3.

Other Select State Court Decisions and Administrative Actions Regarding Ballot Access

Prior to the U.S. Supreme Court's ruling, state supreme courts had issued rulings on legal challenges to the former President's eligibility to be on the states' election ballots. The Michigan Supreme Court, for example, [denied](#) review of the [dismissal](#) of a challenge to Mr. Trump's placement on the primary ballot on ripeness grounds. The Minnesota Supreme Court dismissed a legal challenge to Mr. Trump's placement on the state's presidential primary ballot while allowing the plaintiffs to potentially bring suit at a later date. On March 4, following the *Trump v. Anderson* decision, the Minnesota secretary of state [issued](#) a statement indicating that Mr. Trump will stay on the ballot in that state. That same day, the Maine secretary of state [withdrew](#) an earlier determination that Mr. Trump was ineligible be on the state's presidential primary ballot and announced that votes cast for Mr. Trump during the March 5 primary election will be counted. Similarly, a February 28, 2024, [ruling](#) by an Illinois circuit court judge [denying](#) the former President ballot access [stayed](#) the order until the U.S. Supreme Court issued a decision that was inconsistent with the ruling. Therefore, for the March 19, 2024, Illinois presidential primary election, former President Trump [appeared](#) on the ballot.

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