Opinion

NCR Voices



Protesters and supporters of former President Donald Trump wait for him to arrive at Trump National Doral golf resort on June 12 in Doral, Florida. (AP/Evan Vucci)



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Last week, six voters in Colorado filed a suit to keep Donald Trump off the ballot. Jena Griswold, the Colorado secretary of state, said she has been discussing the possibility of barring Trump from the ballot for months with other secretaries of state, usually the office that administers elections.

As much as I would like nothing better than for Trump to be consigned to history one way or another, this way is profoundly misguided and anti-democratic.

The suit comes after some legal scholars have made the argument that Article 3 of the 14th Amendment to the Constitution forbids Trump from running for president. That article reads in relevant part:

> No person shall be a senator, or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, 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.

The argument that this amendment should be used to bar Trump from the ballot has become a staple of the MSNBC nightly talk shows. But it received its most forceful articulation from two conservative legal scholars, William Baude of the University of Chicago and Michael Stokes Paulsen of the University of St. Thomas.

The conservative scholars believe there is "abundant evidence" that Trump engaged in the kinds of activities that constitute "insurrection or rebellion" and, therefore, should be barred by the courts from being placed on the ballot in the first place.

The problem is that the U.S. Senate failed to convict Trump during his second impeachment trial. He was acquitted of the charge of "incitement of an insurrection." Two of Trump's indictments deal with the same issues faced in the impeachment trial, but he has not been tried, let alone convicted.

What is more, if the Democrats were to pursue this strategy, even if it worked, it would be used against them in other states and in other elections. It would only further debase and unravel our democratic values and norms.

This issue has never arisen in normal times because, in normal times, all candidates have accepted the results of an election once legal avenues such as recounts were exhausted. Until Trump, no one glommed on to carefully edited videos of election workers doing their job or defamatory accusations against poll workers in order to overturn an election.

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Until 2020, no television network had engaged in the kind of accusations against a company that makes voting systems that were so defamatory that the network, Fox News, had to pay $787.5 million in a settlement with the Dominion Voting Systems Corp.

Here we are. These are not normal times. And no one should dismiss novel theories simply because they are novel: We might need some creative thinking to extract the nation from the mess in which Trump has put us. It is worth noting that Article 3 does not mention the office of the presidency because the drafters could not even imagine that electing someone to the presidency who had broken his oath to defend the Constitution would be possible.

The Constitution is quite clear that the people get to decide who will be president of the United States and who will represent them in Congress. The idea that a judge, ruling on a motion from a state official, could deny voters of their right to elect who they want, is abhorrent on its face. Better to trust the oracle at Delphi!

The idea also gives credence to an underlying allegation against the left that has fueled the rise of Fox News and Trump, the charge that the left thinks it knows best and looks down on the rest of the country. If you listen to "scholars," legal and otherwise, it is not hard to find someone peddling a theory that lacks all common sense.

President Joe Biden needs to get out front on this issue. He needs to point out that, so far, it is mostly a debate among Republicans and conservative legal scholars and he is content to let them duke it out on their own terms to decide who leads their

party.

He needs to insist that he would never countenance an end-run around the voters. Biden should add that he took an oath to uphold the Constitution and the Constitution states that the people decide who gets to be president, not a judge, still less a secretary of state.

Biden might add that he is looking forward to facing Trump again and, even more, to beating him again. Rubbing a little salt into the wound is constitutionally permissible.

This latest lawsuit is all part of the Trump derangement syndrome that still afflicts the country. The courts, other politicians, the media, all are trying to navigate in waters that have been churned by Trump's ability to tap into the darkest reaches of the American psyche and craft a political movement out of the anxieties and resentments he unearths.

Those of us who want to return sanity to our constitutional system need to be wise, not clever. And if, as in this case, people on the left are too clever by half, they risk handing Trump the keys to the White House again.