

- 1. Mark your confusion.**
- 2. Show evidence of a close reading.**
- 3. Write a 1+ page reflection.**

Can Trump Be on the Ballot?

It's the Supreme Court's biggest election test since Bush v. Gore

Source: Mark Sherman, *Associated Press*, February 3, 2024

A case with the potential to disrupt Donald Trump's drive to return to the White House is putting the Supreme Court uncomfortably at the center of the 2024 presidential campaign.

In arguments Thursday, the justices will, for the first time, wrestle with a constitutional provision that was adopted after the Civil War to prevent former officeholders who "engaged in insurrection" from reclaiming power.

The case is the court's most direct involvement in a presidential election since *Bush v. Gore*, a decision delivered a quarter-century ago that effectively delivered the 2000 election to Republican George W. Bush. It comes to a court that has been buffeted by criticism over ethics, which led the justices to adopt their first code of conduct in November, and at a time when public approval of the court is diminished, at near-record lows in surveys.

The dispute stems from the push by Republican and independent voters in Colorado to kick Trump off the state's Republican primary ballot because of his efforts to overturn his 2020 election loss to Democrat Joe Biden, culminating in the Jan. 6, 2021, attack on the U.S. Capitol.

Colorado's highest court determined that Trump incited the riot in the nation's capital and is ineligible to be president again as a result and should not be on the ballot for the state's primary on March 5.

A victory for the Colorado voters would amount to a declaration from the justices, who include three appointed by Trump when he was president, that he did engage in insurrection and is barred by the 14th Amendment from holding office again. That would allow states to keep him off the ballot and imperil his campaign.

A definitive ruling for Trump would largely end efforts in Colorado, Maine and elsewhere to prevent his name from appearing on the ballot.

The justices could opt for a less conclusive outcome, but with the knowledge that the issue could return to them, perhaps after the general election in November and in the midst of a full-blown constitutional crisis.

The court has signaled it will try to act quickly, dramatically shortening the period in which it receives written briefing and holds arguments in the courtroom.

Trump is separately appealing to state court a ruling by Maine's Democratic secretary of state, Shenna Bellows, that he was ineligible to appear on that state's ballot over his role in the Capitol attack. Both the Colorado Supreme Court and the Maine secretary of state's rulings are on hold until the appeals play out.

The former president is not expected to attend the Supreme Court session this coming week, though he has shown up for court proceedings in the civil lawsuits and criminal charges he is fighting.

Whatever the justices decide, they are likely to see more of Trump, who is facing criminal charges related to Jan. 6 and other issues. Other election-related litigation also is possible.

In 2000, in *Bush v. Gore*, the court and the parties were divided over whether the justices should intervene at all.

The conservative-driven 5-4 decision has been heavily criticized ever since, especially given that the court cautioned against using the case as precedent when the unsigned majority opinion declared that "our consideration is limited to the present circumstances."

In the current case, both parties want the matter settled, and quickly.

Trump's campaign declined to make anyone available for this story, but his lawyers urged the justices not to delay.

"The Court should put a swift and decisive end to these ballot-disqualification efforts, which threaten to disenfranchise tens of millions of Americans and which promise to unleash chaos and bedlam if other state courts and state officials follow Colorado's lead and exclude the likely Republican presidential nominee from their ballots," Trump's lawyers wrote.

Donald Sherman, the top lawyer at the group behind the ballot challenge, said voters and election officials need to have an answer quickly.

"And I think, obviously, voters have a not small interest in knowing whether the Supreme Court thinks, as every fact-finder that has reached this question, that Jan. 6 was an insurrection and that Donald Trump is an insurrectionist," Sherman said in an interview with The Associated Press. He is executive vice president and chief legal counsel at Citizens for Responsibility and Ethics in Washington.

Justice Clarence Thomas is the only sitting member of the court who was on the bench for Bush v. Gore. He was part of that majority.

But three other justices joined the legal fight on Bush's side: Chief Justice John Roberts and Justices Brett Kavanaugh and Amy Coney Barrett. Bush eventually put Roberts on a federal appeals court and then appointed him chief justice. Bush hired Kavanaugh to important White House jobs before making him an appellate judge, too.

Kavanaugh and Barrett were elevated to the Supreme Court by Trump, who also appointed Justice Neil Gorsuch.

Thomas has ignored calls by some Democratic lawmakers and ethics professors to step aside from the current case. They note that his wife, Ginni Thomas, supported Trump's effort to overturn the results of the 2020 election. Ginni Thomas repeatedly texted White House chief of staff Mark Meadows in the weeks after that election, once referring to it as a "heist," and she attended the rally that preceded the storming of the Capitol by Trump supporters. Nearly two years later, she told the congressional committee investigating the attack that she regretted sending the texts.

Trump lost 60 different court challenges to his false claims that there was massive voter fraud that would have changed the results of that election.

The Supreme Court ruled repeatedly against Trump and his allies in 2020 election-related lawsuits, as well as his efforts to keep documents related to Jan. 6 and his tax returns from being turned over to congressional committees.

But the conservative majority Trump's appointees cemented has produced decisions that overturned the 5-decade-old constitutional right to abortion, expanded gun rights and struck down affirmative action in college admissions.

The issue of whether Trump can be on the ballot is just one among several matters related to the former president or Jan. 6 that have reached the high court. The justices declined a request from special counsel Jack Smith to rule swiftly on Trump's claims that he is immune from prosecution, though the issue could be back before the court soon depending on the ruling of a Washington-based appeals court.

In April, the court will hear an appeal that could upend hundreds of charges stemming from the Capitol riot, including against Trump.

Possible Response Questions

- What are your thoughts about this case which the Supreme Court will hear this week? Explain.
- Did something in the article surprise you? Discuss.
- Pick a word/line/passage from the article and respond to it.
- Discuss a "move" made by the writer in this piece that you think is good/interesting. Explain.