

# [***Opinion: The Supreme Court could make a Trump victory virtually impossible***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6B0N-HPG1-DY7V-G08R-00000-00&context=1516831)

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**Body**

(CNN) &#8212; **Editor's Note:** [*David Mark*](https://twitter.com/DavidMarkDC) is a political journalist, author and public speaker. He is the author of "[*Going Dirty: The Art of Negative Campaigning*](https://www.amazon.com/Going-Dirty-Art-Negative-Campaigning/dp/0742545008)" and co-author of "[*Dog Whistles, Walk-Backs, and Washington Handshakes: Decoding the Jargon Slang and Bluster of American Political Speech*](https://www.amazon.com/Dog-Whistles-Walk-Backs-Washington-Handshakes-ebook/dp/B07NP3Y4XR)." The views expressed in this commentary are his own. Read [*more opinion*](https://www.cnn.com/opinions) at CNN.

The 2024 presidential race is likely to come down to a [*handful of key swing states*](https://www.cnn.com/2023/12/11/politics/biden-electoral-college-2024-what-matters/index.html). Based on recent elections, voter registration trends and other factors, it's reasonable to assume that the 2024 winner will be decided by the voters of [*Arizona*](https://www.nbcnews.com/meet-the-press/first-read/arizonas-politics-will-help-define-both-parties-2024-rcna67151), [*Georgia*](https://www.cnn.com/2023/12/11/politics/cnn-polls-trump-biden-michigan-georgia/index.html), [*Michigan*](https://www.cnn.com/2023/09/27/politics/donald-trump-michigan-speech-uaw/index.html), [*Nevada*](https://www.cnn.com/2023/10/10/politics/cnn-poll-nevada/index.html#:~:text=President%20Joe%20Biden%20and%20Trump,the%20state%20conducted%20by%20SSRS.), [*New Hampshire*](https://www.cnn.com/2023/11/17/politics/cnn-poll-new-hampshire-democrats-biden/index.html), [*North Carolina*](https://www.cnn.com/2023/05/20/politics/abortion-ban-north-carolina-democrats-2024/index.html), [*Pennsylvania*](https://www.cnn.com/2023/09/19/politics/pennsylvania-automatic-voter-registration-shapiro/index.html) and [*Wisconsin*](https://www.cnn.com/videos/politics/2023/02/09/joe-biden-campaign-2024-voters-concerns-age-earlystart-zeleny-pkg-vpx.cnn) plus single Electoral College votes in [*Maine*](https://spectrumlocalnews.com/me/maine/news/2023/12/27/maine-politics-elections-2024) and [*Nebraska*](https://apnews.com/article/nebraska-democrats-lincoln-election-2024-e3d7c8f189e076aa4d6ef5300faeb209) based on presidential preferences in individual House districts.

And while a lot can change over the 10 months before Election Day, in a potential rematch between [*President Joe Biden*](https://www.cnn.com/politics/joe-biden) and his vanquished 2020 Republican foe, former President [*Donald Trump*](https://www.cnn.com/politics/president-donald-trump-45), the remaining 40 states and District of Columbia can reasonably be expected to fall into red or blue camps.

A wild card is whether Trump will be ruled ineligible for the 2024 ballot. If the courts allow it, the swing states could gain even more influence over who wins the presidency in 2024, since there are a total of 68 electoral votes in those swing states where secretaries of state are elected Democrats or were appointed by a Democratic governor and may be in a position to decide if Trump's name is kept off ballots. That's out of 538 electoral votes, with a majority, 270, needed to win the presidency.

It has become an issue of stark national importance with [*Thursday's decision*](https://www.cnn.com/2023/12/28/politics/trump-maine-14th-amendment-ballot/index.html) by Maine Secretary of State Shenna Bellows to exclude Trump from the ballot in her state. Bellows, Maine's top election official, and a Democrat elected to her post by the state legislature, cited Trump's actions on Jan. 6, 2021 over his role trying to block congressional certification of Biden's 2020 win - including the attack on the Capitol that day by the then-president's supporters. Bellows removed Trump from the state's 2024 primary ballot, based on the 14th Amendment's "insurrectionist ban." However, Bellows' decision [*will be put on hold*](https://www.cnn.com/2023/12/28/politics/trump-maine-14th-amendment-ballot/index.html) until Maine's Superior Court - a trial-level court - makes a ruling.

Maine's move came 9 days after the [*Colorado Supreme Court*](https://www.cnn.com/2023/11/18/politics/takeaways-from-the-blockbuster-trump-insurrectionist-ban-ruling/index.html) removed Trump from the state's 2024 ballot, citing similar 14th Amendment "insurrection ban" concerns in its 4-3 ruling. The New York Times [*reported*](https://www.nytimes.com/2023/12/29/us/politics/trump-ballot-challenges-colorado-maine.html) that the Trump campaign plans to challenge both decisions as early as Tuesday. In Maine, Trump's lawyers will challenge the decision in a state court, while the Colorado ruling will be appealed to the US Supreme Court.

Colorado and Maine aren't the only states to have considered measures to remove Trump from 2024 ballots. [*Michigan*](https://www.cnn.com/2023/11/14/politics/michigan-judge-trump-14th-amendment/index.html) and [*Minnesota*](https://www.cnn.com/2023/11/08/politics/minnesota-14th-amendment-trump/index.html) denied proposals to do so. And while there wasn't a formal court challenge in California, the state's top election official [*also recently decided to keep Trump*](https://www.cnn.com/2023/12/28/politics/trump-maine-14th-amendment-ballot/index.html) on the list of certified candidates for the state's GOP primary, despite political pressure to remove him. Trump has also survived ballot access challenges in [*Arizona*](https://ktar.com/story/5555249/sec-adrian-fontes-explains-why-donald-trump-remains-eligible-for-arizona-ballot/) and [*New Hampshire*](https://www.nhpr.org/nh-news/2023-09-13/nh-secretary-of-state-says-he-wont-block-trump-from-presidential-primary-ballot), while the outcome of one in [*Oregon*](https://www.cnn.com/2023/12/29/politics/what-to-know-14th-amendment-challenges/index.html) is pending.

This proliferation of legal actions, and the fact that two states have denied Trump ballot access, makes it likely the high court will take up the issue. Justices would do so with the goal of setting some sort of uniform standards states must follow in considering efforts to keep Trump off of upcoming ballots - including whether that should be allowed at all.

At first glance, it seems unlikely the Supreme Court would actually rule that Trump could be removed from individual state ballots. The 6-3 conservative majority includes three justices appointed by Trump. And more broadly, justices in recent years [*have been reluctant*](https://www.cnn.com/2020/12/11/politics/supreme-court-texas-trump-biden/index.html) to jump into election rules disputes, saying that belongs in the realm of elected officials.

Still, the Trump era of ***politics*** has made clear that anything can happen. In the event the Supreme Court allows some sort of Trump ballot disqualification measures to stand - which could come in the form of simply refusing to take up his campaign's lawsuits - individual secretaries of states would take on outsize importance. And that's where those 68 electoral votes come in.

Colorado, for instance, is virtually certain to give its electoral votes to the Democratic nominee - in 2020 [*Biden beat Trump*](https://www.cnn.com/election/2020/results/state/colorado) in Colorado 55.4% to 41.9%. Trump getting knocked off the Colorado ballot wouldn't matter in terms of practical ***politics***.

But that's not the case at all in states with top elections officials who are Democratic-aligned. Elected Democratic secretaries of state include [*Adrian Fontes of Arizona*](https://www.cnn.com/election/2022/results/arizona/secretary-of-state) (11 electoral votes), [*Jocelyn Benson*](https://www.cnn.com/election/2022/results/michigan/secretary-of-state) in Michigan (15 electoral votes), [*Cisco Aguilar of Nevada*](https://www.cnn.com/election/2022/results/nevada/secretary-of-state) (6 electoral votes), and [*Elaine Marshall of North Carolina*](https://ballotpedia.org/Elaine_Marshall) (16 electoral votes). In Pennsylvania (19 electoral votes), [*Al Schmidt*](https://www.cnn.com/2023/01/05/politics/al-schmidt-pennsylvania-shapiro-secretary-state/index.html)was appointed by Democratic Gov. Josh Shapiro and confirmed by the state Senate (Schmidt is a Republican former Philadelphia city commissioner who Trump targeted for criticism in the aftermath of his 2020 election loss.)

Add in a single Maine electoral vote that leans Trump, in the 2nd congressional district - he won it in [*2016*](https://www.politico.com/story/2016/11/trump-wins-maines-2nd-congressional-district-231064) and [*2020*](https://www.politico.com/news/2020/11/04/congressional-maine-nebraska-presidential-results-2020-433380) - and the total is 68. That's because Maine, unlike all other states except Nebraska, awards two electoral votes based on the statewide popular vote and one vote for each congressional district. That comes out to four electoral votes in Maine and five in Nebraska.

Of course, some swing state electoral votes fall where the top elections official is Republican, for a total of 21 electoral votes. Including Georgia (16 electoral votes), with GOP Secretary of State [*Brad Raffensperger*](https://www.cnn.com/2022/05/06/politics/who-is-brad-raffensperger-georgia-secretary-of-state/index.html), and Nebraska, where Democrats have a decent chance at winning one electoral vote, from the Cornhusker State's 2nd congressional district, as happened in [*2008*](https://www.nbcnews.com/id/wbna27721471) and [*2020*](https://nebraskapublicmedia.org/en/news/news-articles/biden-takes-electoral-vote-in-2nd-district-trump-wins-nebraskas-4-other-votes/).In New Hampshire (4 electoral votes), which Biden [*won easily*](https://www.cnn.com/election/2020/results/state/new-hampshire/president) in 2020, the secretary of state is appointed by the Republican-majority legislature.

Meanwhile, in what's arguably the nation's premier swing state, Wisconsin, elections are overseen by its election commission. That panel [*on Thursday*](https://www.tmj4.com/news/local-news/complaint-filed-to-have-trump-removed-from-wisconsin-2024-ballot-denied) denied a request to remove Trump from the 2024 ballot, which would seem to render the issue moot for the rest of election season.

None of this is to suggest secretaries of state would act in the baldly political self-interest of their parties. Still, it's entirely possible, even likely, these top elections officials' honestly-come-by opinions about whether Trump should be on their state's presidential ballots would naturally line up along partisan preferences.

[*Michigan*](https://www.cnn.com/2023/11/14/politics/michigan-judge-trump-14th-amendment/index.html) is the most prominent example. There, Secretary of State Benson [*said in a statement*](https://www.michigan.gov/sos/resources/news/2023/12/27/secretary-benson-statement-on-michigan-supreme-court-ruling-in-14th-amendment-case) Wednesday that the state's top court had rightly concluded she lacked the authority to block Trump appearing on the upcoming Republican primary ballot. Yet in what's now only a hypothetical, should the Supreme Court rule give secretaries of state that power, Benson could exercise her own professional judgment and disqualify Trump.

If state election officials block Trump from their ballots - having first been given a green light by the Supreme Court - it could make it practically mathematically impossible for the former president to win a second, non-consecutive term. Whether or not that becomes a live possibility may soon be in the Supreme Court's hands.

Opinion by David Mark

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