

## THE SUPREME COURT DECISION ON PRESIDENTIAL IMMUNITY.

*Trump v. United States*, 603 U.S. \_\_\_\_, (2024)

The Supreme Court's decision in *Trump v. United States* on July 1, 2024 in a 6-3 decision established significant new precedents regarding presidential immunity from criminal prosecution.

The majority opinion was authored by Chief Justice John Roberts. It is a landmark decision of the Supreme Court of the United States in which the Court determined that presidential immunity from criminal prosecution presumptively extends to all of a president's "official acts" – with absolute immunity for official acts within an exclusive presidential authority that Congress cannot regulate such as the pardon, command of the military, execution of laws, or control of the executive branch.

The case extends from an ongoing federal case to determine whether Donald Trump, president at the time, and others engaged in election interference during the 2020 election, including events during the January 6, 2021, attack on the U.S. Capitol. It is the first time a case concerning criminal prosecution for alleged official acts of a president was brought before the Supreme Court.



### SCOPE OF PRESIDENTIAL IMMUNITY:

The Court ruled that former presidents have:

1. **Absolute immunity** for actions taken in exercise of their "core constitutional powers".
2. **Presumptive immunity** for other official actions within the "outer perimeter" of presidential responsibility.
3. **No immunity** for unofficial actions taken as a private individual.

### **DETERMINING OFFICIAL VS. UNOFFICIAL ACTS:**

The Court provided some guidance, but left many questions unanswered:

- Courts cannot examine a president's motives in determining if an act was official.
- Actions related to a president's official responsibilities are covered by immunity unless "manifestly or palpably beyond [his] authority".
- The president's discussions with the Attorney General and decisions about investigating crimes fall within absolute immunity.

### **IMPLICATIONS AND CRITICISMS:**

The ruling has several significant implications for future presidents, generally they are:

- It places presidents "substantially above the law" for many of their actions while in office.
- It may shield presidents from accountability for potentially criminal conduct if framed as official acts.
- Critics argue it creates a "dangerous new precedent" that could be abused by future presidents.

**Specifically, those concerns and Implications are:**

#### **Expanded Immunity**

- **Absolute immunity** for "core constitutional powers" and actions within the president's "exclusive sphere of constitutional authority".
- **Presumptive immunity** for acts within the "outer perimeter" of official responsibilities, unless prosecutors can prove applying criminal law poses no danger to executive branch functions.
- No immunity for unofficial, private acts.

#### **Potential for Abuse**

The ruling creates concerning possibilities for future presidents:

- Presidents may be emboldened to commit criminal acts while in office, knowing they have broad immunity.
- A president could potentially order illegal actions related to elections or weaponize the Justice Department with at least presumptive immunity.
- The decision may enable presidents to subvert laws or distort justice in ways that favor themselves.

### **Accountability Concerns**

- The ruling undermines traditional checks on presidential power and may place presidents "substantially above the law" for many official actions.
- It could shield presidents from accountability for potentially criminal conduct if framed as official acts
- Critics argue it creates a "dangerous new precedent" that future presidents could exploit.

### **Legal and Democratic Implications**

- The decision may delay or complicate future prosecutions of former presidents.
- It raises questions about the balance of power and accountability within the U.S. government.
- Some experts warn the ruling could transform the presidency in ways more familiar to dictatorships than democracies.

### **International Repercussions**

- The ruling may undermine U.S. credibility in promoting rule of law globally.
- It could potentially open the door for presidents to commit criminal acts in foreign policy or national security without legal consequences.

While the full impact remains to be seen, the decision significantly reshapes the legal landscape surrounding presidential powers and accountability, with potentially far-reaching consequences for American democracy and governance.

### **THE DISSENTING OPINIONS:**

The dissenting opinions in *Trump v. United States* were strongly critical of the majority's ruling, expressing several major concerns about the majority's ruling on presidential immunity. Here are the key points from the dissents:

## **Reshaping Presidential Power**

Justice Sotomayor argued that the decision "reshapes the institution of the presidency" and "makes a mockery of the principle, foundational to our Constitution and system of Government, that no man is above the law".

Creating a "Law-Free Zone"

The dissenters warned that the ruling effectively creates a "law-free zone" around the president:

- Sotomayor cautioned it allows for potential "misuse of official power for personal gain" without legal consequences.
- Jackson stated it declares "for the first time in history that the most powerful official in the United States can (under circumstances yet to be fully determined) become a law unto himself".

## **Undermining Accountability**

The dissenting justices expressed deep concern about the ruling's impact on presidential accountability:

- They argued it shields presidents from facing consequences for potentially criminal or treasonous acts committed while in office.
- Jackson warned it "undermines the constraints of the law as a deterrent for future Presidents who might otherwise abuse their power".

## **Altering Constitutional Balance**

Justice Jackson contended the ruling "has unilaterally altered the balance of power between" the three branches of government, giving more power to the courts and executive branch at Congress's expense.

## **Threat to Democracy**

Both Sotomayor and Jackson framed the decision as a serious threat to American democracy:

- Sotomayor concluded her dissent stating she had "fear for our democracy".
- Jackson characterized the ruling's practical consequences as "a five-alarm fire that threatens to consume democratic self-governance".

## A breakdown of each dissenting opinion:

### Justice Sotomayor's Dissent



Justice Sonia Sotomayor issued a blistering dissent, joined by Justices Kagan and Jackson, arguing that the decision:

- "Reshapes the institution of the Presidency"
- "Makes a mockery of the principle, foundational to our Constitution and system of Government, that no man is above the law"
- Gives Trump "all the immunity he asked for and more"
- Is based on "little more than its own misguided wisdom about the need for 'bold and unhesitating action' by the President"

Sotomayor warned that the ruling effectively makes "the President of the United States...the most powerful person in the country, and possibly the world" and insulates them from criminal prosecution when using official powers.

### Justice Jackson's Dissent

Justice Ketanji Brown Jackson wrote a separate dissent, stating:

- The decision creates a "dangerous new precedent" that could potentially shield a President from accountability for severe misconduct
- It establishes a troubling immunity framework that applies solely to the highest-ranking government official
- The majority's new "Presidential accountability paradigm" risks allowing Presidents to become like kings



Jackson expressed deep concern about the implications, concluding: "Because the risks (and power) the Court has now assumed are intolerable, unwarranted, and plainly antithetical to bedrock constitutional norms, I dissent". The dissenting justices fundamentally disagreed with the majority's interpretation of presidential immunity, arguing it undermines core constitutional principles and potentially enables abuse of power by future presidents.

The dissenters fundamentally disagreed with the majority's expansive view of presidential immunity, seeing it as a dangerous precedent that could enable abuse of power and undermine core constitutional principles.

### **REDEFINES BALANCE OF POWER BETWEEN THE BRANCHES:**

The Supreme Court's ruling in *Trump v. United States* significantly alters the balance of power between the executive and legislative branches in several keyways:

#### **Expanded Executive Power**

- The decision grants presidents broad immunity for official acts, especially those related to "core constitutional powers".
- It takes an "expansive view" of presidential powers that could "effectively insulate all sorts of noncore conduct from criminal prosecution".

#### **Diminished Congressional Authority**

- The ruling "tilts power away from Congress, which passes criminal statutes that presumably apply to the president".

- It potentially limits Congress's ability to hold presidents accountable through criminal laws.

### **Weakened Checks and Balances**

- The decision "unilaterally altered the balance of power between" the three branches, giving more power to the executive branch at Congress's expense.
- It "undermines the constraints of the law as a deterrent for future Presidents who might otherwise abuse their power".

### **Shift in Accountability Mechanisms**

- The ruling may make impeachment "the only option left for accountability for presidents".
- This shifts power away from the judicial system and towards a political process controlled by Congress.

### **Potential for Abuse**

- Critics argue the decision could allow presidents to "exploit the trappings of office for personal gain" or "use official power for evil ends" with limited consequences.
- It may embolden future presidents to push the boundaries of their authority, knowing they have broad immunity from prosecution.

The majority's decision thus significantly expands executive power while potentially limiting Congress's ability to check that power through criminal statutes, fundamentally reshaping the relationship between these two branches of government.

### **THE PRINCIPLE OF “NO MAN ABOVE THE LAW”:**

The Supreme Court's ruling in *Trump v. United States* significantly alters the principle that "no man is above the law," particularly as it applies to presidents:

- **Expanded immunity:** The decision grants presidents broad immunity for official acts, especially those related to "core constitutional powers". This creates a sphere where presidents may be effectively above the law for certain actions taken while in office.
- **Weakened accountability:** The ruling potentially limits the ability to hold presidents criminally accountable for misconduct committed while in office, as long as it can be framed as an official act.

- Shift in balance of power: The decision "tilts even more power toward the office of the presidency" and away from Congress and the courts, potentially insulating presidents from legal consequences for some actions.
- Concerns about abuse: Critics argue the ruling could allow presidents to "exploit the trappings of office for personal gain" or "use official power for evil ends" with limited legal repercussions.
- Impeachment as primary recourse: The decision may make impeachment "the only option left for accountability for presidents", shifting from legal to political mechanisms of accountability.
- Debate over interpretation: While the majority framed the ruling as upholding that "the President is not above the law", dissenting justices argued it effectively places presidents "above the law" for many official actions.
- Long-term implications: The full impact remains to be seen, as lower courts grapple with applying this new framework to determine which presidential actions qualify for immunity.

While the ruling doesn't completely negate the principle that no one is above the law, it significantly complicates its application to presidents, creating what some view as a "law-free zone" around certain presidential actions.

### **IMPLICATIONS FOR TRUMP IN PARTICULAR:**



Based on the Supreme Court's ruling in *Trump v. United States*, there are several key implications for Trump's accountability:



1. **Expanded immunity:** The decision grants Trump (and future presidents) broad immunity for official acts, especially those related to "core constitutional powers". This creates a sphere where Trump may be effectively above the law for certain actions taken while in office.
2. **Delayed prosecution:** The ruling will likely cause significant delays in the ongoing criminal cases against Trump, as lower courts now have to determine which alleged actions qualify as official vs. unofficial acts.
3. **Potential escape from some charges:** Some of Trump's alleged criminal conduct may now be shielded from prosecution if it can be framed as an official act within his presidential duties.
4. **No trial before election:** Although Jack Smith the special prosecutor has filed his documents to proceed with the prosecution there is little to no chance that the matter will see the inside of a court room before election day. So Trump will not face trial on federal charges related to January 6th before the 2024 election, due to the delays caused by this ruling.
5. **Complicated evidence gathering:** The court ruled that even official acts that are immune from prosecution cannot be used as evidence to support charges for unofficial acts, making it more difficult to build cases against Trump.
6. **Shift to political accountability:** With criminal prosecution more limited, impeachment may become a more critical tool for presidential accountability, though its effectiveness is questionable, especially late in a president's term.
7. **Potential for future abuse:** If Trump were to win re-election, the ruling could embolden him to push boundaries further, knowing he has broader immunity from criminal consequences.

While the ruling doesn't completely shield Trump from accountability, it significantly complicates efforts to hold him criminally responsible for actions taken while president and potentially sets a precedent for reduced presidential accountability in the future.

## THE IMPERIAL PRESIDENCY:

If the President does it, it's not illegal."

*Richard M. Nixon, 1977*



The view of maximalist executive power has rarely been expressed as bluntly as Richard Nixon did in his interview with British journalist David Frost in 1977, two years after he resigned from office in disgrace. But the United States Supreme Court, in its recent decision *Trump v. United States*, comes close. The court held that the president has absolute immunity for core presidential action, and presumptive immunity for a wide swath of conduct that might be official, unless the prosecution can establish that a conviction would pose “no danger” of intrusion into the authority of the executive branch. Even more striking, the court held that, in determining whether an act was “official” or not, a court could not inquire into a president’s motives.

The case raises serious concerns about a president’s ability to use the Department of Justice to pursue political enemies. For members of the press especially, the prospect of a weaponized DOJ is alarming. And although potential criminal penalties against a former president are not the only remedies available to targets of politically motivated prosecutions, the removal of a significant potential deterrent to a president who is tempted to abuse his or her power is hardly reassuring. [Trump v. United States: The Chilling Effects of Potential Presidential Immunity - New York State Bar Association \(nysba.org\)](https://www.nysba.org/trump-v-united-states-the-chilling-effects-of-potential-presidential-immunity)

[Supreme Court Grants Trump Broad Immunity for Official Acts, Placing Presidents Above the Law | American Civil Liberties Union \(aclu.org\)](#)

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[Supreme Court Grants Trump, Future Presidents a Blank Check to Break the Law | ACLU](#)