United States v. Nixon (1974)

Argued: July 8, 1974

Decided: July 24, 1974

Background

"Executive privilege" is the concept that the president can protect confidential communications with advisers and refuse to divulge information to the courts, Congress, or the public. For years presidents have claimed executive privilege if they see a need to protect military, diplomatic, or national security secrets. The concept is based on the idea that a president cannot be forced to share information with other branches of government if sharing that information might harm national interests.

Presidents may also want to keep certain conversations private so that their advisers may give honest advice without worrying about facing criticism or retribution.

Throughout history, several presidents from both parties have claimed executive privilege when they attempted to withhold information requested by the judiciary or Congress. Yet, the U.S. Constitution never specifically mentions executive privilege. At times, the courts have recognized and allowed this privilege because it is viewed as part of the constitutional principle of the separation of powers.

This is a case about the scope and limits of the president's executive privilege. Is it an absolute power of the president, or can it be limited by the courts or by Congress?

Facts

In 1972, five burglars were caught breaking into the Democratic National Committee Headquarters at the Watergate Office Building in Washington, DC. Investigations revealed that the burglars were associated with the campaign to re-elect President Richard Nixon. Those investigations also suggested that the president and his aides had probably abused their power in other ways as well. The Senate set up a special committee to investigate the scandal. The attorney general appointed a special prosecutor to investigate and charge the president or his aides with crimes if warranted.

President Nixon had installed a tape-recording device in the Oval Office and taped many of the conversations that took place there. The special prosecutor in charge of the case wanted the tapes of the Oval Office discussions to help determine whether President Nixon and his aides had abused their power and broken the law. President Nixon refused to turn over the tapes. A federal court ordered the president to do so. The president appealed that court's order to the U.S. Circuit Court of Appeals, but the special prosecutor asked the Supreme Court of the United States to hear the case instead, and the Supreme Court agreed.

Issue

Does the president have an absolute right to withhold certain information based on "executive privilege?"

Arguments for the United States (Petitioner)

- The courts must be able to hear challenges to the president's executive privilege. This case raises a constitutional question: Is the president's power of executive privilege absolute or limited? It is the courts' role to interpret the meaning of the constitution.
- In this case, the judiciary has a very important goal: providing a fair trial with full factual disclosure.
- Executive privilege is not absolute. There must be a balance between a president's need for confidentiality and the judicial system's need to function during criminal cases. In this particular case, the demands of the legal system should win out.
- If the Court decides that the president's executive privilege is absolute, then their power would be unchecked by the judicial branch. This would also undermine the rule of law concept that no person—even a president—is above the law.
- Just because executive privilege can be limited does not mean that it ceases to exist. The president still enjoys executive privilege in many instances. However, if a judge concludes that there is a compelling government interest in getting access to otherwise privileged conversations, then the president must hand over the information.

Arguments for President Nixon (Respondent)

- This case cannot be heard in the courts because it involves a dispute within the executive branch. The president and the special prosecutor are both parts of the executive branch. The president is the head of the executive branch, and their determinations about the national interest may not be challenged by an executive branch employee under the president's authority. The courts should not interfere with disputes among members of the same branch.
- Even though it is not mentioned in the Constitution, the president's claim of executive privilege is protected. The president must have the powers and privileges that they need in order to carry out the duties assigned by the Constitution. The power to keep communications confidential is a necessary power, since this confidentiality assures that the president will receive candid advice from senior advisors on important public issues.
- Executive privilege should extend to conversations between the president and their aides, even when national security is not at stake. In order for aides to give good advice and to

truly explore various alternatives, they have to be able to be candid. If they are going to offer frank opinions, they need to know that what they say is going to be kept confidential.

- The president has absolute executive privilege. This means that the decision to withhold or reveal certain information is based only on the president's discretion.

Decision

In a unanimous 8-0 decision (Justice Rehnquist recused himself because he previously worked in the Nixon administration), the Court ruled in favor of the United States and against President Nixon. Chief Justice Burger wrote the opinion for the Court.

Majority

The Supreme Court said that presidents do enjoy a constitutionally protected executive privilege, but that the privilege is not absolute. In this case, the president's interest in keeping his communications secret was outweighed by the interests of the judiciary in providing a fair trial.

The Supreme Court said that it had the power to decide this case because the case raised a constitutional question. That puts the case clearly within the functions of the judicial branch as interpreter of the Constitution. To support this ruling, the justices cited the precedent in *Marbury v. Madison*, which stated "it is emphatically the province and duty of the judicial department to say what the law is."

The Court acknowledged the validity of the president's interests in confidential communications and said that the president is generally entitled to executive privilege. However, this privilege is not absolute. The Court concluded that the interests asserted by the president must be balanced against the interests of the judicial branch when these interests conflict. When the president asserts executive privilege based on "military, diplomatic or sensitive national security secrets," then the president's interest will usually outweigh the judicial system's interest in the "fair administration of criminal justice." But when, as here, the president's only interest in asserting the privilege is the general interest in preserving confidentiality with his advisers, then the interest of the judicial system may outweigh the interests of the president.

Impact

President Nixon complied with the Court's decision upholding the subpoena and turned over the tapes, which showed that he had actively coordinated the criminal coverup. Exactly one month after oral arguments and just over two weeks after the Supreme Court's decision, Richard Nixon became the only president in U.S. history to resign from office.

The decision in *United States v. Nixon* still sets the precedent for the use of executive privilege. Executive privilege has also been extended to senior officials in presidential administrations. Presidents may invoke executive privilege to protect confidential information related to national

security but cannot to avoid criminal investigation of their conduct. Every president since Ronald Reagan has used executive privilege to block the release of specific documents or the testimony of some members of their administration.

Additional information about *United States v. Nixon,* including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at https://www.landmarkcases.org/.