Opinion
NCR Voices



Republican presidential candidate and former U.S. President Donald Trump speaks during a campaign rally at Winthrop Coliseum in Rock Hill ahead of the South Carolina Republican presidential primary Feb. 23. (OSV News/Reuters/Shannon Stapleton)



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I hate to say, "I told you so," but I told you so. The U.S. Supreme Court's March 4 decision to overturn the efforts by secretaries of state in Colorado, Maine, Illinois and other states to remove former President Donald Trump from the ballot citing the 14th Amendment's insurrection clause was both the correct decision and a foreseeable one.

Back in September, when this idea of invoking Section 3 of the 14th Amendment first started getting attention, I warned that it was "profoundly misguided." It is true that novel circumstances sometimes demand novel approaches, but the anti-democratic quality of these decisions by state officials was obvious. You can't save democracy by gutting it.

The U.S. Supreme Court agreed, although the primary focus was on the legal issue of enforcing the insurrection clause.

"This case raises the question whether the States, in addition to Congress, may also enforce Section 3," the majority wrote. "We conclude that States may disqualify persons holding or attempting to hold state office. But States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency."

The three liberal justices on the bench, Justices Sonia Sotomayor, Elena Kagan and Ketanji Brown Jackson, concurred with the decision but chastised the majority for going further than necessary:

> Although only an individual State's action is at issue here, the majority opines on which federal actors can enforce Section 3, and how they must do so. The majority announces that a disqualification for insurrection can occur only when Congress enacts a particular kind of legislation pursuant to Section 5 of the Fourteenth Amendment. In doing so, the majority shuts the door on other potential means of federal enforcement.

This is a bit rich coming from court liberals who have never shied away from venturing further than necessary to find a result they wanted to reach.

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Still, in the end, the liberal justices did not dissent because they recognized that upholding the Colorado decision would "create a chaotic state-by-state patchwork, at odds with our Nation's federalism principles."

As the legal and political debate matured over the past few months, it became clear that the idea of invoking the 14th Amendment was not only anti-democratic but offensive to our notion of justice. Trump was impeached for his efforts to overturn the 2020 election, but he was acquitted in the Senate. Whether they were right or wrong to acquit Trump is a different question. He was acquitted.

The District Court in Colorado held a "trial" for five days last fall on the suit brought by citizens asking the state to bar Trump from the ballot. The findings of the House Select Committee on the Jan. 6, 2021, attack on the U.S. Capitol were admitted as evidence. But those congressional hearings lacked cross-examination, and without that, you can't sustain a criminal conviction in a modern, liberal democracy. This is star chamber nonsense.

The U.S. Constitution does not empower the Colorado Supreme Court to decide who gets to be president, nor does it give that court jurisdiction in a crime that happened thousands of miles away. Such legal niceties as determining jurisdiction and the rules of evidence are the stuff of civilization.

In addition to the legal result being obvious for a long time, the fact that this effort to bar Trump from the ballot was a political loser was equally clear.

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In the first place, the Democrats need to be the party that respects the will of the voters and the party that defends the rule of law. President Joe Biden has made the defense of democracy central to his argument for reelection, and extreme MAGA candidates bombed in the 2022 midterm elections. This case made Democrats appear like they were trying to do an end-run around the voters and ignore the rule of law.

It was painful watching Sean Hannity wax eloquent Monday night about respecting the rights of the voters. We are in this mess because Trump refused to accept the will of the voters in 2020. But Hannity's stirring defense of democracy was foreseeable too.

What is more, what would happen if the Supreme Court had allowed Colorado to remove Trump from the ballot? How long would it take before Republican secretaries of state started removing Biden from the ballot?

Worst of all, the Supreme Court ruling allows Trump to appear again as a winner. Those who brought the impeachments against him miscalculated, too. They knew that he was not going to be convicted in the Senate and that Trump would present his acquittal as a complete vindication, which he did.

Part of the secret to defeating Trump is making sure people see him as a loser. This misbegotten case had the opposite effect and only a few very siloed individuals failed to see how inevitable that result would be.

Let's give the last word to Boston College professor of law and theology Cathleen Kaveny, who told me, "Many people may not like the result, but the Supreme Court did the right thing for the future of this democratic republic."