

Washington, D.C., Justice

Immunity Decision Hands Federal Courts Last Word in Trump Cases, Say Experts

— Juliann Ventura, 7.9.2024



WASHINGTON, D.C. — Legal experts say the landmark Supreme Court **decision** last Monday hands federal courts the last word on the state cases facing former President Donald Trump.

“What this opinion does is this opinion effectively constitutionalizes both of those [state] cases,” said William Thomas, an assistant business law professor at the University of Michigan. “It provides the federal judiciary a really clear, direct pathway into sort of being the last adjudicator of what

used to be state cases, and it does that by recognizing this really broad notion of official acts that are constitutionally immunized from prosecution.”

The court ruled that the president has complete immunity for all core presidential actions like pardon power, while purely private conduct remains indictable. All other official acts are immune, according to the ruling, unless prosecutors can show that a criminal case would not intrude on the authority and functions of the executive branch.

One of the things that made Trump’s Georgia election interference case and his New York hush money case especially strong for prosecutors was that they were state cases, Thomas said, and thus largely free from federal review. But the Supreme Court ruling, he said, appears to have manufactured a path between the two.

“What we often hope that the Supreme Court will do is it will give clear guidance to lower courts. That’s a fundamental role of the Supreme Court, particularly in high-stakes cases like this — it tells lower courts what to do,” Thomas said. “What the court has in mind with respect to that middle bucket of presumptively immune official acts is simultaneously very expansive and also pretty hazy. So the court says, you know, we’re not going to decide what things count as receiving for them from the community or not. We’re going to send that back down to the district court.”

Clark Neily, senior vice president of legal studies at the conservative think tank Cato Institute, agreed that the Supreme Court’s decision could trickle down to the state cases facing Trump. And he said New York Judge Juan Merchan’s decision to **postpone** Trump’s sentencing until September may be an example of those after effects.

“I think that Trump has certainly been handed some arguments that he did not have before this decision came down,” Neily said. “We know, for example, that Judge Merchan in the New York case has rescheduled the hearing ... and there was some language in his order that sort of expressed an awareness that he might have to take a look at the [New York hush money] trial and see if anything that happened in the trial that resulted in Donald Trump’s conviction is inconsistent with this Supreme Court decision.”

Neily agreed that there's some merit to the idea that the president now has immunity for certain acts. But he said this isn't a wholly new idea, citing a Supreme Court ruling from 1976 that **grants** prosecutors absolute immunity from a civil suit or damages if they acted within the scope of their duties in initiating and pursuing a criminal prosecution.

"I don't think we should be arguing about whether it does to some in some sense place the president above the law. I think it does," he said. "But that's not exactly new. Other government officials are in some sense above the law. Just take, for example, prosecutors. You cannot sue a prosecutor for violating your rights."

Connecticut's lawmakers on Capitol Hill voiced urgency in the need to protect American democracy, calling the court's decision an obstacle in holding not only the president, but all of the nation's leaders accountable.

"My stomach turns with fear and anger that our democracy can be so endangered by an out-of-control court," Sen. Richard Blumenthal said in a statement. He went as far to characterize the court's conservative majority as "politicians in robes."

In a statement, Sen. Chris Murphy criticized the Supreme Court's decision, arguing that it protects Trump from claims that the former president incited the Jan. 6 riot in 2021, giving Trump the "political gift of a lifetime."

Murphy added that this win for Trump "not only gives future presidents a free pass to knowingly commit crimes, it also transforms the office of the president into a king-like ruler."

"This should be simple," Murphy said in the statement. "No American citizen is above the law, not even a former president."

Rep. Joe Courtney called the decision a "radical, alarming break from two centuries of established precedent" and that "no person — not a president, a senator, or House member — is above the law."

"He [Chief Justice Roberts] is rewriting the Constitution's carefully designed separation of powers, not interpreting it," Courtney warned. "For the

American people, it is clear that exercising their power at the ballot box has never been more critical.”

In a statement, Rep. John Larson said that he agreed with Justice Sonia Sotomayor, who wrote in her dissent that “the damage has been done. The relationship between the President and the people he serves has shifted irrevocably. In every use of official power, the President is now a king above the law.”

Larson, like Courtney, relayed a sense of urgency about the upcoming presidential election.

“Today’s decision, on top of this court’s decision to overturn Roe v. Wade, will make this year’s election the most urgent and critical for the future of our democracy,” he said in the statement.

Last year, Trump was **indicted** in four criminal cases. In May, he was found **guilty** in one case, in a scheme to influence the 2016 election through a hush money payment.

Thomas warned that the Supreme Court’s decision could not only impact Trump’s other cases, but the ability to hold president’s accountable in the future.

“A big practical reality today is Donald Trump specifically is going to be very hard to prosecute in any case,” Thomas said. “And then in the future, incidentally, it may be the case that presidents are also inoculated from personal liability.”

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