

Classifying Arguments Activity

Trump v. United States

After reading the **background, facts, issue, constitutional provisions, and Supreme Court precedents**, read each of the arguments below. These arguments come from the briefs submitted by the parties in this case. If the argument supports the petitioner, **Donald Trump**, write **T** on the line after the argument. If the argument supports the respondent, **the United States**, write **US** on the line after the argument. Work in a small group. When you have finished, determine which argument for each side is the most persuasive, highlight or put a star next to it, and be ready to give your reasons.

Arguments¹

1. A former president enjoys absolute immunity from criminal prosecution for their official acts. _____
2. The threat of future prosecution and imprisonment would become a political weapon to influence the most sensitive presidential decisions, taking away the strength, authority, and decisiveness of the presidency. _____
3. A former president lacks absolute immunity from federal criminal prosecution for conduct involving their official acts. The Framers did not include presidential immunity explicitly in the Constitution. _____
4. The Founders understood that the Impeachment Judgment Clause required a president's impeachment and conviction before a former president may be prosecuted. _____
5. The Framers experienced the dangers of a monarch who was above the law, and they adopted a system of checks and balances to avoid those dangers. _____
6. A claim of absolute criminal immunity for a former president's official acts violates established separation of powers principles. _____
7. The separation of powers, which the Supreme Court emphasized in *Nixon v. Fitzgerald*, supports a finding of criminal immunity. _____
8. A bedrock principle of U.S. constitutional order is the rule of law—that no person is above the law including the president. Recognition of Trump's immunity claim would prevent Congress from applying the criminal laws equally to all persons, including the president. _____

9. If a president cannot be sued civilly for official acts, they cannot be prosecuted criminally. Concerns about distraction and disruption are magnified for criminal prosecutions. _____
10. In *Marbury v. Madison*, the Supreme Court ruled that a president's official acts can never be examinable by the courts—a precedent that the Supreme Court has followed for over two centuries. _____
11. *Marbury v. Madison* did not rule that a president's official acts can never be examined in a court. It established only that courts will not allow criminal prosecution of a *sitting* president. That principle has no application to criminal prosecution of a *former* president. _____
12. A president can be immune civilly for official acts, but criminal laws are more important. Nobody should be above the criminal law. _____
13. Federal criminal law applies to the president. There is not a need to expressly include the president in statutes. _____
14. Since the president is presumed to be immune from criminal prosecution, unless a criminal statute expressly names the president, the law does not apply. _____
15. The Impeachment Judgment Clause does not establish a rule requiring a president's impeachment and conviction before a former president may be prosecuted. The text of the clause clarifies that an impeached and convicted president may nevertheless be prosecuted and, therefore, recognizes that former presidents are subject to federal criminal prosecution. _____
16. The presidency cannot retain its independence if the president faces criminal prosecution for official acts once they leave office. _____
17. The D.C. Circuit's decision to deny presidential criminal immunity when the conduct is allegedly motivated by the desire to remain in power unlawfully is wrong. Virtually all first-term presidents' official actions carry some motivation to be re-elected. _____
18. Even if the Supreme Court rules that a former president is entitled to some immunity from criminal prosecution for official acts, the specific form of criminal conduct charge here—conspiracy to subvert an election—is an unofficial act and does not justify any form of immunity. _____

Trump v. United States

Argued: April 25, 2024

Decided: July 1, 2024

Background

The rule of law is a founding principle of the United States and a bedrock of democracy. It means that no one is above the law, laws are publicly and widely known, laws apply equally to all and are equally enforced, and disputes are settled by an independent judiciary. The Framers of the U.S. Constitution borrowed from the Magna Carta, which was signed in 1215 by King John of England and limited the rights of the king. In the Magna Carta, King John agreed to the principle that kings were not above the law—an important factor of the rule of law.

Another important principle in the Constitution is the separation of powers between the legislative, executive, and judicial branches. This principle ensures two things: **1)** that each branch has a dedicated task to accomplish—the legislature makes the laws, the executive branch enforces the laws, and the judiciary interprets the laws; and **2)** that no branch should intrude upon the other except when exercising the checks and balances put in place by the Constitution. The U.S. Department of Justice has long stated that the separation of powers does not allow for the criminal prosecution of a sitting president, a concept called **presidential immunity**. Under that view, prosecuting a president while in office—whether for personal or official actions—would interfere with the job of the executive branch.

Presidential immunity has limits. For example, concerns about work disruption do not apply to prosecution of a former president. In addition, in *Clinton v. Jones*, the Supreme Court ruled that sitting presidents do not have immunity from civil litigation (a lawsuit) resulting from acts before their election as president. This case was important for setting limitations on presidential immunity. However, this case was about a civil trial rather than criminal trial and about non-official actions prior to holding presidential office rather than **official actions** during an active presidency.

Presidents have historically had complete immunity from charges resulting from official actions they took as president. There is some dispute, however, about what constitutes “official actions.” Many look to the language of Article 2, Section 3 of the U.S. Constitution, which lays out the president’s duties, and argue that an official action must be closely tied to the duties outlined there. One such duty is to “take Care that the Laws be faithfully executed,” which can be interpreted broadly to include many types of presidential actions.

Facts

On August 1, 2023, President Donald Trump was indicted on four criminal counts for alleged conduct following the 2020 presidential election. The federal grand jury indictment alleged that Trump, while serving as president, was involved in conspiracies with private individuals and a public official to “overturn the legitimate results of the 2020 presidential election by using knowingly false

claims of election fraud to obstruct the federal government function by which those results are collected, counted, and certified.”²

The indictment alleges that Trump sought to accomplish the conspiracy’s objectives through the following:

- using deceit toward state officials to subvert the legitimate election results in those states,
- using deceit to organize fraudulent slates of electors in seven targeted states and cause them to send false certificates to Congress,
- leveraging the U.S. Department of Justice (DOJ) to use deceit to have state officials replace the legitimate electoral slate with electors who would cast their votes for Trump,
- attempting to enlist the vice president, in his capacity as president of the Senate, to fraudulently alter the election results during the certification proceeding on January 6, 2021,
- directing supporters to the U.S. Capitol to obstruct the proceeding, and
- exploiting the violence and chaos that transpired at the Capitol on January 6, 2021.³

Based on those allegations, four counts were charged:

- *Count 1*: conspiring to defraud the United States
- *Counts 2 and 3*: corruptly obstructing the certification of the presidential election results on January 6, 2021
- *Count 4*: conspiring to violate one or more person’s constitutional right to vote and have one’s vote counted

Trump, after leaving the office, moved to dismiss the indictment based on presidential immunity. The District Court ruled that a former president enjoys no immunity from criminal prosecution for official acts. The court explained that the Constitution’s text, structure, and history support the conclusion that Trump “may be subject to federal investigation, indictment, prosecution, conviction, and punishment for any criminal acts undertaken while in office.”⁴ The U.S. Court of Appeals for the D.C. Circuit agreed with the decision of the District Court that a former president has no immunity from criminal prosecution for official acts.

Trump sought Supreme Court review, and the Court agreed to hear the case.

Issue

Does a former president enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during their tenure in office, and if so, to what extent?

Constitutional Provisions and Supreme Court Precedents

- **Impeachment Judgment Clause, Article 1, Section 3, Clause 7 of the U.S. Constitution**

“Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United

States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”

- **Executive Vesting Clause, Article 2 of the U.S. Constitution**

“The executive Power shall be vested in a President of the United States of America.”

- **Article 2, Section 3 of the U.S. Constitution**

“He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.”

- *Marbury v. Madison* (1803)

In *Marbury v. Madison*, the Supreme Court set out basic separation-of-powers principles. Among other things, the Court touched on when courts could hold a president accountable for official acts. The Supreme Court wrote:

By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion and is accountable only to his country in his political character and to his own conscience. To aid him ... he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

In such cases, [the officer’s] acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, ... there exists ... no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and, being entrusted to the Executive, the decision of the Executive is conclusive ... This officer is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the Courts.⁵

- *Nixon v. Fitzgerald* (1982)

In 1968, a civilian analyst named A. Ernest Fitzgerald testified before a congressional committee about inefficiencies and cost overruns within the U.S. Air Force. He was later fired, and President Richard Nixon took responsibility for his dismissal. Fitzgerald sued President Nixon for damages after a commission concluded that his firing was unjust. The case made its way to the Supreme Court, which considered the question of whether the president was immune from a civil suit based on his official acts.

The Court ruled that a president has absolute immunity from liability for damages resulting from official acts. The Court reasoned that immunity was part of separation of powers between the branches of government, and that private lawsuits based on official acts would distract the president or disrupt official policies.

– *Clinton v. Jones* (1997)

Paula Jones, a former employee of the state of Arkansas, sued then-Governor Bill Clinton alleging that she suffered “abhorrent” sexual advances from him while he was governor and she was a state employee. She brought a lawsuit against Bill Clinton in a civil (not criminal) court. By the time of the lawsuit, Bill Clinton was elected president.

Clinton argued that immunity for a president’s official actions extends to the president’s unofficial conduct and that the separation of powers forbids courts to force a sitting president to defend against a lawsuit. The Court rejected both of Clinton’s arguments. In a unanimous decision, the Court ruled that Jones could move forward with her sexual harassment lawsuit because nothing in the Constitution allows a sitting president to postpone a private civil damages lawsuit while in office. The Court rejected the notion that “our decision will generate a large volume of politically motivated harassing and frivolous litigation.”⁶

Notes

¹ *Donald J. Trump, Petitioner v. United States, Respondent*, Brief of Petitioner President Donald J. Trump, https://www.supremecourt.gov/DocketPDF/23/23-939/303418/20240319150454815_23-939%20-%20Brief%20for%20Petitioner.pdf and *Donald J. Trump, Petitioner v. United States*, Brief for the United States, https://www.supremecourt.gov/DocketPDF/23/23-939/306999/20240408191803801_United%20States%20v.%20Trump%20final%20for%20filing.pdf.

² *United States of America v. Donald J. Trump*, Grand Jury Indictment, (U.S. District Court for the District of Columbia), https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf.

³ See note 1.

⁴ *United States of America v. Donald J. Trump*, Memorandum Opinion, (U.S. District Court for the District of Columbia), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2023cr0257-171.

⁵ *Marbury v. Madison*, 5 U.S. 137 (1803), <https://supreme.justia.com/cases/federal/us/5/137/>.

⁶ *Clinton v. Jones*, 520 U.S. 681 (1997), <https://supreme.justia.com/cases/federal/us/520/681/>.