

The Trump Disqualification Lawsuit

How Did One Litigant Fare in the Eye of the Storm?

BY RONALD M. SANDGRUND

"We must never forget that while Americans will always have our disagreements, we are a nation of incredible, decent, faithful, and peace-loving citizens who all want our country to thrive and flourish and be very, very successful and good.

....

Our allegiance is not to the special interests, corporations, or global entities; it's to our children, our citizens, and to our nation itself.

....

We fought for the principle that every citizen is entitled to equal dignity, equal treatment, and equal rights because we are all made equal by God. Everyone is entitled to be treated with respect, to have their voice heard, and to have their government listen."

—President Donald Trump¹

"It is a greater thing to be a good citizen than to be a good Republican or a good Democrat."

—Governor Gifford Pinchot²

This is the 12th article series by the InQuiring Lawyer. The topics in this column are explored through dialogues with lawyers, judges, law professors, law students, and law school deans, as well as entrepreneurs, journalists, business leaders, computer scientists, programmers, politicians, economists, sociologists, mental health professionals, ethicists, academics, children, gadflies, and know-it-alls (myself included). If you have an idea for a future column, I hope you will share it with me via email at rms.sandgrund@gmail.com.

This article asks what goes through the mind of the litigant who chooses to bring a lawsuit

against the most powerful person on the planet, and what they thought as that lawsuit wound its way in seemingly record time through the Colorado state courts, ultimately ending up before the US Supreme Court. This article is *not focused on the substance or merits of that lawsuit*, but the emotional toll that lawsuit levied upon one of its litigants.

Participants



Krista Kafer is a Sunday *Denver Post* opinion columnist; adjunct professor of communication, journalism, and political science; and frequent radio and television commentator. A Colorado native, Kafer returned to Colorado after nine years in the nation's capital, where she worked for two members of Congress and served as the senior expert on education policy at the Heritage Foundation. She has a BA in history and an MA in political science. She loves to travel and has been lost on five continents because she lacks a sense of direction. Among her many nonmonetizable talents, she can say "hello" in 30 languages.



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of being a lawyer. He has taught courses on entrepreneurial innovation and public policy and trial advocacy, and has lectured on legal ethics, construction law, mass tort litigation, consumer rights, and other subjects at Colorado Law.

Introduction

Trial of the century! A lawsuit for the ages! Screaming headlines appear almost monthly in this 21st century. And, during the Trump and Biden administrations, constitutional challenges of all sorts have metastasized to the point where the question isn't whether they'll garner a substantial headline but in what super-sized font those headlines will appear.

This article chronicles the journey of a single litigant—Krista Kafer—who was one of several plaintiffs in the high-profile presidential candidate disqualification case brought against then former President Donald Trump under our Constitution's Fourteenth Amendment³ to bar him from appearing on the 2024 Colorado presidential ballot. This article will not explore in any depth the lawsuit's merits—I'll leave that to pundits, constitutional know-it-alls, historians, and that lonely soul sitting at the end of the bar. Instead, we will examine the personal and professional toll the lawsuit exacted.

Full disclosure requires me to acknowledge that Krista Kafer and I have been part of a public policy discussion group for several years consisting of folks across the political spectrum—Republicans, Democrats, and the unaffiliated (me). While not social friends, she and I are acquainted, although we often wear our political stripes on different sleeves and diverge profoundly on some fundamental political and social questions. When Krista first told me about her involvement in the disqualification case, I said to her that I thought the lawsuit was likely to fail. In the end, it did fail, and I grudgingly agreed with the result, but not necessarily all of the opinion's reasoning.⁴ But, I wondered, what had Krista's passage through our court system been like? And, would she do things differently had she known from the outset that she would receive death threats, lose longtime friends, and see long-standing professional relationships severed?

The Road to Suing Then Former President Trump for Allegedly Fomenting an Insurrection



InQuiring Lawyer: Krista, most people don't roll out of bed one morning and decide to sue a former US president to keep him off the ballot and from earning a second presidential term. What was the life path that led you to this moment—tell me about the household you came from and what school and career choices led you to become a *Denver Post* columnist.



Krista: I grew up in Littleton. My dad was a salesman, and my mom was a homemaker who eventually went to work for the state. They were thoughtful and decent people, the kind that read the newspaper every morning. Two of my grandparents did not graduate from high school; the other two did graduate but never went on to college. I was the first in my family to go on to college, getting my bachelor's and master's degrees from CU.

InQ: I recall that you attended grad school in your early 40s after moving back to Colorado. What did you do before grad school?

Krista: I moved to Washington, DC, when I was 25 and worked there for nine years. I worked for two members of Congress and for the Heritage Foundation, a conservative/libertarian think tank. I was a liberal Democrat while in college, but I became a Republican and remain so today. When I moved to Washington, I worked on the Dole for President campaign and did an internship for Joel Hefley, a congressman from Colorado Springs. Then I worked for Congressman Bob Schaffer of Colorado and then, later, for Congressman David McIntosh of Indiana.

InQ: Why did you switch from Democrat to Republican?

Krista: When I was in college, I wasn't well-informed—I was like, "Wouldn't it be great to have socialized medicine and socialized education; wouldn't it be great if we could get college for free. We need to do more for the poor; we need to do more for this and that." Then, at some point, I thought long and hard about the assumptions I was making. I asked myself what I was doing for the poor, which was a lot of

nothing. The difference between my ideals and actions caused cognitive dissonance. I began to explore other political options. I started reading *National Review*. Some time after that, I became a registered Republican because more of my opinions and values were aligned with that party. That said, I consider myself ideological but not partisan. I think the two parties keep each other in line, and both are often deserving of criticism. I think one-party political systems are a recipe for corruption and the amassing of power. I worry about the rule of law under the current administration.

InQ: What caused you to return to Colorado, and what did you do after moving here?

Krista: I moved back to Colorado when my dad was diagnosed with terminal cancer. I started a consulting business and became a charter school evaluator for state and federal departments of education. After that, I broke into radio broadcasting as a mostly conservative/libertarian commentator and became a columnist for *The Denver Post*, and I did wine reviews for *Westword*. I got my master's degree. I ran for the Littleton City Council as a Republican. I sometimes teach college classes or substitute teach in K-12 public schools. I sell homemade pickles and jams. I do a lot of writing and editing for other people and manage two leadership forums.

InQ: What was the genesis of you getting involved in the Colorado lawsuit seeking to disqualify candidate and former President Donald Trump from the presidential ballot?

Krista: Someone reached out to me regarding CREW's [Citizens for Responsibility and Ethics in Washington] anticipated lawsuit because word was out that I had been a prominent critic of President Trump during his first term. I was told that Norma Anderson was going to be a plaintiff. She had been my Republican representative, leader of both the Colorado State House and Senate, and I had enormous respect for her. I knew nothing about CREW other than they were a left-leaning legal organization.

InQ: Did you consider the risks or downsides of your becoming involved as a party in a lawsuit like this—one seeking to bar from elected office someone who was once the

most powerful person on the planet, especially given the prospect that your lawsuit might fail? I mean, he had declared, "if you put me back in the White House . . . I am your justice, and for those who have been wronged or betrayed, I am your retribution."⁵

Krista: I didn't really appreciate what my involvement in the lawsuit would mean for me personally—I tend to be risk ignorant.

InQ: Well, from our prior discussions and your tales of traveling alone as a woman to various corners of the world, including getting briefly kidnapped, and yet continuing to travel, I'd say "risk ignorant" might be one way to describe you, but "brave" might be another.

Krista: I'm okay taking a good risk, so I don't think of myself as risk averse. I don't think I foresaw any risk I was taking getting involved in the lawsuit.

InQ: Were you familiar with the constitutional provision upon which the lawsuit was founded relating to the potential disqualification of then former President Trump?

Krista: I had read the entirety of the Constitution earlier in my life, but I wasn't familiar with that provision in the Fourteenth Amendment. I was very familiar with the Equal Protection and Due Process provisions of the Fourteenth Amendment since they apply to more common circumstances. When I read the complaint, it made a good case. I learned the backstory relating to the end of the Civil War, when a number of people were disqualified from seeking election—at least without first obtaining Congress's consent to their running for office—despite having never taken up arms. Before the Civil War, they refused to accept the results of the 1860 election and urged others to secede. My view was that the provisions of the Constitution apply until they are repealed.

InQ: Of course, your view of the Constitution may have been dead wrong and could have wreaked havoc on the then-approaching 2024 and future elections.

Krista: Sure, there are multiple ways to interpret most constitutional provisions, including this one, and I was aware we were taking an old provision and applying it to modern day. But the courts do this every time they interpret the Constitution—reconcile the old with the new.

InQ: What precisely was motivating you to get involved with this lawsuit—what impelled you to take action?

Krista: In my view, as a citizen, I felt that what President Trump had done or condoned was incredibly egregious—he not only didn’t accept the results of the 2020 election, he spun up an entire conspiracy theory with the help of others and deluded millions of people. He contributed to partisan divisions within this country by accusing faithful Americans of cheating, accusing county clerks of cheating, many of whom have received death threats. It was horrible what he did, pushing this false narrative for months, culminating in January 6, when thousands showed up in Washington, DC. Most were peaceful and went home afterward, but there also was a sizeable contingent who went on to attack the Capitol for one reason: to stop the certification of the election and the peaceful transfer of power from one administration to another. It wasn’t just the speech he gave that day, it was months of pushing people to that moment. And I thought to myself: what precedent does it set that someone could do something like that and run again?

Might the Lawsuit Be a Mistake?

InQ: I hear you, but I have to say we’ve had lots of disputed elections, followed by lots of false narratives, and it seems to have become the name of the game. Take the claims of alleged Russian election interference in 2016 or of the hanging chads and an allegedly politicized judiciary in 2000, both leveled by Democrats. Going back further, consider the presidential elections results of 1800 (*Jefferson v. Adams*), 1824 (*Adams v. Jackson*), and, of course, 1876 (*Tilden v. Hayes*), all hotly disputed in their time. As Roseanne Roseannadanna used to say, “it’s always something.” Ignoring for the moment the debate over whether President Trump was actively involved with and a motivating force for the folks who stormed the Capitol that day, did you perceive any potential downsides to trying to disqualify then former President Trump?

Krista: Yes, I recognized that there was a dangerous countervailing precedent that might be set: that if you allowed a state to disqualify someone from running, does that

open the door for future partisans to try to improperly disqualify others? I get that, and I think that is a risk. But there is yet another risk: that we effectively say to demagogues out there, “Hey, feel free to dispute an election, push a false narrative, and push for violence, and all of that is okay because if you don’t get what you want, you can just run again.” That was the main reason I signed on. I don’t think President Trump is an evil person, a Hitler, or a Stalin, or someone who is going to destroy the country. I don’t think he’s a good person either. However, the idea that he could simply ignore the Constitution and do whatever he wants, that worried me. It continues to worry me. Yes, election fraud happens, but there are legitimate processes for pursuing such claims. But, here, he was pursuing a demonstrably false narrative for months, culminating in violence. And I felt we couldn’t just green-light that for others to do in the future.

The Consequences Envisioned

InQ: When the lawsuit was filed, did you consider the consequences, particular to you, if your lawsuit failed and the person you tried to get kicked off the ballot for fomenting an insurrection against this country then became president?

Krista: Not really, because, at the time, it just seemed like the right thing to do. If I feel like something is the right thing to do, I just do it. My thinking was, if a Democrat had done the things Trump did, wouldn’t I want a Democrat to step up and say no? I have a lot of friends who are Democrats, loyal, wonderful Americans. I felt like Trump had tried to disenfranchise millions of Americans. Trump continues to say Democrats did this lawsuit. The six of us plaintiffs are Republicans and unaffiliated independents. We stood up and challenged his false narrative about the election.

InQ: Did you have any discussions with your fellow plaintiffs about what consequences might follow you filing your lawsuit?

Krista: I don’t remember talking to the other plaintiffs about any consequences. At some point, however, after speaking to the folks at CREW, I took steps to take my name and address off the internet.

The Consequences Encountered

InQ: After the lawsuit was filed, and it became publicized, and it started winding its way through the courts, did any consequences arise?

Krista: The consequences have been negative. After I started getting death threats, I bought a security system. The comments were over social media. I reported a couple of them to the authorities. Maybe they were just angry men who like to threaten women with whom they disagree to blow off steam. Who knows? I hadn’t experienced that before. Name-calling, yes; “you better look over shoulder,” no. It was scary. If we had won our case, those threats would have become a whole lot scarier.

InQ: Any other consequences?

Krista: I lost friends. I lost clients. I lost speaking engagements—people used to invite me as “that conservative columnist.” That all dried up. I do less of everything now. Still, in other countries, I probably would have been “disappeared.” If someone tried to keep Putin off the ballot, they would be gone. We have a good system here—patriotic Americans don’t disappear when they criticize an administration.

InQ: Do you think the speaking engagements have gone away because you are no longer viewed as a conservative or because there is some sort of effort to punish you and deprive you of a source of income?

Krista: I don’t think there is any sort of conspiracy against me; I believe that the individuals who run these events now view me as disloyal. Yet even today I appreciate some of the things that Trump has done: I like his judicial picks, I like a few of his policies. I’m not mad, I even appreciate some things about him. He can be funny, for example. But a lot of people see the world in black and white: there are loyal people and there are disloyal people. They can’t carry opposing ideas in their heads and weigh their respective merits. All they can see is, “Trump is a good guy and you tried to keep a hero off the ballot. Therefore, you will pay by not getting my business anymore. And I will never speak to you again.” The challenge for me has been to forgive. I think when people are scared, they act badly. They are wired in a way where they seem to be unable to criticize their own side. They believe anyone who does is disloyal.

How Our Court System Performed

InQ: In rough outline, the Colorado trial judge who heard your claim made a number of favorable factual findings but ultimately ruled against you on a technical point: whether President Trump was an “officer” of the United States within the meaning of the Fourteenth Amendment.⁶ The case went up immediately to the Colorado Supreme Court, which ruled 4-3 in favor of your position, reversing the trial court on that technical issue.⁷ Thereafter, the US Supreme Court ruled 9-0 against your position, reversing the Colorado Supreme Court.⁸ If I’m not mistaken, former President Trump’s lawyers had argued mainly legal points in the trial court but offered little factual evidence, probably thinking that the key issues were primarily issues of law for the appellate courts to decide. After reading the Colorado Supreme Court’s ruling, the majority opinion and three dissents, I was taken by how soundly they were written and how well they each made their arguments and supported their analysis. Regardless of which side you were “rooting for” in that court, I felt that all Coloradans should have felt very proud of the intellectual vigor, seriousness, and cogency with which each of the justices expressed themselves. No vitriol, just doing the job they were charged with doing as justices. And a very good reflection on Colorado’s judicial selection process—the Colorado Supreme Court’s majority opinion and the three dissents reflected a wide spectrum of political viewpoints and legal analysis, yet evinced a collective effort to get the right result applying the language of our Constitution, a document written long ago. A challenging task indeed, as meaning had to be given to some seemingly obscure terms and phrases dating to the end of our Civil War. And then the lawsuit’s final chapter followed. I think it is hard to dispute that the US Supreme Court’s opinion went well beyond the meaning of the plain words used in the Fourteenth Amendment. Yet many legal scholars believe it reached the correct result, or at least avoided a result that could have led to gamesmanship within and chaos among various state courts flowing from future disqualification challenges to presidential candidates.

What I’m most interested in, however, is not so much whether you agreed or disagreed with the substance of the rulings at each level, but how you felt about the judicial process—how seriously did you feel the trial court judge and various appellate justices took their jobs? How respectful were they in listening to the parties’ arguments? In other words, how did our system work assuming you are able to unmoor yourself from your feelings about the substantive rulings at each level?

Krista: Well, I’d never been involved in a lawsuit before, so all of this was new to me. So, I really jumped into the deep end by involving myself in this particular case! But I absolutely loved the experience. I like legal matters, and I enjoyed reading all of the court decisions relating to our case. Starting in the district court, I thought we knocked it out of the park. I thought the other side was rather glib and did not take the events of January 6 very seriously.

InQ: What was the judge’s demeanor at the Colorado district court level? Since it was a trial to the court, she must have been asking a lot of questions and been pretty actively involved during the proceeding?

Krista: I thought she was really thoughtful and engaged, and aware that the spotlight was on her. She was smart, she didn’t treat people differently. I had no idea what her opinion was—the sort of thing you look for in a judge. I thought she did a terrific job. And, yes, she ruled against us, but she rested that ruling on the narrow issue of whether former President Trump was an “officer” as that word is used in the Fourteenth Amendment. Some might say that we lost in the district court on a technicality, but if you are an originalist, language matters. And she thoughtfully disagreed with us on that point and ruled against us. But there were points within her decision where she acknowledged how egregious former President Trump’s conduct was, and I appreciated those findings as well.

InQ: What was your impression of the demeanor of the Colorado and US Supreme Court justices?

Krista: The Colorado Supreme Court justices were respectful and interested in the arguments and asked good questions. And then we moved on to the US Supreme Court, which of course

was really exciting. I had been in the US Supreme Court once before, as a student. My professor arranged an in-chambers meeting with Justice Thomas. He told us his favorite play was *A Man for All Seasons*. I really love one particular quote from that play, and I’m paraphrasing, “If you knock down all the laws to get at the devil, what will protect you when the devil comes for you?”⁹ I couldn’t help but think about that while I was sitting in the courtroom during oral argument.

InQ: And how did you feel during oral argument before the US Supreme Court?

Krista: I was a little disappointed. Not with the decision—I thought the justices were all very thoughtful. I had the utmost respect for the process. I understand that there were frightful implications of ruling in our favor. But it made me think, which repercussion is more frightful: the idea that partisans can knock each other from the ballot during an election by having people ruled ineligible based on things they had said or done—that’s serious; but the other repercussion is that someone could foment an insurrection, incite people to go to the Capitol in an effort to stop the certification of the election, or worse, and then that person can run for future office. I don’t know the answer to that conundrum, and I think reasonable people can disagree on the answer.

InQ: What was your reaction to the justices themselves during the argument?

Krista: I have deep respect for all of the justices, and I believe that of our three-part government, it is the one that works the best. They show great respect for each other and the process, and they are very collegial. But that day in front of the US Supreme Court, I was disappointed with the demeanor of some of the justices—a few of the justices, they gave the appearance that their time was being wasted. I recognize the difficulties in evaluating another’s affect: maybe those justices were tired, didn’t sleep well that night, you just don’t know—I could be off in my judgment. Some of the justices simply were not particularly respectful toward our lawyer—I didn’t appreciate that, and it was something that I didn’t see at the lower court levels.

InQ: Based on my experience handling state and federal court appeals in Colorado, but never

in the US Supreme Court, and from what I've heard, nearly all of the time appellate judges and justices have made up their minds before oral argument. In a way, some might say that oral argument is more like a choreographed performative dance. I remain surprised that most appellate courts still allow oral argument as a matter of course—it seems like it's either a luxury or superfluous. So, your description of some of the US Supreme Court justices as bored or not engaged doesn't shock me, and it doesn't strike me as evidence that they didn't appreciate the gravity of the case. Does my experience change your view of any dismissiveness or lack of mindfulness you perceived during your US Supreme Court oral argument?

Krista: Yes, I get that. A million amicus briefs had been already filed by some of the finest legal minds on both sides of the issue. But—there were four very earnest litigants who had made the long trip to Washington, DC, to be in that courtroom that day. We weren't being paid, and in many respects, we had put our lives on the line for this. I think that if the Court had ruled in our favor, I would have gotten even more death threats than I got. There were just four of us, not millionaires, not big companies doing litigation on a regular basis.

InQ: I'm going to hypothesize that perhaps some of the justices didn't perceive your group as earnest Americans exercising your right to seek redress in the courts. But, rather, they saw your group as shills for a cause, or that you were being played by others. That might not be pleasant to hear, but there are examples of such cases allegedly making it to the US Supreme Court—like the one involving a wedding website portal owner who declined to create a gay-themed website on religious grounds—where serious accusations flew that the case had been ginned up and that the plaintiffs were mere tools for lawyers who were seeking to fulfill a not-so-hidden legal agenda.¹⁰ I'm not casting doubt on your and your fellow plaintiffs' bona fides, I'm just suggesting that this kind of legal gamesmanship has been claimed to occur, where litigants are allegedly manipulated by their attorneys, and the record is being artificially shaped with a

particular goal in mind, rather than the lawsuit taking root organically.

Krista: I think that if a justice has hit that level of cynicism, that they view the litigants before them as mere puppets, I think it may be time for them to retire. Of course, public interest and ideologically founded law firms will look for attractive clients and compelling facts. Civil rights and gun ownership litigation often exemplifies this—and there is nothing wrong with law firms seeking the most affable litigants and the most compelling cases to effect changes in the law. I know Jack Phillips personally, the cake maker in the famous gay-themed wedding cake case—this is not the wedding website portal case you referred to. He's a very earnest person, a guy who loves cake making—it's an expression of who he is. I think he was treated really unfairly in Colorado. A big law firm picked him up and helped him win his case in the US Supreme Court. This was the same legal role that CREW played in our case, no different.

InQ: Did any of the justices leave a particularly positive impression on you?

Krista: The two justices I really came away liking were Justices Barrett and Kagan. Kagan came across as funny and smart. Barrett seemed genuinely open-minded, highly intellectual, and very respectful. It just goes to show that you can be really smart and also really nice, and I like that.

InQ: So it sounds like Justices Barrett and Kagan stood in contrast to at least a couple of the other justices.

Krista: Yes, as I have noted. But, clearly, all the justices are committed to doing the hard work of figuring out what the Constitution says and applying it. I have nothing but respect for their opinions, their processes, but I do wish their respect for the process and the parties had been more apparent in the demeanor of some of them that day.

InQ: Well, after all the arguments you made, your side lost 9-0, a schneid as they sometimes say in Brooklyn,¹¹ the supposed liberals joining the supposed conservatives. Your thoughts?

Krista: As a longtime Republican conservative, I've been hearing about how we have to be originalists, and the dangers of a

living Constitution, often from folks carrying miniature copies of the Constitution in their pockets. But in our case, I heard, "Ahh, let's not be originalists, this passage is old, it's arcane, it's not useful, let's do our own thing." It was the first time I heard some professed Republicans and conservatives saying, "On second thought, let's not do the Constitution."

InQ: Well, I hear you, but originalists like the late Justice Scalia have admitted that originalism, like any method of constitutional interpretation, has its limits; that even the best legal theories face challenges when applied to real world situations; and that originalism, while aiming for consistency and adherence to original meaning, still encounters complexities in its application. In sum, as Scalia himself said, "I am a textualist, I am an originalist. I am not a nut."¹²

Parting Thoughts

InQ: We have a mutual acquaintance who distanced herself from you after she learned of your involvement in the disqualification lawsuit, and her stated reason wasn't that you were expressing your opinion on this Fourteenth Amendment disqualification question, it was that you were taking actual, concrete steps to deny her choice of presidential candidate. How did that make you feel?

Krista: I'll answer that question this way: for as long as I had an understanding of political issues, since junior high, I have been adamantly pro-life. Yet I have friends who lobby for abortionists, who do everything they can to advocate for abortion. Yet we are friends, we remain civil, and our relationship transcends our starkly divergent views on that issue. And most of my friends obviously feel the same way. But I now realize that not everyone is capable of doing this. One friend's husband refuses to talk to me, to even occupy the same room with me—even though he's never said anything directly to me about the lawsuit. I would like to have that conversation.

Frankly, I expected people to react to my participation in the lawsuit the way I react to such things, objectively, which is maybe where I went wrong. I look at my friends and acquaintances involved in all sorts of politics

and lobbying, sometimes pushing policies I strongly disagree with. It never occurs to me to dislike that individual personally because of these activities. Our relationships aren't based on our politics; they're based on hiking, or making a meal together, or a shared history. I don't mind disagreement at all—people should come to their own conclusions about things. But the idea that people would be so angry at me that they would cut off contact, or go further and be nasty toward me, calling me a Nazi to my face, that surprised me. Maybe it shouldn't have, but it did.

InQ: By and large I agree with what you just said, but I think that, for some people, there are things so abhorrent to them that they feel the need to distance themselves from those who advocate for such things. It's like knowing a really likeable and charitable person for many years, maybe a recreational tennis player you see every week, and with whom you've talked about family and life at more than a surface level. And then, one day, they make several brutally, horribly racist comments. Can one, should one, compartmentalize that, and remain their friend? I'm not saying your lawsuit is analogous to such a thing, just that it might evoke emotions of a similar vein, leading one to terminate the relationship.

Krista: That actually happened to me—an old high school friend drunkenly texted me disgusting racist conspiracy theory garbage, and I told him to repent of racism before he contacted me again. That's more than mere disagreement over a court case; I don't want to be around white supremacists.

InQ: So, as we conclude I must ask, would you do something like this again? Put yourself out there as a plaintiff on a hot and contentious issue, face the kind of reactions you got, including the death threats?

Krista: Certainly.

Conclusion

Generally, we all see ourselves as principled actors. But how many of us are willing to act on those principles and risk what we value most—our friends, our physical safety, our livelihood, our reputations—in pursuit of those principles? During our discussion, Krista Kafer

described her journey through the Colorado court system, ending in front of the US Supreme Court. At every step along the way, jurists were asked to determine the meaning of arcane words

from a 157-year-old document, a document written in the shadow of a bloody civil war. She lost her case and more. Her life was threatened. And she'd do it again. **CL**

NOTES

1. Farewell Address of Donald J. Trump, 45th President of the United States of America (Jan. 19, 2021), <https://trumpwhitehouse.archives.gov/farewell-address>.
2. Pinchot, Former Chief, US Forest Service (and later Governor of Pennsylvania), Speech at the Ryan Hotel in St. Paul, Minnesota (June 11, 1910) (as reported in "Talk of New Party at Pinchot Dinner," *N.Y. Times* 11 (June 12, 1910)).
3. US Const. amend. XIV, § 3, reads: "No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability."
4. I had similar thoughts about the presidential immunity case. There, I had generally agreed with the Court's holding but took issue with some of its reasoning, the breadth of the various immunity tests it adopted, and its failure to consider the combined effect of its holding with a president's expansive pardon power. With regard to both decisions, I found myself in the company of Dan McLaughlin of *National Review* ("The *Trump v. Anderson* case, which concerned Trump's eligibility under the 14th Amendment, was unanimously decided but hastily written and poorly reasoned. The presidential immunity decision was right in broad outline, but extended far too broadly."). McLaughlin, "Lawfare and Constant Emergencies Put the Judiciary at Risk," *Nat'l Rev.* (Sept. 5, 2025), <https://www.nationalreview.com/2025/09/lawfare-and-constant-emergencies-put-the-judiciary-at-risk>.
5. Trump, Closing Speech at the Conservative Political Action Conference in National Harbor, Maryland (Mar. 4, 2023). See <https://www.c-span.org/clip/campaign-2024/donald-trump-tells-cpac-i-am-your-retribution/5062345>.
6. *Anderson v. Griswold*, No. 2023CV32577 (Denv.Dist.Ct. Nov. 17, 2023).
7. *Anderson v. Griswold*, 2023 CO 63.
8. *Trump v. Anderson*, 601 U.S. 100 (2024).
9. Bolt, "A Man for All Seasons: A Play in Two Acts," Act 1 (1960). The full passage is:
William Roper: So, now you give the Devil the benefit of law!
Sir Thomas More: Yes! What would you do? Cut a great road through the law to get after the Devil?
William Roper: Yes, I'd cut down every law in England to do that!
Sir Thomas More: Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!
<https://www.goodreads.com/work/quotes/1358325-a-man-for-all-seasons>.
10. Gira Grant, "The Mysterious Case of the Fake Gay Marriage Website, the Real Straight Man, and the Supreme Court," *New Republic* (June 29, 2023), <https://newrepublic.com/article/173987/mysterious-case-fake-gay-marriage-website-real-straight-man-supreme-court> (arguing that the married man with kids who supposedly requested the creation of a gay wedding website says he never made such a request).
11. "Schneid" is short for "schneider," a term originally used in gin rummy, meaning to prevent an opponent from scoring any points. "Schneider" entered the cards vocabulary from Germany (probably via Yiddish), where it means "tailor." Apparently, the original sense was that if you were "schneidered" in gin, you were "cut" (as if by a tailor) from contention in the game. <https://english.stackexchange.com/questions/17905/shnde-schneid-which-is-it-and-whats-this-terms-origin>. On the other hand, I think I recall my uncle, George Baskin from Brooklyn, a former US paddleball champion, telling me that the term was coined after a Brighton Beach paddleballer named Schneider, who had a very big ego, and an even bigger mouth, but only mediocre skills, got thrashed in a big money game 15-0 and involuntarily lent his name to mean getting shut out.
12. McDonough, "Scalia: 'I Am Not a Nut,'" *ABA L.J.* (Apr. 8, 2008), https://www.abajournal.com/news/article/scalia_im_not_a_nut (quoting Scalia from a speech he gave to students at Roger Williams University law school).