

Gauging the Fallout From the Colorado Court Ruling Against Trump

7 MIN READ

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Former U.S. president and 2024 presidential hopeful Donald Trump speaks during a campaign event in Waterloo, Iowa, on Dec. 19, 2023. That same day, a Colorado court ruled Trump could not appear on the state's presidential primary ballot due to his involvement in the U.S. Capitol riot in January 2021. (KAMIL KRZACZYNSKI/AFP via Getty Images)

The Colorado Supreme Court's ruling that Donald Trump is ineligible to appear on the presidential ballot and hold the office of president will only further crystalize the global perception that U.S. institutional and democratic strength is weakening, forcing Washington's global partners to shore up self-reliance, while giving authoritarian states more fodder to crack down on opponents. If the decision stands, it will also increase the risk of political violence in the United States next year. In a 4-3 ruling released on Dec. 19, the Colorado Supreme Court ruled that Trump, the frontrunner for the Republican presidential nomination, was disqualified from holding the office of president and is thus ineligible to be placed on the state's March 5 presidential primary ballot. The court found that Trump's actions related to the U.S. Capitol riot on Jan. 6, 2021, amounted to engaging in an insurrection, thus restricting him from office under the Fourteenth

Amendment's insurrection clause. Importantly, the court also found that the amendment was "self-executing" and did not need the U.S. Congress to pass legislation for the amendment's disqualification provision to be invoked. Trump's campaign has promised to appeal the case to the U.S. Supreme Court.

- While the Supreme Court currently has a conservative majority, the constitutional questions in this case are not easily broken down in traditional conservative-liberal themes — particularly as several conservative judges are textualists and originalists. It's thus possible that the top court could rule in an unanticipated way and take a literal interpretation of the insurrection clause that upholds part of the Colorado court's ruling.
- The Colorado Supreme Court stayed its decision from taking effect until Jan. 4, 2024, one day before the deadline for the state's secretary of state to certify the candidates for its primary on March 5. This gives time for the U.S. Supreme Court to quickly weigh in on the matter.
- Although the Colorado Supreme Court's decision specifically relates to the primary ballot, if it holds, it will likely result in Trump's removal from the ballot in the November presidential election as well.
- Similar efforts to strike Trump's name off the ballot have occurred in other states, with courts taking opposing views. In November, Minnesota's supreme court dismissed a legal challenge trying to remove Trump's name from the ballot using the insurrection clause. In Michigan, on Dec. 18 a liberal group also appealed a ruling in favor of Trump by a lower court to the state's supreme court.

If it stands, the court ruling will open the door to similar moves in other states, exacerbating U.S. political polarization and increasing the risk of election violence targeting the political and legal system next year. Already, many Republicans have rallied around Trump, criticizing the ruling as politically motivated. The resulting increased political polarization will only impede legislative efforts in the divided U.S. Congress in 2024, although the functional impact on U.S. policymaking may be limited given that the legislature is already heavily divided; indeed, in 2023, Congress passed the fewest laws in

more than 20 years, making it one of the least productive congresses in U.S. history. If the U.S. Supreme Court allows Colorado's decision to stand, it will also open the door for similar, successful legal challenges against Trump's eligibility in other states. If Trump is left off the ballot in any states, those states — as well as state and judicial officials viewed as facilitating Trump's removal — will face an increased threat of violence next year, including potential attempted assassinations and violence targeting polling stations and elected officials, as well as disruptive and potentially violent rallies and demonstrations in favor of Trump. Despite the increased threat of violence, the number of incidents and their frequency may be low as law enforcement is well aware of the risks and is unlikely to show any complacency, which many critics accused law enforcement of for underestimating the risk of violence on Jan. 6. Already there have been multiple examples of law enforcement arresting individuals over threats they've made, such as against judges and their clerks overseeing Trump's legal cases. Although Colorado's 10 electoral college votes are not viewed as being a crucial battleground, Michigan and its 15 electoral college votes could be vital to Trump's or Biden's reelection, and a ruling by the U.S. Supreme Court in favor of Trump may result in Michigan's supreme court siding with liberal activists to ban him from the ballot in the state, where Trump has been leading President Joe Biden in recent polls. While Trump's campaign will likely view the Colorado ruling as an opportunity to raise funds and rally up the former president's base, Trump's removal from the ballot in Colorado and/or other states would still hurt his overall election chances by making it more difficult for some moderate voters, and perhaps even some moderate-leaning Republicans, to vote for him, given the large chunk of U.S. voters who have said that they could or would change their voting preferences if Trump was convicted of insurrection.

- Republican National Committee Chair Ronna McDaniel called the Colorado court decision "election interference," while Republican House Speaker Mike Johnson called it a "thinly veiled partisan attack." Republican presidential candidate Vivek Ramaswamy, meanwhile, promised to withdraw his name from the Colorado primary ballot and urged other Republicans to do the same. Florida Governor Ron DeSantis and former South Carolina Governor Nikki Haley — Trump's two leading primary opponents — said the judges should not be making these decisions.

- Over the last two months, there have been a raft of charges brought against individuals threatening elected and other U.S. officials. In the latest, an Arizona man was arrested on Dec. 18 for threatening federal law enforcement agents and employees. A week earlier, a New Hampshire man was arrested for threatening to kill Ramaswamy and voters attending a campaign event for the Republican presidential candidate. Few attacks or threats in recent years have so far been successful. But the most recent, high-profile successful attack was in October 2022, when a far-right individual broke into then-House Speaker Nancy Pelosi's home and assaulted her husband with a hammer.

Colorado's ruling, regardless of whether it stands, will only reinforce global perceptions that U.S. institutional and democratic strength is ailing. Next year will likely prove to be consequential for these perceptions among both U.S. allies and adversaries, Trump's legal schedule is jam-packed, and his potential reelection could trigger a constitutional crisis if some states view him as ineligible to hold office and/or if he is convicted of a criminal offense. From a practical perspective, European countries will likely try to double down on their own strategic autonomy strategy, viewing any strategic reliance on the United States as a growing liability as U.S. political turmoil increases. This will translate to increasing support for European-centric national security policies and military mechanisms (both under NATO and under the European Union). Brussels and European capitals could also diverge from Washington on certain global issues where the U.S. political environment may be restricting U.S. political options, including the Israel-Hamas conflict where President Biden's close support of Israel may have domestic political considerations in mind, and in international frameworks, like climate negotiations. For China and Russia, a turbulent U.S. political environment only gives their diplomats and leaders more ammunition to convince other countries that the United States is an unreliable partner embroiled in domestic turmoil. Ultimately, this will hurt the U.S. reputation in areas where competition between Washington and Beijing (and Moscow) is high, such as across the African continent. Finally, even if some Americans may view Trump's actions as insurrectionist and that barring him from holding

office is a testament to the strength of the United States and its institutions, any effort to remove Trump from the ballot, regardless of the arguments' legitimacy, will be used by authoritarian or aspiring authoritarian leaders as justification to use legal or other mechanisms to disqualify a popular political foe.