

Supreme Court should look to the history that kept ex-Presidents Taft and Teddy Roosevelt off from some ballots: Mark R. Brown

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6–8 minutes

COLUMBUS, Ohio -- All eyes are on the U.S. Supreme Court following Colorado's Dec. 19 [decision](#) to disqualify former President Donald Trump from the state's primary election ballot under [Section 3 of the 14th Amendment](#). That provision prohibits those who have sworn to uphold the Constitution only to later have "engaged in insurrection or rebellion against" it from holding state or federal office. Trump was sworn to uphold the Constitution and then engaged in the Jan. 6, 2021, insurrection, the Colorado high court ruled, thus disqualifying him from running on the Colorado presidential primary ballot.

[Maine's Secretary of State](#) last week followed Colorado's lead and disqualified Trump, while officials in Michigan and California ruled that Trump would remain on their states' ballots.

Because of these differing conclusions, a [consensus](#) has emerged among academics that the U.S. Supreme Court absolutely must intervene. Trump, they argue, must be either on or off the ballot in every state, something only the nation's high court can singularly ensure.

Disparate ballot access decisions, as a dissenting Justice in the Colorado case stated, “risk[] chaos in our country.”

In [papers](#) filed last week with the U.S. Supreme Court, the Republican Party went even further, claiming that “[f]or the first time in American history, a former President has been disqualified from the ballot, [and] a political party has been denied the opportunity to put forward the presidential candidate of its choice.”

If the Republican Party’s claims were true, and if constitutional chaos were a real risk, then the Supreme Court’s immediate involvement would be plainly justified.

The Republican Party’s claims, however, are false. Contrary to the Republicans’ claims, political parties have often been “denied the opportunity to put forward the presidential candidates of their choice,” and former presidents have, in fact, been excluded from presidential ballots.

Since the emergence of secret “Australian” ballots in the late 19th century, election officials’ ex-ante decisions about candidates’ qualifications and credentials have become the norm. Like it or not, official ballots require gatekeepers. These gatekeepers, ordinarily state and local elections officials, have often over the last 120 years disqualified or excluded popular presidential candidates.

Just to use two recent examples, in 2012, the Libertarian Party’s candidate, [Gary Johnson](#), was disqualified in Michigan under the state’s “sore loser” law because he had filed to run in the state’s GOP primary and then was three minutes late withdrawing. A three-minute mistake and a constitutionally questionable ruling were used to disqualify the third most popular candidate in the 2012 presidential election.

Ralph Nader in 2004, meanwhile, was kicked off presidential ballots in

more than a dozen states for a variety of technical reasons. Ohio, for instance, claimed that voters' signatures supporting Nader's candidacy were illegally collected by nonresidents. Election officials then used this residence requirement, which was later ruled to be [unconstitutional](#), to remove Nader from the presidential ballot.

Johnson and Nader were the third most popular presidential candidates in 2012 and 2004, respectively, yet neither would appear on all the nation's ballots. Nor did Nader appear on all the country's ballots when he ran as the third most popular candidates in 2000. Elections officials' disqualifications of their respective candidacies were often constitutionally dubious, yet the Supreme Court never intervened to ensure that they uniformly appeared on presidential ballots.

All of this is testament to the fact that political parties simply do not enjoy a constitutional right, as the Republicans now claim, to present the candidates of their choice to the American public.



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History reveals that this same principle applies to the “major” political parties. Their candidates, including those who have once been elected president, have been excluded from presidential ballots. The incumbent GOP President, William Howard Taft, did not qualify in [South Dakota or California](#) during his 1912 presidential run for re-election. Nor did his

nemesis, former President Teddy Roosevelt, qualify in Oklahoma that year. Incumbent President Lyndon Baines Johnson did not qualify for Alabama's presidential ballot in 1964.

History proves that presidential elections can properly proceed without the presence of all popular candidates, including former presidents, on all the nation's ballots. The Supreme Court would be wise to take note of this fact before stepping into the fray.

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Editor's note: This post was corrected at 1:30 p.m. Jan. 3 to remove an erroneous reference to Gary Johnson's ballot access in 2016. Johnson did in fact qualify for all 50 states' ballots in 2016 in one form or another (sometimes as party candidate and others as independent). It was augmented Jan. 4 to note that LBJ, the incumbent, did not qualify for Alabama's presidential ballot in 1964.

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