



Written by [Joe Wolverton, II, J.D.](#) on August 9, 2023

Donald Trump's Lawyer Insists President's Challenge of Election Results Protected by First Amendment

“The subject hath a right to petition, and that all commitments and prosecutions for such petitioning are illegal.” — William Blackstone, *Commentaries on the Laws of England*, Book I, Chapters 138-139



AP Images

The indictment released by Special Counsel Jack Smith reveals that former President Donald Trump is accused of having participated in a criminal conspiracy that violated federal law. On the Sunday news programs, Trump's attorney John Lauro presented the former president's defense to the charges, claiming that his client's acts in relation to challenging the results of the 2020 elections are protected by the First Amendment.

In a report on the merits of that defense, [Reason summed up](#) the argument laid out by Lauro:

Lauro, who outlined the former president's defense in interviews on ABC, CBS, NBC, CNN, and Fox News yesterday, said Trump believed then and still believes his grievances about the election were justified. And in pressing election officials, state legislative leaders, and [former Vice President Mike] Pence to act on his unsubstantiated fraud claims, Lauro maintains, Trump was pursuing remedies he reasonably believed to be legitimate. As Lauro sees it, Trump therefore lacked the criminal intent that federal prosecutors will have to prove beyond a reasonable doubt.

Additionally, as reported by *Reason*, Lauro portrays the former president's statement to Georgia Secretary of State Brad Raffensperger requesting he “find” enough votes to prove Trump actually won that state's electoral votes not as an attempt to commit election fraud, but as an attempt to *prevent* election fraud committed by someone interested in seeing Joe Biden elected president.

Regarding the alternate electors that President Trump identified as “duly elected and qualified,” Lauro [told Dana Bash on CNN](#):

Alternate electors are used in every four-year cycle. The Senate parliamentarian acknowledged to Vice President Pence that they always receive protest alternate electors. None of those electors were counted. Vice President Pence was completely aware of the nature of the protest, of the nature of the right to speech.



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While many may regard President Trump's defense as presented by Lauro as novel, there is some merit in the effort to legally shelter the former president's pursuit of a reliable accounting of votes cast in the 2020 election under the aegis of the First Amendment.

The United States are built upon the bedrock of free speech and open discourse, and the right to express dissenting views and question authority is enshrined within the very fabric of our Constitution. Such freedoms empower citizens to engage in robust debate, holding the government accountable and ensuring the integrity of our process of electing officeholders.

The challenge posed by former President Donald Trump to the 2020 presidential election outcome seems defensible, then, as an exercise of this fundamental right protected by the First Amendment.

The First Amendment stands as a testament to our Founding Fathers' belief in the power of ideas and the importance of allowing citizens to voice their opinions without fear of retribution. Throughout American history, individuals have used this protection to challenge established norms, question governmental actions, and participate actively in shaping the course and execution of the law and the limits of the power of government.

It is no exaggeration to claim that were it not for the freedom of speech and redress of grievances, there would be no independent United States today. From the earliest abuses by Parliament and the king of the rights and privileges of the Colonists, Americans relied on these rights to alert authorities in London to their opposition to the various policies and the reasons for their refusal to obey acts they considered contrary to the English constitution.

It doesn't stretch the imagination to view Donald Trump's decision to contest the 2020 election results as falling within this rich tradition of exercising free speech to express concerns and demand transparency.

It is important to acknowledge that challenging election results, while admittedly contentious, is not unprecedented. In recent decades, candidates from points all along the political spectrum have contested election outcomes through legal channels. From Al Gore's challenge in 2000 to the legal battles surrounding the 2004 Ohio presidential vote, such challenges consistently have been viewed as a valid way to address perceived irregularities and maintain the public's trust in the outcome of elections. Therefore, Trump's actions, though controversial, can be viewed as part of a larger dialogue on the legitimacy of the various methods employed to count ballots and qualify ballots for being counted.

The 2020 presidential election witnessed a surge in the use of mail-in and early voting alleged to be necessary because of restrictions on movement and gathering in groups imposed during the Covid-19 "pandemic." These "emergency measures" prompted concerns from various quarters about the potential for fraud or mishandling of ballots. Eleven years ago I wrote [an article for *The New American*](#) warning of the potential for manipulating electronic voting machines.

It is vital to recognize that addressing these concerns is not inherently a threat to the stability of the government; rather, it is, as many understand, an exercise of civic responsibility to reveal election intrigue whenever it is found.

By initiating legal challenges and seeking recounts in specific states, Donald Trump aimed to ensure the accuracy and legitimacy of the election results, an endeavor that aligns with the duty of any American to protect the faith of millions of Americans in the casting and counting of their votes.



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Critics argue that Trump’s challenges went beyond legitimate concerns and contributed to the erosion of public trust in the election process. While it is essential to maintain the integrity of the electoral process, it is equally crucial to respect the rights of individuals to question and investigate potential irregularities. Inflammatory rhetoric and unsubstantiated claims are indeed concerning, but these should be addressed through counterarguments, fact-checking, and open dialogue rather than suppressing dissenting voices.

The *Reason* article’s report that Donald Trump’s claim that there was evidence of fraudulent acts in the counting and certifying of ballots “was repeatedly debunked by state and federal officials, including Republicans who had supported Trump’s reelection,” is immaterial to whether the former president’s claims should be protected by the First Amendment.

The First Amendment’s protection of free speech is not dependent on whether the speech is popular or likely to be proven true. In fact, it extends even to statements that may be controversial or disputed. When individuals hold positions of power, their speech may carry more weight, but that should not be used as a justification to silence them. The remedy for misleading or false claims lies in rigorous debate, media scrutiny, and legal mechanisms, not in stifling individuals’ ability to express their viewpoints.

Furthermore, Trump’s challenge to the 2020 election outcome should *not* be equated with incitement of violence or the endorsement of unlawful behavior. There were certain events of January 6, 2021, at the U.S. Capitol that seem to have been unnecessarily violent, and Trump’s words on that day have already been met with criticism and official attempts to impose legal consequences on him for those comments.

However, his legal challenges leading up to that point should be evaluated within the broader context of the exercise of his constitutionally protected right to seek legal remedies for perceived grievances, particularly if the grievances are based on a belief that turns out to be unfounded.

Finally, Donald Trump’s challenge to the 2020 presidential election, while it has unarguably initiated an avalanche of legal and social repercussions, reasonably can be interpreted as an exercise of his right to free speech as protected by the First Amendment, as Lauro claims. The United States’ history is replete with instances of citizens and leaders questioning authority and challenging election outcomes, often leading to improvements in the electoral system.

While acknowledging the need to address concerns about the erosion of public trust, it is imperative to safeguard the principles of free speech and open discourse that are vital to a vibrant and robust functioning and future of republican government. Rather than suppress dissent, Americans on both sides of the political aisle should welcome debate, analysis, and dialogue — even controversial dialogue — to uphold one of the basic principles upon which our country and Constitution are founded.

To learn more about election integrity and what can be done to restore it, [click here](#).



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