Supreme Court lines up with Trump at hearing on Colorado ballot exclusion ruling

Patrick Martin
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The US Supreme Court heard more than two hours of oral argument Thursday over whether the state of Colorado could exclude fascist ex-president Donald Trump from the presidential ballot because of his role in the January 6, 2021 attack on Congress.

The mob assault was aimed at shutting down the congressional certification of Trump's defeat in the 2020 elections and creating the conditions for Trump to remain in the White House as a dictator-president. It very nearly succeeded.

The hearing, which discussed the possibility of removing the frontrunner for the Republican nomination from the ballot, not only in Colorado but nationally, underscores the deepening crisis of the US political system.

But the Supreme Court justices seemed entirely averse to discussing the fundamental issue of what happened on January 6, what Trump's role in the attack was, and whether Section three of the 14th Amendment to the US Constitution, which bars insurrectionists from holding federal office, applied to him.

The colloquy was between the nine justices and three lawyers—one representing Trump, one representing the six plaintiffs who sued against Trump appearing on the ballot, and one representing the Colorado secretary of state, the top state election official.

For most of the hearing, it was truly Hamlet without the prince, with endless hairsplitting over legal technicalities, and no discussion of the January 6 insurrection and the wider threat to American democracy.

During the first hour, when Trump's attorney Jonathan Mitchell was taking questions from the justices, January 6 only came up as the final issue raised by Justice Ketanji Brown Jackson, at the conclusion of Mitchell's questioning. She asked Mitchell whether January 6 "qualifies as insurrection as defined by Section three."

Mitchell: We never considered this was an insurrection. What we said is President Trump did not engage in any act that could possibly be characterized as insurrection.

Jackson: What is your argument that it is not? Your reply [brief] says—I think you say it did not involve any organized attempt to overthrow the government.

Mitchell: That is one of many reasons. There needs to be an organized effort to overthrow the United States through violence.

Jackson: A chaotic effort is not an insurrection?

Mitchell: We did not concede it was an effort to overthrow the government. It was shameful, but it did not qualify as insurrection as that term is used in Section three.

This was the sole discussion by the court of the significance of January 6 in the entire 150-minute hearing.

Attorney Jason Murray, representing six voters in Colorado, four of them Republicans, several of them former elected officials, sought to bring the argument back to January 6 in his brief opening statement. His first words were:

> Mr. Chief Justice, we are here because the first time since 1812, our nation's capital came under violent assault. The attack was incited by a sitting president of the United States to disrupt the transfer of presidential power. Engaging in insurrection against the Constitution, President Trump disqualified himself from public office.

No justice chose to follow up by challenging this characterization of Trump's role. Instead, they turned to bombarding Murray with technical questions relating to the language of Section three.

In his opening statement Murray responded to one such issue, saying, "As we heard, President Trump's main argument is this court should create a special exception to Section three that one apply to him and him alone."

He was referring to claims by Trump's lawyer that because the oath sworn by the president and the oath described in Section three are slightly different, any president who swore only the presidential oath was not covered by that passage in the Constitution. This exemption would apply only to George Washington, the first president, whose service in the revolutionary army came before adoption of the Constitution, and Trump, the only president never to have held any state, federal or military office before entering the White House.

Most of the oral argument revolved around such legal minutiae, with Trump's attorney arguing, among other things, that the president is not an "officer" under the Constitution, as specified in Section three, that Section three is not "self-executing" and requires federal legislation to permit a state to use it, and that Section three bans insurrectionists only from taking office, not from running for office, and therefore cannot be applied to ballot status.

In one exchange with Justice Brett Kavanaugh, Mitchell conceded that Trump is arguing that a state has no power to penalize him for the January 6 insurrection, that the only remedy is federal prosecution, but at the same time he is arguing, in a separate case now also headed for the Supreme Court, that as a former president he is immune from federal prosecution. In other words, he is completely above the law.

Press commentaries on the oral argument noted the demeanor of the justices, particularly the three appointed by Democratic presidents, who appeared unwilling to challenge the pro-Trump narrative voiced in the questions of the six right-wing justices appointed by Republican presidents, including three by Trump himself.

There appeared to be a consensus on settling the case on the narrowest possible grounds, avoiding January 6 altogether, and ruling that states could not intervene in a federal election for president, which was inherently a national political question to be decided by Congress.

Justice Elena Kagan, appointed by Barack Obama, told Murray, "I think the question that you have to confront is why a single state should decide who gets to be president of the United States. In other words, this question of whether a former president is disqualified for insurrection. It sounds awfully national to me."

Chief Justice John Roberts said, referring to the after-effects of a Trump disqualification, "I would expect that a goodly number of states will say: 'Whoever the Democratic candidate is, you're off the ballot.' That's a pretty daunting consequence."

Roberts also observed that Section three of the 14th Amendment was enacted to empower the federal government to bar former Confederate states from electing prominent ex-Confederates to high office. It was "at war" with the position advanced by Colorado, which asserted the right of individual states to exert control over federal election, he said.

There are fatal flaws in the arguments by Roberts, Kagan and others that there should be a uniform policy applied in all 50 states and that Colorado's actions challenged that. First of all, Colorado was seeking precisely a decision by the Supreme Court that would apply to all 50 states. Until that issue was decided, the state Supreme Court stayed its own decision, and Trump is on the ballot in Colorado for the March 5 "Super Tuesday" primary elections.

Secondly, as the Socialist Equality Party has long and bitter experience, there is no uniformity applied to ballot access requirements in the various states when it comes to candidates running outside the two-party system. One state may allow independent candidates and third parties to obtain ballot status with relative ease, even while the majority of states use arcane procedural rules and onerous signature requirements to make ballot access difficult, even impossible.

The consensus on the necessity for uniform rules applies only to the two major capitalist parties, which are nowhere mentioned in the US Constitution, but which enjoy a virtual political monopoly in terms of ballot access, media publicity, fundraising and the holding of elective office. The Democrats and Republicans are accorded semi-official status, and any threat to their dominance, such as the exclusion of Trump from the ballot, is treated as presumptively illegal and unconstitutional by the high court.

One of the most right-wing justices, Samuel Alito, painted the most dire picture of the consequences of keeping Trump off the ballot. "It would seem to me," he said, "if the Colorado position is upheld, surely … the consequences of what the Colorado Supreme Court did, as some people claim, would be quite severe."

He raised implicitly the possibility of civil war, asking whether military commanders could disobey orders from the "commander-in-chief" if they decided that the president was engaged in an insurrection.

He also hinted that similar charges could be brought against other presidents under a clause in Section three that excludes anyone from office who has "given aid or comfort to the enemies" of the United States. This could disqualify a president who authorizes the distribution of funds to a country that "proclaims again and again and again" that the United States is its enemy, he said.

It was a clear reference to fascistic claims that Obama and Biden gave money to Iran as part of various deals to curb Iran's nuclear power program. The money was actually the property of Iran, obtained from selling oil, but frozen in the accounts of Western banks under US-imposed sanctions.