

South Dakota Newspapers  
"We the People"  
December 7, 2022

"Donald Trump's Call to Terminate the  
Constitution"

David Adler

As the entire world knows by now, former President Donald Trump, the presumptive leader of the Republican Party, has called for the "termination" of the Constitution to overturn the 2020 election. Trump's landmark demand, if implemented, would eviscerate the Constitution, American democracy and the rule of law.

Setting aside calls during the Civil War from Confederate leaders for the overthrow of the Constitution and the Union, no high-ranking American official, past or present, has ever sought the termination of the Constitution. No delegate to the Constitutional Convention ever urged the termination of the Constitution. No previous President has called for it. Certainly, no Supreme Court Justice has ever commanded it. In the annals of American legal history, Confederate officials and former President Trump are the sole occupiers of this platform.

President Trump's declaration represents a landmark of a different order than the landmark judicial decisions ordinarily reviewed in this space. But the potential legal significance of Trump's clarion call is as great as, or greater than, any ruling ever rendered by a court of law. As such, it requires attention. As a matter of law, readers might ask, is there a mechanism for the termination of the Constitution?

President Abraham Lincoln, a better judge of the founders' aims in creating the Constitution than his

successors, confronted the issue in his magnificent First Inaugural Address, delivered on March 4, 1861. Seven southern states had seceded from the Union by the time he took the Oath of Office. Lincoln denied the claim that states might constitutionally secede from the Union, since the very act itself would violate the premise and promise of the Preamble that the Constitution was created to create a "more perfect Union."

Lincoln justly stated, "It is safe to assert that no government proper ever had a provision in its organic law for its own termination." The 16<sup>th</sup> President added, "Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself."

For Lincoln, secession, whether by one or several states, represented the destruction of the Union, and was thus "unlawful." The Union, he said, "is less perfect, having lost the vital element of perpetuity."

In this reasoning, Lincoln was closely following the landmark words of Chief Justice John Marshall, as set forth in *McCulloch v. Maryland* (1819): "The Constitution is intended to endure for the ages."

The Supreme Court, in *Texas v. White* (1869), agreed. Chief Justice Salmon P. Chase, appointed to the Court by Lincoln, held: "When these Articles (of Confederation) were found to be inadequate to the exigencies of the country, the Constitution was ordained 'to form a more perfect Union.' It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not." The Constitution, Chase wrote, is "indestructible."

Although the Constitution is indestructible, it is yet subject to amendments. The framers of the Constitution, aware of the limitations of their work, potential "errors," as James Madison described them in Federalist Number 43, sought protection for the citizenry in the form of Article V, the Amendatory Clause. This provision left to successive generations of Americans the opportunity to improve the Constitution in the name of creating a "more perfect Union."

The framers created the Amendatory Clause as the means for correcting "errors" in the original Constitution. They supplied no emergency power to overturn presidential elections, despite President Trump's wishes. And they did not, as Lincoln concluded, place in the Constitution a mechanism or power "for its own termination."

As such, there are no legal grounds or principles within the architecture of the Constitution for the annulment, destruction or termination of the supreme law of the land, despite desperate motives harbored by desperate men. In 1796, President George Washington, who embraced principles of American Constitutionalism, reminded the citizenry of the importance of scrupulous adherence to constitutional principles.

The nation's first president stated, "If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

