

## ***Trump v Anderson: The Balance of American Democracy & Legitimization***

By: Melissa Shane

In the highly tense partisan environment of the United States, the mere mention of the name Donald Trump evokes a reaction. Hence, the United States Supreme Court's decision to hear a case where the former president himself is a plaintiff has taken the political world by storm. *Trump v Anderson* (2024) sought to investigate whether Colorado's decision to bar Donald Trump from appearing on the Republican primary ballot was constitutional.<sup>1</sup> The decision to hear this case itself and what they ultimately decided indicates both the legal role of the Supreme Court and the political motives they hold. Knowing the surrounding political climate and the potential consequences of ignoring this case, the Court ruled that Donald Trump could not be excluded on the ballot. The Court made this ruling in a manner that made them look as far removed and apolitical as possible and diverts the issue from the name "Donald Trump" and to the law. In this way, it is clear that the Supreme Court aims to preserve its legitimacy and American democracy while masking these motives of political tranquility under legality.

On January 6, 2021, the United States Capitol was attacked by a large mob of supporters of then-President, Donald Trump after Congress determined he had lost the 2020 Presidential Election to his Democratic opponent, Joe Biden. Trump and the mobsters claimed that he did not lose and that the election had been stolen; he famously echoed, "We will stop the steal,"<sup>2</sup> in his speech preceding the attack. As he emerges as the front-running Republican candidate for the 2024 presidential election, people and most notably, states, have begun questioning whether this event makes him ineligible to be elected president and more technically even appear on the ballot. Section three of the 14th Amendment states, "No person shall be... an elector of President and Vice-President... who, having previously taken an oath... as an officer of the United States...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."<sup>3</sup> Under this statute

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<sup>1</sup> *Trump v. Anderson*, 601 U. S. (2024). [https://www.supremecourt.gov/opinions/23pdf/23-719\\_19m2.pdf](https://www.supremecourt.gov/opinions/23pdf/23-719_19m2.pdf)

<sup>2</sup> Naylor, Brian. "Read Trump's Jan. 6 Speech, a Key Part of Impeachment Trial." *NPR*, NPR, 10 Feb. 2021, [www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial](http://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial).

<sup>3</sup> *United States Constitution*. Amend. XIV, Sec. 1 & 3.

and the Colorado Election Code, courts in Colorado reached a disagreement regarding the application of the term “officer” to the President and whether this potential application could exclude Trump from the Colorado Republican Primary ballot. Knowing Trump’s exclusion from the ballot would result in him appealing to the Supreme Court, Colorado delayed the implementation of this ruling, and thus, *Trump v Anderson* (2024) was born.

Perhaps an unpopular opinion, this *was* a question to be answered by the Supreme Court. The public tends to believe in the concept of popular constitutionalism, where the final arbiter of the law is the people, and they tend to get angry when the Court rules against public desire. There is historical evidence to support this constitutional approach, a famous example being conservative retaliation to Supreme Court approval of New Deal legislation.<sup>4</sup> However, the people are not equipped to answer this specific question. There was a legitimate need to clarify the broader issue at hand, which deals with the extent to which states can control who appears on the ballot for national elections, and more specifically, presidential elections. The people know how they feel about abortion, Affirmative Action, or other hot-topic issues that are frequently at the forefront of political conversation, but issues of federalism and the creation of a ballot are less contentious. Many people know they don’t want Donald Trump as president<sup>5</sup>, but they are less aware of the actual legal question at hand and the potential consequences of the ruling that he can be excluded from the ballot. Of course, every case has an underlying legal dispute, but when the results of a case could impact the functioning and legitimacy of American Democracy for the foreseeable future, using the public’s opinion of a specific candidate to guide that ruling would be illogical. While states are broadly at liberty to run their own elections, if states have the capability to edit who is on their ballot, particularly for federal elections and the highest office in the nation, knowing who the nationally approved candidate is would be difficult as there would be inconsistencies across states due to varying ballots. Trump could be barred from the ballot,

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<sup>4</sup> Fishkin, Joseph, and William E Forbath. “The Supreme Court Wasn’t Always the Final Arbiter of the Law” *The Washington Post*, 2 Aug. 2022, [www.washingtonpost.com/made-by-history/2022/08/02/supreme-court-wasnt-always-final-arbiter-constitution/](https://www.washingtonpost.com/made-by-history/2022/08/02/supreme-court-wasnt-always-final-arbiter-constitution/).

<sup>5</sup> Cerda, Andy. “Little Change in Americans’ Views of Trump Over the Past Year.” *Pew Research Center* [pewresearch.com,https://www.pewresearch.org/short-reads/2023/07/21/little-change-in-americans-views-of-trump-over-the-past-year/](https://www.pewresearch.org/short-reads/2023/07/21/little-change-in-americans-views-of-trump-over-the-past-year/)

but then Republican states could respond by finding a way to bar Biden from the ballot. The presidential election would be in shambles as the ability for a candidate to win the necessary number of electors would be excruciatingly difficult and likely depend on the speed at which various states can judicially edit the candidates on their ballot. For this reason, there is a legitimate legal issue at hand that should be contemplated by the highly educated Justices of the Supreme Court. They cannot decide to usurp the entire process of putting candidates on the ballot because of Donald Trump's public disapproval. As a result, popular constitutionalism is a better fit for public policy issues that don't directly delegitimize the principle of democracy and that the public has a strong opinion on.

Beyond the legality of the issue, there was a strong political motive to hear this case because of what could have happened should they have elected not to. If the Court had ignored this case, effectively allowing Colorado and other states to bar Trump from the ballot, chaos likely would have ensued, and the Justices knew this. Look at the very reason this case exists—there was an insurrection by supporters who felt democracy was at threat and that an election was unfair. If the Justices stayed silent, effectively allowing Trump to be absent from the ballot, who is to say this event would not repeat? If the Justices ruled that Trump couldn't be on the ballot and effectively limited his ability to participate in democracy as a candidate, again, who is to say this event would not repeat? Sure, justices are supposed to be apolitical, merely interpreters of the law who operate as though they are isolated from the outside world, but they are not. While they do have their partisan ties that likely influence how they vote, *Trump v Anderson* (2024) feels less about these ties and more about the context in which they are operating in. This is articulated well in the “strategic” framework set up by Political Scientist Lee Epstein. Judges’ “expectations about the actions of others” and consideration for retaliation play a large role in how they act.<sup>6</sup> When she discusses *Newport News Shipbuilding & Dry Dock Company v. Equal Employment Opportunity Commission* (1983), it becomes very clear that the judges could have ruled according to their opinions (which, at the time, were Conservative compared to Congress), but they did not—because they knew that if they did, Congress could

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<sup>6</sup> Epstein, Lee, and Jack Knight. “A Strategic Account of Judicial Decisions.” *The Choices Justices Make*, CQ Press, Washington D.C., 2005.

retaliate by writing a different, perhaps more expansive law. This same retaliation is what the Judges kept in the back of their mind when ruling in *Trump v Anderson* (2024). If they had ruled that Trump could be barred from the ballot, how would Trump retaliate? How would his correspondents, still in Washington D.C., retaliate? How would other states and their legislators? While sure, this same retaliation could occur by those who dislike Trump; there was an inherently higher risk with a group that has already demonstrated their volatility (Trump supporters) and with the general nature of ruling that states can make decisions about who can be on their presidential ballot. The Court wanted to subdue these potential consequences by straying away from this question and answering it without really answering it.

And that is just what they did. Not even six months after this case was first heard in Colorado courts, on March 4, 2024 the Supreme Court issued its decision in *Trump v Anderson* (2024) ruling that Colorado erred in its decision to bar Donald Trump from its Republican Primary ballot, as the enforcement of Section three of the 14<sup>th</sup> Amendment is constitutionally delegated to the United States Congress, not to the states. This statute effectively prevents Trump and any other political candidates from being barred by states from the ballot.

While the Court recognized there was a legitimate legal question at hand and a political concern to contemplate, they likely wanted to make a decision in the most apolitical fashion possible, given the nature of Donald Trump as a political figure and their legitimization as an institution. Put plainly, the Court didn't want to answer the presented question. Stability is a frequent concern and conversations among the Justices; Justice Clarence Thomas and Justice Elena Kagan, along with a few others, showed their concerns with the Court's public perception, fearing a loss of trust and stressing the dangerous effects of a "lost connection" with the American people.<sup>7</sup> As a result, there was likely a legitimate and inherent concern with this case—while they recognized the necessity of the case given the upcoming presidential election, the justices were likely aware that their reputation would be squashed and further delegitimized no matter how they chose to rule. The Justices didn't want to appear in favor of

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<sup>7</sup> de Vogue, Ariana. "Justices Worry about the Future of the Supreme Court -- and Point Fingers as to Who's to Blame." *KRDO*, CNN, 29 July 2022, [krdo.com/news/2022/07/29/justices-worry-about-the-future-of-the-supreme-court-and-point-fingers-as-to-whos-to-blame/](https://www.krdo.com/news/2022/07/29/justices-worry-about-the-future-of-the-supreme-court-and-point-fingers-as-to-whos-to-blame/).

Trump, nor did they want to appear against him. They didn't want to appear to have an opinion on him at all, just the law. This is likely why they reached the decision they did, centering the issue around logistics to shield themselves from partisan blame. Nonetheless, considering the alternatives, this decision was risky.

While it ultimately focused on who maintained the 14<sup>th</sup> Amendment's enforcement power, the decision could have been even more far removed. For example, this concern could have been deferred as a problem of ripeness—arguing that the Colorado statute and the 14th Amendment's focus is on Trump's ability to take office, not his ability to appear on the ballot, and thus this is an issue for a later time, should he win and need to assume office. It could've also been argued as an issue in Congressional purview, urging Congress to make a law specifying states' ability to exclude presidential candidates from their ballot. Both approaches would lend a decision to the pressing issue (so pressing that, within five months of its initial hearing, it is on the desk of the Supreme Court) by avoiding a conclusive or divisive decision. The optics of these alternatives are arguably better than that of the Court's ultimate decision, as the alternatives stray completely away from the question. Contemplating this decision and the alternatives matters because, as the Justices recognize themselves, the Supreme Court is not only responsible for interpreting the law but also for legitimizing the American government. If the Court is consistently ruling against the other branches or usurping key principles of the nation (in this case, democracy), it becomes hard to maintain national unity, and thus, trust with the people. "At its best, the Court operates to confer legitimacy, not simply on the particular and parochial policies of the dominant political alliance," and thus, the Justices have a key responsibility to stray away from ruling along party lines and instead focus on maintaining legitimacy; both for themselves and for the American government.<sup>8</sup>

Holistically, the political and legal crossover of *Trump v Anderson* (2024) can be found in the need to legally protect the legitimacy of American Democracy while balancing the reputation and societal damage that could come from failing to do so. Silence is not an option when the

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<sup>8</sup> Dahl, Robert A. "Decision Making in a Democracy: The Supreme Court as a National Policymaker." *Emory Law Journal*, Emory University, 2001.

integrity of a presidential election is in question, and the Court was challenged to balance this need with their own desire to shield themselves from partisan controversy and strategically avoid the weeds of Donald Trump. It is then evident that the Supreme Court is neither completely centered on legal interpretation nor policymaking but must balance the two to carefully consider the legitimacy and the meaning of the Constitution in the given political context.