

Can Trump Legally Pardon Himself? The Constitution's So-called "Take Care Clause"

By [Stephen Lendman](#)

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No constitutional provision prohibits presidential self-pardons.

Article II, Section 3 states the president "shall take Care that the Laws be faithfully executed" - the Constitution's so-called Take Care Clause.

No one is above the law, including US presidents. They can be indicted for criminal offenses. The issue of presidential self-pardoning authority is uncharted territory.

Legal scholars disagree on if it's permissible or not. Nothing in US law states it's not.

On June 4, Trump tweeted:

"As has been stated by numerous legal scholars, I have the absolute right to PARDON myself, but why would I do that when I have done nothing wrong?"

"In the meantime, the never ending Witch Hunt, led by 13 very Angry and Conflicted Democrats (& others) continues into the mid-terms!"

According to Law Professor Jonathan Turley, Trump can pardon anyone including himself. The Constitution's Article II, Section 2 states

"(t)he President...have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment."

No constitutional provision or language prohibits presidential self-pardons. It's not protection from impeachment - affecting government office holders.

Pardons concern individuals in or out of government, Turley explained. Under the Constitution, anyone impeached and convicted "shall...be liable and subject to indictment, trial, judgment and punishment, according to law."

Former Justice Department attorney Samuel Morison agrees with Turley, saying

"(i)f there are any limits on (pardoning) power, it's got to be in the Constitution. It's nowhere in the Constitution."

Trump's attorney Rudy Giuliani said he has self-pardoning power, using it "unthinkable," he added.

Law Professor Mark Tushnet said much the same thing. In Federalist No. 74, Alexander Hamilton (the first US Treasury Secretary) said “humanity and good policy” require pardoning power to be exclusive presidential authority to be used “scrupulously (with) caution” – not for self-interest.

Law Professor Andrew Wright said

“(o)ne of the basic rules is that no man is a judge in his own case. (Trump isn’t) a king.”

Law Professor Jessica Levinson explained that the Constitution means what Supreme Court justices decide. In other words, the law of the land is what they say it is. A constitutional amendment would be required to change or override this interpretation.

Ahead of Nixon’s August 1974 resignation, the Justice Department’s Office of Legal Counsel said no one may judge his or her own case, claiming the president cannot pardon himself.

Law Professor Asha Rangappa interpreted this to mean that

“(t)he point of the pardon power (is) to bestow mercy on another, not to enrich oneself.”

Law Professor Jimmy Gurule said the notion of Trump pardoning himself isn’t the behavior of an innocent man, adding no one is above the law. No one can be criminally culpable with impunity, not even US presidents.

Not according to Law Professor Susan Block, saying presidents can self-pardon – but they cannot stop or interfere with an investigation. That would constitute obstruction of justice, an impeachable offense.

Emirta Professor of Law Marjorie Cohn called the notion of a presidential self-pardon an unsettled issue.

Yet “the fact that Trump is thinking about such pardons is an indication he is concerned about his own criminal liability,” adding:

“Rather than acting to fulfill his constitutional duty to faithfully execute the laws, Trump is violating or advocating violation of many of them. His law-breaking renders him vulnerable to criminal indictment and perhaps eventually to impeachment.”

Law Professor Keith Whittington calls presidential self-pardoning a murky area of law never before tested.

Many legal experts believe self-pardoning is an admission of guilt, risking a constitutional crisis – an issue the framers didn’t address.

A constitutional amendment or Supreme Court ruling would be required to correct the omission.

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Stephen Lendman is a Research Associate of the CRG, Correspondent of Global Research based in Chicago.

VISIT MY NEW WEB SITE: stephenlendman.org ([Home - Stephen Lendman](http://stephenlendman.org)). Contact at lendmanstephen@sbcglobal.net.

My newest book as editor and contributor is titled "Flashpoint in Ukraine: How the US Drive for Hegemony Risks WW III."

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Articles by: [Stephen Lendman](http://stephenlendman.org)

About the author:

Stephen Lendman lives in Chicago. He can be reached at lendmanstephen@sbcglobal.net. His new book as editor and contributor is titled "Flashpoint in Ukraine: US Drive for Hegemony Risks WW III."
<http://www.claritypress.com/LendmanIII.html> Visit his blog site at sjlendman.blogspot.com. Listen to cutting-edge discussions with distinguished guests on the Progressive Radio News Hour on the Progressive Radio Network. It airs three times weekly: live on Sundays at 1PM Central time plus two prerecorded archived programs.

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