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Can a President Really Pardon Himself? No, According to History, Precedent, and Case Law, Despite Media Pundits

By *Robert Weiner* and Ben Kearney



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Can a President really pardon himself? Most likely not despite what media pundits have been saying. If Trump were to win the election, this question takes on enormous priority.

As we know, a President can vote for himself in a general election, but that is not the case for pardoning himself. With Donald Trump's 91 felony counts for attempted election rigging, obstructing federal proceedings, hush money for election interference, and stealing secret files without declassifying them, this issue may be extremely significant. From the founders to the Federalist papers to the historical record, there is no basis or validation for the option of self-pardon. In fact, quite the contrary.

Prior to leaving the White House in 2021, Trump considered the idea of pardoning himself, stating in a tweet as far back as June 2018 "I have the absolute right to PARDON myself." As he gains momentum to achieve the GOP nomination, and upcoming trials in the spring, the assumption resurfaces that Trump can self-pardon himself from his crimes if he returns to the White House, once again putting himself in the uncharted legal territory of a U.S. dictator.

The media has latched onto the idea that Trump would pardon himself for everything allegedly illegal he committed whilst President. MSNBC's Paul Butler even said on January 28, "He would pardon himself" if he successfully delays the election interference trial until post-election and Trump wins.

Currently, this issue has not been addressed by any federal courts. However, President Nixon's Office of Legal Counsel did. An official brief before Nixon resigned in 1974 included Acting Assistant Attorney General Mary Lawton's statement that a President could not pardon himself because of "the fundamental rule that no one may be a judge in his own case." This echoes

the message from James Madison's Federalist Paper 10, "No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity."

Trump likes to believe that he dictates how his rulings in his various lawsuits and federal charges will go. As we know, that is not how the judiciary system operates.

Representative Jamie Raskin (D-Maryland) said in a December 2020 interview with CSPAN, "The Department of Justice has long rejected the proposition that the President could grant himself a pardon. The language of the Constitution (in reference to how the laws are written) about granting a pardon or reprieve suggests why it is an absurd idea. You cannot pardon yourself." Raskin also quoted Madison in his interview and noted the rule "is a cardinal principle that runs through the Constitution."

When asked if Trump could pardon himself back in 2019, Harvard Professor of Law Laurence Tribe commented. "No. That's so profoundly inconsistent with the premises of the whole American system of government that we should not allow ourselves to be distracted by it."

Former U.S Pardon Attorney for seven years at the Department of Justice Margaret Love, when asked the same question in 2018 to CNBC, used U.S v Nixon to justify the reason Trump cannot pardon himself. "This case [U.S v Nixon] teaches that the president cannot act in an official capacity to benefit himself against an authorized criminal prosecution."

Trump is not capable of escaping his role in supporting and spearheading his supporters to break into the Capitol on January 6th, and doing nothing to stop them while the rampage was occurring. Nor can he credibly deny that he used constant lies to persuade people to "Stop the Steal" and reverse the official outcome with fake, illegal electors. It would strain any credulity if he were to contend he knew nothing about the fake elector scheme when the evidence shows he called the swing states' legislative and voter counting leaders and officials to ask to reverse the results counts.

"There is no question that President Trump is practically and morally responsible for provoking the events of that day," Senate Minority Leader Mitch McConnell (R-Kentucky) stated [in his speech](#) on the Senate floor after Trump was acquitted of being convicted in February 2021: "The people who stormed this building believed they were acting on the wishes and instructions of their president. And their having that belief was a foreseeable consequence of the growing crescendo of false statements, conspiracy theories, and

reckless hyperbole which the defeated president kept shouting into the largest megaphone on planet Earth."

Republican Leader McConnell also stated that Trump is not immune from conviction: "We have a criminal justice system in this country. We have civil litigation. And former presidents are not immune from being held accountable by either one." The fact is that the highest-ranking Republican, the Leader, established that Trump cannot escape the crimes he inflicted as President.

Former Vice President Mike Pence told the New York Times. "A president may not pardon himself...The pardon power is a great responsibility I myself exercised as governor of Indiana, and it is one I take very seriously, considering each case on its own merits without prejudgment."

If Donald Trump hasn't damaged the image of the President of the United States enough with 91 felony charges, he certainly is capable of destroying the reputation further and the core of the justice system itself if he is allowed to pardon himself. No President before Trump chose to use the power on himself during their tenure, this path has remained set in stone for 235 years. Commentators who suggest that Trump can pardon himself need to get it right. Trump cannot pardon himself. As the saying goes, "Only a fool would have himself for a lawyer." You and we would be even more fools if he or we were to think someone can pardon himself. There is no indication a President can use his own power on himself. Otherwise his responsibility to the nation becomes more tyrannical for selfish goals.

Robert Weiner was a spokesman in the Clinton and George W. Bush White Houses. He was Communications Director of the House Government Operations Committee, and Senior Aide to Four-Star Gen/Drug Czar Barry McCaffrey and Reps. John Conyers, Charles Rangel, Claude Pepper, and Ed Koch. Ben Kearney is a Policy Analyst and Writer at Robert Weiner Associates and Solutions for Change.