

# [***Opinion: The 14th Amendment gambit is breathtakingly foolish***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:69XG-MNP1-DY7V-G3V0-00000-00&context=1516831)

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**Body**

(CNN) &#8212; The [*Colorado Supreme Court's decision Tuesday*](https://www.cnn.com/2023/12/19/politics/takeaways-trump-colorado-supreme-court-14th-amendment-insurrection/index.html) disqualifying former President Donald Trump from appearing on the state's presidential ballot is breathtakingly foolish.

I say that as someone who considers Trump an aspiring authoritarian who poses a serious threat to democracy in America. Unfortunately, many people who agree with me in this judgment - including the [*lawyers*](https://www.theatlantic.com/ideas/archive/2023/08/donald-trump-constitutionally-prohibited-presidency/675048/) who supported the [*gambit of arguing*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751) that [*Section 3 of the 14th Amendment*](https://www.law.cornell.edu/constitution/amendmentxiv) bars Trump from running and the Colorado judges who were persuaded by it - believe the former president can be neutralized by appealing to a clause of the Constitution written to exclude members of an armed rebellion against the United States (who had surrendered after defeat in the Civil War) from holding office.

But this is an illusion. Trump fundamentally represents a political problem, which means he can only be beaten in the political arena. Efforts to take him down by other means will only make him stronger.

From the very beginning of his political rise, [*Trump has played*](https://www.cnn.com/2023/09/26/opinions/trump-union-gop-debate-populism-al-gharbi/index.html) by the rules of populist ***politics***. The populist sets himself up as the angry, defiant champion of ordinary people against them - the powers that be who make up the political, cultural, journalistic and legal establishments. The populist calls them corrupt. He dubs them cheaters who rig the system to benefit themselves. He insists they will stop at nothing to hold onto their ill-gotten power and privileges.

The populist style of angry opposition has the effect of reversing the polarities that prevail in normal democratic ***politics***. For a standard politician, a criminal indictment is a major problem, a setback that can derail a career in public office. But for a politician like Trump, an indictment can be an opportunity because it confirms the populist narrative: See, they view me as such a potent threat that they're threatening to throw me in jail just to get me to stop fighting for you. But they can't scare me. Together, we will achieve vengeance!

Trump has been incredibly successful at weaponizing this way of doing ***politics***. Back in late March, on the eve of his [*first indictment in New York City*](https://www.cnn.com/interactive/2023/07/politics/trump-indictments-criminal-cases/#:~:text=Trump%20was%20first%20indicted%20in,integrity%20of%20the%202016%20election.), Trump was beating second-place Florida Gov. Ron DeSantis in [*GOP primary polls*](https://projects.fivethirtyeight.com/polls/president-primary-r/2024/national/) by roughly 15 points - a solid but hardly insurmountable lead. Three weeks later, that lead had doubled to 30 points. Four months and a few more indictments later, Trump was ahead by 40. Today, he leads by [*nearly 50 points*](https://projects.fivethirtyeight.com/polls/president-primary-r/2024/national/).

He's also already begun to [*fundraise*](https://secure.winred.com/save-america-joint-fundraising-committee/ite79a7c73af26c43bd/?utm_campaign=20231220&utm_term=8590209&utm_medium=email&utm_source=CI_A&iterable_campaign=8590209&iterable_template=11388068&iterable_user=atreene%40gmail.com) over the Colorado ruling, with the pitch pointing out that the four judges who voted to remove Trump's name from the ballot were all appointed by Democrats.

Many of the roughly [*63%*](https://www.realclearpolitics.com/epolls/2024/president/us/2024_republican_presidential_nomination-7548.html) of Republicans who support the former president do so on the basis of his lies about the "stolen" 2020 election. They think President Joe Biden prevailed through fraud that was covered up by election officials aligned with the Democratic Party, that the insurrection of January 6, 2021, was a patriotic effort by ordinary citizens to resist Biden's power grab and that partisan prosecutors are now attempting to railroad their tribune by throwing him in jail as he seeks to vindicate himself and his cause.

It's bad that a significant chunk of the American electorate has fallen prey to delusions encouraged by a demagogue. But you know what's worse? Giving those deluded voters fodder for their belief that powerful people in American public life (constitutional lawyers and state Supreme Court judges appointed by Democrats) actually are seeking to deprive them of the opportunity to express their political preferences at the ballot box.

The Colorado ruling not only disqualifies Trump from appearing on primary ballots in the state; it even [*forbids the Colorado secretary of state*](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2023/23SA300.pdf) from counting write-in votes for the former president.

One needn't be a populist to recognize what's happening here: A solid majority of the Republican electorate wants Trump to be its nominee, but those who really wield power in our system have decided they will not permit it. So far this has only happened in Colorado. But now that a state has acted, [*courts in other states*](https://ltg.ca.gov/2023/12/20/lt-governor-kounalakis-calls-for-secretary-of-state-weber-to-explore-legal-options-to-remove-former-president-donald-trump-from-californias-2024-presidential-primary-ballot/#:~:text=SACRAMENTO%20%E2%80%93%20Today%2C%20Lieutenant%20Governor%20Eleni,ruling%20in%20Anderson%20v.%20Griswold) are sure to follow. I can't think of a series of events more likely than this to shred the legitimacy of the judicial branch of government among Republican voters - and for good reason.

Such a guilty verdict must also establish that those actions constituted acts covered by the relevant section of the 14th Amendment. Unless and until that happens, the attempt to overrule the preferences of Republican voters will be rightly judged an illegitimate power grab. Democracy cannot be vindicated by abrogating democracy. Which is why the best outcome of this episode would be for the [*US Supreme Court to strike down*](https://www.cnn.com/2023/12/20/politics/trump-supreme-court-2024-election/index.html) the Colorado ruling swiftly and unambiguously, making clear that, for now, no state will be permitted to disqualify Trump from seeking or holding the office of the presidency. Trump and his populist style of ***politics*** can't be defeated by lawyers and judges. They can only be beaten at the ballot box.

The time and place to declare Trump disqualified from holding high office was at the conclusion of his second impeachment trial, conducted by elected officials of both parties in the US Senate in the weeks following January 6. Fearing the wrath of the voters, insufficient numbers of Republican senators were willing to convict him.I think that was a terrible mistake, and one with potentially disastrous consequences. But that doesn't mean a handful of judges in states dominated by Democrats have the legitimacy to reverse course now by forbidding Republican voters from casting ballots for their preferred candidate - especially before Trump has been found guilty in a court of law for acts committed in the days leading up to and on January 6.

Opinion by Damon Linker

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