Petition for United States Constitutional Amendment to Limit Presidential Pardon Power

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PETITION FOR U.S. CONSTITUTIONAL AMENDMENT TO LIMIT PRESIDENTIAL PARDON POWER

The United States Constitution's Article II, Section 2, grants the Pardon Power to the President: "The President shall . . . have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." (original capitalization).

But, the First Amendment to the United States Constitution guarantees that: “Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.”

Also, under Article V of the United States Constitution:

\textit{The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, . . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States . . . .} (stress added).

Thus, We the People of the United States, to re-establish Justice, petition the United States Congress, including the House of Representatives and the Senate, and all states of the United States to pass the following

AMENDMENT TO THE UNITED STATES CONSTITUTION TO LIMIT THE PRESIDENTIAL PARDON POWER

Section 1. \textit{Persons Excluded From the President’s Pardon Power}. The President’s Pardon Power does not extend to offenses committed by:

(a) the President;

(b) past presidents for acts and omissions while President;

(c) other current and past federal officers and federal employees for their acts and omissions while federal officers and federal employees regardless whether the government paid the officers and employees;

(d) the President’s current, past, and future employees regardless whether the President paid the employees;

(e) the President’s family, including the President’s: spouse; ex-spouse; future spouse; natural and adopted children and their spouses; parents
and their siblings; siblings; nieces and nephews; and cousins;
(f) the President’s co-conspirators regardless whether the conspiracy started before, during, or after the President’s term of office;
(g) any businesses owned or controlled by the President;
(h) the President’s past, current, and future business partners;
(i) accomplices to the President’s crimes and any principals committing crimes for which the President is an accomplice regardless whether the crimes were committed before, during, or after the President’s term of office.

Section 2. Charges, Fines, and Convictions Excluded From the President’s Pardon Power. The President may not exercise the Pardon Power prospectively to remove: a charge which has been not yet been brought; a fine which has not yet been levied; and a conviction which has not yet been obtained.

Section 3. Cooperation with Criminal Investigations. The President must comply with subpoenas in criminal cases.

Section 4. Criminal Charges Against the President. Criminal charges against the President may be brought by a grand jury. The President may be tried for criminal charges by a jury, but the President will not be removed from office unless impeached.

Regarding Section 1, an “omission” is a standard law term for failing to act despite a duty to act. Appendix A1 explains conspiracy both as a crime and a way to assign criminal liability, and Appendix A2 explains accomplice liability.

Section 2 would prevent the President from ignoring a subpoena to testify in a grand jury or trial as President Trump now argues. Further, Section 2 would clear up any ambiguities about complying with a subpoena for documents and other tangible things, such as audio and video tapes, left by United States v. Nixon, 418 U.S. 683 (1974), and prevent a future Supreme Court from reversing United States v. Nixon.

Section 3 would reverse current Justice Department policy against prosecuting a current president. The President could be charged like any federal criminal defendant.
Under the United States Constitution’s Fifth Amendment, normally only a grand jury may bring federal felony criminal charges:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger: . . . " (original capitals) (stress added).

“[A] capital, or otherwise infamous crime” normally means a felony. Felonies threaten punishment of death or imprisonment for more than a year while misdemeanors only carry jail time of at most a year. Unlike the federal government, some states permit prosecutors to charge defendants in an “information” without a grand jury’s approval. (Once a federal grand jury charges a defendant, a federal prosecutor may file an information with fewer charges than the grand jury approved, for instance, when a defendant cooperates with the prosecution under a plea agreement.)

Thus, Section 3 would allow federal and state grand juries to indict, i.e. criminally charge, a President with a felony like any federal criminal defendant but with a more stringent standard than states permitting a prosecutor alone to charge by an information.

Further, by permitting a grand jury to criminally charge the President while in office, statutes of limitations from waiting years until after the President leaves office would no longer help the President evade justice.¹

Criminally convicting the President would require imprisoning the President and necessarily ending the President’s term of office. Thus, to match the Constitution’s impeachment process to remove the President from office, criminal charges and convictions would be grounds for impeachment while the President remains in office. The President would be subject to normal criminal prosecution after leaving office.

**We Now Need to Limit the Presidential Pardon Power**

Our country now needs this Amendment to Limit the Presidential Pardon Power because “Cato’s” 1787 Anti-Federalist Paper Number 67’s prediction of Presidents shielding themselves from guilt, e.g. for a conspiracy to commit treason, through the Pardon Power has come true in the decades since the Watergate Scandal.

In 1974 President Richard M. Nixon’s unelected, hand-picked, Vice-President Gerald R. Ford at once pardoned ex-President Nixon after Nixon resigned to escape impeachment.

In 1992 President George H.W. Bush [Bush Sr.] pardoned six high-level federal officers to crush Independent Counsel Lawrence Walsh’s investigation into the Iran–Contra scandal and his possible involvement with the scandal as President Reagan’s Vice President.
In 2007 President George W. Bush [G.W. Bush or Bush Jr.] commuted the sentence of Vice President Cheney’s Chief of Staff and National Security Advisor, I. Lewis “Scooter” Libby for four felonies covering up the CIA-Leak-Scandal/Plame-Affair outing a covert Central Intelligence Agency [CIA] agent married to a political opponent against the Intelligence Identities Protection Act of 1982.

Now, President Donald J. Trump has told Special Prosecutor Robert F. Mueller III that Trump can even pardon himself, even to escape a criminal subpoena about Russian involvement in the 2016 Presidential Election.³ (On July 24, 1974, in United States v. Nixon, the U.S. Supreme Court unanimously upheld a criminal subpoena for audio tapes served on President Richard M. Nixon against Nixon’s claim of executive privilege.) To flaunt his pardon power and deter cooperation with Special Counsel Mueller’s investigation into Russia interference in the 2016 Elections, President Trump fully pardoned Libby. President Trump has also threatened to pardon his many associates charged or convicted as a result of Special Counsel Mueller’s investigation plainly to deter cooperation with Mueller’s investigation.⁴

We elaborate the need for this Amendment below. Though the facts have been widely reported, they have occurred over decades. Thus, we have added representative citations. The Appendices discuss background legal concepts: conspiracy (collusion) as a crime and criminal liability; accomplice liability; coverup crimes; treason; and the President’s Oath of Office.
1. The Original 1789 Constitution granted the Pardon Power to the President despite Cato’s 1787 Anti-Federalist No. 67 warning that the President could shield himself/herself from guilt, as in a conspiracy to commit treason. 

   A. The President’s Constitutional Pardon Power

   B. Cato’s Antifederalist Paper 67 opposed the Pardon Power and stressed it could let a President shield himself from guilt, even for treason.

2. In the United States of America, from its founding, no one has been above the law, not even the President.

3. Yet, in the decades since the 1972–74 Watergate Scandal, Presidents have increasingly abused the Pardon Power to save their henchmen and to crush and to escape, rather than to promote, justice, and President Trump has now even expressly threatened to pardon himself and his associates.

   A. In 1974, against promises to Congress and the People, the unelected President Ford, picked by President Nixon during the Watergate investigation, pardoned ex-president Nixon just after Nixon resigned.

   1. President Nixon formed the Plumbers as a White House security unit because of Daniel Ellsberg’s 1971 Pentagon-Papers classified-information leak.


   3. On October 20, 1973, the day after President Nixon’s White House Counsel Dean pled guilty to Obstruction of Justice, Nixon tried to kill Special Counsel Cox’s Watergate investigation by firing Cox in the infamous “Saturday Night Massacre” of Attorney Generals resigning instead of firing Cox.

   4. In July 1974, the Supreme Court ordered President Nixon to comply with a criminal subpoena for documents and audio tapes.
5. A federal grand jury unanimously named President Nixon an un-indicted co-conspirator in covering up facts about the Watergate break-in, and John Dean’s nationally televised Senate testimony implicated Nixon. ..................................................14

6. President Nixon picked the Republican House Minority Leader Gerald Ford after the 1972 election and during the Watergate investigations. ..................................................................................................................15

7. After Nixon resigned on August 9, 1974, to escape impeachment, President Ford quickly broke his promises to Congress and to the People by pardoning Nixon on September 8, 1974. ..................................................................................................................15

B. On December 24, 1992, President George H.W. Bush [Bush Sr.], President Reagan’s Vice President, pardoned six of Reagan’s high-level federal officers, including Defense Secretary Weinberger before trial, to crush Independent Counsel Walsh’s criminal investigation into the Iran–Contra Scandal and cover-up any of Bush’s involvement. ............. 16

C. In 2007 President George W. [G.W.] Bush commuted the sentence of the convict I. Lewis [Scooter] Libby, Vice President Cheney’s Chief of Staff, for covering up the outing of CIA agent Valerie Plame, the wife of Ambassador Joseph Wilson who publicly challenged G.W. Bush on Iraq’s alleged attempts to buy uranium from Niger in the “CIA-Leak-Case/Plame-Affair.” ................................................................. 17

D. In threats to Special Prosecutor’s Robert Mueller’s criminal investigation of Russian interference with the 2016 Presidential Election, President Trump fully pardoned Libby and told Mueller in January 2018 that Trump can pardon himself and has expressly threatened to pardon the convicts in Mueller’s investigation. .............................. 20

1. So far, resulting from Special Counsel Mueller’s investigation, juries have convicted and/or grand juries have charged: Paul Manafort, Michael Cohen, 13 Russian nationals and firms, Rick Gates, Michael Flynn, George Papadopoulos, Richard Pinedo, Alex van der Zwaan, 12 Russian GRU, i.e. Military Intelligence, officers, and Sam Patten. ..................................................................................................................20
2. Special Counsel Mueller and other agencies have investigated Trump, Trump’s family members, and his employees: Jared Kushner, Donald Trump Jr., Roger Stone, and Rudy Giuliani.  

3. Trump urged Russia to hack Clinton’s emails, fired FBI Director Comey to stop the Russian investigation, gave highly classified information to Russian Ambassadors, has tried to impede Special Counsel Mueller’s investigation, and has expressly threatened to pardon himself and others under investigation.

4. The Amendment would have blocked the pardons of past-president Nixon for Watergate, the Iran-Contra federal officers, Libby’s sentence commutation and full pardon, and will block President Trump’s pardons of Trump himself Trump’s associates investigated by Special Counsel Mueller.

A. The Amendment would have blocked President Ford’s pardoning of past-president Nixon, his ex-boss who hand-picked Ford to be President during the Watergate Scandal.

1. The Amendment would have blocked President Ford’s pardon of past-president Nixon for Nixon’s conspiratorial acts and any other crimes while president.

2. The Amendment would have blocked President Ford’s pardon because the D.C. Grand Jury had not yet charged Nixon though it had named Nixon an un-indicted co-conspirator.

B. The Amendment’s Sections 1(c), (h) and possibly 1(f) would have blocked President George H.W. Bush [Bush Sr.] from pardoning the Iran-Contra federal officers.

C. The Amendment’s Section 1(b) would have blocked President G.W. Bush from commuting ex-Vice Presidential Chief of Staff and National Security Advisor Libby’s sentences, and President Trump’s full pardon of Libby, for obstruction of justice perjury and false statements thwarting the CIA-Leak-Case/Plame-Affair.
D. The Amendment will stop President Trump from pardoning: himself; federal officers/employees Libby and Flynn; Trump’s employees Manafort, Gates, Papadopoulos, Cohen, and Guliani; and anyone who may have conspired with Trump before or during his presidency, such as Cohen, Weisselberg, Flynn, Manafort, Gates, Kushner, Donald Trump Jr., Putin, etc. 26

1. The Amendment’s Sections 1(a), 1(g), 1(h), 1(i), 2, 3, and 4 will stop Trump from pardoning himself to evade a criminal subpoena or any crimes. 26

2. The Amendment’s Section 1(b) will stop Vice President Pence from pardoning President Trump if President Trump resigns or is impeached and is charged with a crime. 27

3. The Amendment’s Section 1(c) will stop President Trump from pardoning federal officers/employees Flynn and Kushner for any acts and omissions while officers/employees. 27

4. The Amendment’s Section 1(d) will stop President Trump from pardoning his employees Manafort, Cohen, Gates, Papadopoulos, and Rudy Guiliani. 27

5. The Amendment’s Section 1(e) will stop President Trump from pardoning family members Kushner and Donald Jr. if a grand jury were to charge them. 28

6. The Amendment’s Section 1(f) will stop President Trump from pardoning apparent co-conspirator Cohen and possible co-conspirators such as the Trump Organization and its employees, Donald Jr., or Manafort, or Putin. 28

7. The Amendment’s Section 1(g) will stop Trump from pardoning the Trump Organization and Donald J. Trump Foundation and Trump's co-owners/partners of any business. 29

8. The Amendment’s Section 1(i) will stop Trump from pardoning a principal criminal for which he is an accomplice by helping or encouraging the principal to commit the crime, such as Putin and the 12 Russian Military Intelligence Agents’ theft of Clinton’s emails. 29

9. The Amendment’s Section 4 will permit a grand jury to criminal charge President Trump and a jury to try Trump while Trump remains President. 30
Appendices ........................................................................................................................................... 30

A1. Conspiracy is both the felony of impliedly or expressly agreeing, i.e. colluding, to perform acts and a way for conspirators to be liable for other co-conspirators’ acts furthering the conspiracy. ................................................................. 30

A2. Accomplice liability, i.e. complicity, makes a person liable, i.e. complicit, for a principal’s crimes whom the accessory aided or encouraged the principal. ................................................................. 31

A3. Cover-up crimes committed by trying to hide other crimes include obstruction of justice, false statements, and perjury. ........................................................................................................................................... 32


A5. President’s Oath of Office ............................................................................................................. 34

References ............................................................................................................................................. 35
1. The Original 1789 Constitution granted the Pardon Power to the President despite Cato’s 1787 Anti-Federalist No. 67 warning that the President could shield himself/herself from guilt, as in a conspiracy to commit treason.

A. The President’s Constitutional Pardon Power
The U.S. Constitution’s Article II, Section 2, grants the Pardon Power to the President: “The President shall . . . have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.” (original capitalization). “Offenses against the United States” means federal, not state, crimes.

B. Cato’s Antifederalist Paper 67 opposed the Pardon Power and stressed it could let a President shield himself from guilt, even for treason.
During the states’ ratification process from 1787 to 1789, mainly for the New York Convention, the Federalist Papers and Anti-Federalist Papers debated parts of the proposed Constitution. In particular, Cato’s Anti-Federalist Paper Number 67 in the November 8, 1787, New York Journal warned that the Constitution’s Presidential powers could be abused to form a monarchy. Cato warned a President could abuse the Pardon Power to exonerate himself, even for treason:

“And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office, with the foregoing doctrine—his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers. His power of nomination and influence on all appointments; the strong posts in each state comprised within his superintendence, and garrisoned by troops under his direction; his control over the army, militia, and navy; the unrestrained power of granting pardons for treason, which may be used to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt; his duration in office for four years—these, and various other principles evidently prove the truth of the position, if the president is possessed of ambition, he has power and time sufficient to ruin his country.” (stress added)

....
He is the generalissimo of the nation, and of course has the command and control of the army, navy and militia; he is the
general conservator of the peace of the union—\textit{he may pardon all offenses, except in cases of impeachment}, and the principal fountain of all offices and employments. \textit{Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy or monarchy?} The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers, and interested in his re-election, in what circle appointments will be made; \textit{by which means an imperfect aristocracy bordering on monarchy may be established.} (stress added)\textsuperscript{6}

“\[T\]he unrestrained power of granting pardons for treason, which may be used to screen from punishment those whom he had secretly instigated to commit the crime” means pardoning those whom the President conspired with to commit the crime—treason. (Treasure's technical definition has changed since Cato’s 1787 Antifederalist No. 67. This Petition quotes some modern “treason” statutes for Treason, Seditious Conspiracy, and Misprision of Treason.)

The Antifederalist “Cato’s” prophesy of Presidents concealing their crimes to form an aristocracy has come true in the years since the 1972–74 Watergate Scandal. Now, President Trump even argues he can pardon himself, even to escape a criminal subpoena, and has threatened to pardon his associates who may be convicted by Special Counsel Mueller's investigation.

2. In the United States of America, from its founding, no one has been above the law, not even the President.

This Constitution's Presidential Pardon Power descended from the British Crown's power to pardon offenses when justice required.

But, unlike Great Britain, the United States of America has never had kings or queens, only the constitutionally established Office of the President. Different people have served as President, but none of those people has become a king or queen.

In the United States of America, from its founding, no man or government officer has been above the law. Thus, as the Supreme Court once put it in \textit{United States v. Lee}:

\begin{quote}
No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

It is the only supreme power in our system of government, and every man who by accepting office participates in its func-
tions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.\textsuperscript{7}

In short, in the United States of America, no one is above the law, not even the highest federal officer, the President of the United States.

3. Yet, in the decades since the 1972–74 Watergate Scandal, Presidents have increasingly abused the Pardon Power to save their henchmen and to crush and to escape, rather than to promote, justice, and President Trump has now even expressly threatened to pardon himself and his associates.

A. In 1974, against promises to Congress and the People, the unelected President Ford, picked by President Nixon during the Watergate investigation, pardoned ex-president Nixon just after Nixon resigned.

1. President Nixon formed the Plumbers as a White House security unit because of Daniel Ellsberg’s 1971 Pentagon-Papers classified-information leak.

Daniel Ellsberg conducted research at the RAND defense think-tank from 1964 to 1970.\textsuperscript{8} At RAND, Ellsberg had written part of the top-secret report \textit{U.S. Decision-Making in Vietnam, 1945–68}, dubbed the “Pentagon Papers,” documenting the secret United States’ secret involvement in Vietnam from the Truman Administration during World War II.\textsuperscript{9} Ellsberg leaked the Pentagon Papers to, amongst others, the New York Times Reporter Neil Sheehan\textsuperscript{10} and the Washington Post National Editor Ben H. Bagdikian\textsuperscript{11}. To stop future leaks, President Nixon formed the White House’s own “Plumbers” security unit.\textsuperscript{12} The Plumbers, including E. Howard Hunt and G. Gordon Liddy, broke into Ellsberg’s psychiatrist’s office seeking information to discredit Ellsberg.\textsuperscript{13}


On June 17, 1972, the Watergate Scandal started when five burglars working for President Nixon’s Committee to Re-Elect the President [CREEP] broke into the Democratic National Committee’s [DNC’s] Headquarters at the Watergate Hotel and Office Building in Washington, D.C.\textsuperscript{14} They had burglarized the DNC office on May 27th to tap phones.\textsuperscript{15} When they returned
on June 17th to fix one of the taps,16 a Watergate security officer caught them. The burglars included: ex-Central Intelligence Agency [CIA] officer James McCord, CREEP’s Security Coordinator.

Plainly, the burglary involved a conspiracy between at least the five burglars. On September 15, 1972, a grand jury indicted the five burglars with Plumbers E. Howard Hunt and G. Gordon Liddy for conspiracy, burglary, and breaking federal wiretap statutes. Liddy was CREEP’s Finance Counsel and an ex-Federal Bureau of Investigation [FBI] agent, and Hunt was an ex-CIA officer. 17

The scandal slowly snowballed through parallel press, Senate, and criminal investigations.18 The Washington Post’s Bob Woodward and Carl Bernstein mostly drove the press investigation.19 In 1973’s Summer, the Senate Select Committee on Presidential Campaign Activities, a.k.a. the Senate Watergate Committee, held daily nationally televised hearings.20 Former White House Counsel John Dean's daily, all-day, testimony before the Senate Watergate Committee brought the White House’s involvement with the break-in and the cover-up to wide national attention.21

3. On October 20, 1973, the day after President Nixon’s White House Counsel Dean pled guilty to Obstruction of Justice, Nixon tried to kill Special Counsel Cox’s Watergate investigation by firing Cox in the infamous “Saturday Night Massacre” of Attorney Generals resigning instead of firing Cox.


Former White House Counsel John Dean pled guilty to Obstruction of Justice on Friday, October 19, 1973.23

In the infamous Saturday Night Massacre of October 20, 1973, Nixon tried to kill the investigation by ordering confirmed AG Richardson to fire Special Counsel Cox.24 Richardson refused and resigned.25 The next highest-ranking Justice Department official/officer was Deputy AG William Ruckelshaus.26 When AG Richardson resigned, Nixon ordered Deputy AG William Ruckelshaus to fire Cox.27 Like Richardson, Ruckelshaus refused and resigned.28 The next highest-ranking Justice Department official/officer was the Solicitor General, Robert Bork.29 After Ruckelshaus resigned, Nixon ordered Bork to fire Cox.30 After Nixon promised to nominate Bork as the next Supreme Court Justice, Bork fired Cox.31
4. In July 1974, the Supreme Court ordered President Nixon to comply with a criminal subpoena for documents and audio tapes.

The District of Columbia’s federal trial court, the District Court for the District of Columbia, subpoenaed documents from President Nixon’s White House. Despite Nixon’s executive privilege claim, the Supreme Court ruled President Nixon had to comply with the subpoena:

“[N]either the doctrine of separation of powers nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”

“[W]hen the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice.”

The Supreme Court did not decide whether a prosecutor, grand jury, and/or trial court could subpoena a current President to testify. (After resigning his Presidency and receiving President Ford’s pardon even before a grand jury could charge Nixon, on June 23–24, 1975, Nixon voluntarily testified before a federal grand jury.)

5. A federal grand jury unanimously named President Nixon on an un-indicted co-conspirator in covering up facts about the Watergate break-in, and John Dean’s nationally televised Senate testimony implicated Nixon.

Under the United States Constitution’s Fifth Amendment, with a few exceptions, e.g. military courts, all federal criminal charges must be brought by a grand jury.

Though President Nixon was not indicted, i.e. formally charged, the District of Columbia Grand Jury unanimously voted 19–0 to name Nixon an un-indicted co-conspirator in Conspiracy to Defraud the United States and Conspiracy to Obstruct Justice. Thus, the D.C. Grand Jury found probable cause to indict President Nixon, but it did not charge Nixon in the indictment.

In the Summer of 1973, former White House Counsel John Dean’s all-day nationally televised testimony for many days forced into the open President Nixon’s and the White House staff’s crimes to coverup the Watergate break-in. National broadcast television [TV] broadcast "Watergate Hearings" before the Senate Select Committee on Presidential Campaign Activities, a.k.a. the Senate Watergate Committee, all-day everyday during the Summer of 1973, chaired by North Carolina’s Sam Ervin with ranking Member and Tennessee
Senator Howard Baker. Former White House Counsel John Dean testified extensively before the Watergate Committee on national TV for weeks the Summer of 1973. Dean’s testimony thrust into the spotlight Nixon’s acts and those of White House staff in covering up White House involvement with the Watergate break-in.

6. President Nixon picked the Republican House Minority Leader Gerald Ford after the 1972 election and during the Watergate investigations.

Between June and November 1972, “Ford was instrumental—at the urging of the White House—in disrupting an inquiry by the House Banking and Currency Committee,” chaired by Wright Patman, “that the financing of the break-in had its origins at the top of the Nixon Administration.”36 After Nixon won the 1972 election, Vice President Spiro T. Agnew resigned on October 10, 1973, to plead no contest to charges of bribery, tax evasion, and money laundering while Maryland’s Governor.37 On October 12th, under the 25th Amendment to the U.S. Constitution, Nixon picked House Minority Leader Gerald Ford to replace Agnew. The Senate confirmed Ford as Vice President on November 27, 1973.38 The House confirmed Ford on December 6, 1973, and Ford assumed the Vice-Presidency the same day.39

7. After Nixon resigned on August 9, 1974, to escape impeachment, President Ford quickly broke his promises to Congress and to the People by pardoning Nixon on September 8, 1974.

On August 9, 1974, rather than become the first President to be impeached since Andrew Johnson in 1868, President Richard M. Nixon became the first President to resign.

After Nixon’s resignation, the House approved 412–3 the Judiciary Committee’s unanimous final report of “‘clear and convincing evidence’ that [Nixon] had ‘condoned, encouraged, . . . directed, coached, and personally helped to fabricate perjury’ and had abused his power, and should have been removed from office had he not resigned.”40

Ford repeatedly promised not to pardon President Nixon. During Ford’s Vice-Presidential confirmation hearings before the House Judiciary Committee, Ford promised not to pardon Nixon.41 Before the Senate Committee on Rules and Administration, when asked about pardoning a prior president, Ford also testified: “I don’t think the American people would stand for it.”42 Even after assuming the Presidency, Ford’s Press Secretary Jerald F. terHorst assured the People that President Ford still opposed pardoning ex-President Nixon.43
In a stunning reversal, President Ford pardoned Nixon on September 8, 1974 even before Nixon could be formally charged. On learning of President Ford’s decision, terHorst at once resigned, even before Ford could announce his pardon of Nixon.

B. On December 24, 1992, President George H.W. Bush [Bush Sr.], President Reagan’s Vice President, pardoned six of Reagan’s high-level federal officers, including Defense Secretary Weinberger before trial, to crush Independent Counsel Walsh’s criminal investigation into the Iran–Contra Scandal and cover-up any of Bush’s involvement.

The Iran–Contra Scandal started around November 1985 during Ronald Reagan’s Presidency. High-level federal officers illegally sold arms to Iran to try to get hostages released. Then, high-level federal officers illegally sent the cash from the illegal arms sales to Contra Rebels in Nicaragua.

President Reagan started his second term in 1985. In November 1985, news reports started exposing the secret arms sales and transfer of money.

In the Watergate Scandal’s wake, Congress passed the Independent Counsel Statute as part of the Ethics in Government Act of 1978. The Independent Counsel Statute pertained to potential crimes by high-ranking federal officers. If the Attorney General’s preliminary investigation shows one of the officers may have committed a sufficiently serious crime, the AG may request the Special Division, i.e. a three-judge panel, of the U.S. Court of Appeals for the District of Columbia Circuit to select an independent counsel.

In December 1986, a three-judge panel appointed former federal judge and Deputy Attorney General, and Republican, Lawrence Walsh as Independent Counsel to investigate the Iran–Contra Scandal. Attorney General Edwin Meese III preliminarily investigated the facts November 21–25, 1986. The Special Division appointed Walsh as Independent Counsel on December 19, 1986.


Bush’s diary while Vice President was not known to Walsh until December 1992.

Less than one month before President Clinton took office, President George H.W. Bush pardoned six of President Reagan’s high-level federal officers involved with Iran–Contra:

1
1) Elliot Abrams, Assistant Secretary of State for Inter-American Affairs (pled guilty to two counts of withholding information from Congress);

2) Duane Clarridge, Latin American Division Chief, CIA (pardoned during trial for seven perjury and false statements counts);

3) Alan D. Fiers (pled guilty to two counts of withholding information from Congress);

4) Claire E. George, Deputy Director of Operations, CIA (convicted of perjury and false statements);

5) Robert C. MacFarlane, National Security Advisor (pled guilty to four counts of withholding information from Congress); and

6) Caspar Weinberger, Secretary of Defense (indicted on two perjury counts and one obstruction-of-justice count, pardoned twelve days before trial).

Bush’s pardons crushed Walsh’s investigation and completed the Iran–Contra coverup.53

C. In 2007 President George W. [G.W.] Bush commuted the sentence of the convict I. Lewis [Scooter] Libby, Vice President Cheney’s Chief of Staff, for covering up the outing of CIA agent Valerie Plame, the wife of Ambassador Joseph Wilson who publicly challenged G.W. Bush on Iraq’s alleged attempts to buy uranium from Niger in the “CIA-Leak-Case/Plame-Affair.”


On September 11, 2001, Osama Bin Laden’s terrorists flew airliners into New York’s World Trade Center and the Pentagon and tried to crash a plane into the White House but crashed in rural Pennsylvania. Though Bin Laden was in Afghanistan, in response to the “9/11” attacks, President G.W. Bush led the country to a second war with Iraq. As a reason to attack and to continue a war with Iraq, G.W. Bush adamantly insisted Iraq and had weapons of mass destruction.

After the 9/11 attacks, G.W. Bush adamantly insisted that Iraq was involved with the attacks. Bush’s Defense Secretary Donald Rumsfeld started planning to attack Iraq as retaliation for the 9/11 attacks on the same day as the attacks.54

Four months later, G.W. Bush’s 2002 State of the Union address continued building a case for the Second Iraq War by claiming Iraq “continues to
flaunt its hostility toward America and to support terror” and “plotted to develop anthrax and nerve gas and nuclear weapons for over a decade.” G.W. Bush dubbed North Korea, Iran, and Iraq part of “an axis of evil.”

In February 2002, at the specific request of Vice-President Dick Cheney through the CIA, retired Ambassador Joseph C. Wilson visited Niger to look into whether Iraq had tried to buy yellow-cake uranium from Niger in the late 1990s. The State Department had stationed Wilson in Niger in the 1970s, and Wilson visited Niger for the National Security Council in the late 1990s. After eight days, due to multiple international and national entities monitoring the uranium mines, Wilson agreed with the U.S. Ambassador to Niger Barbro Owens-Kirkpatrick that a sale of somewhat refined “yellow-cake” uranium to Iraq was extremely unlikely. Selling uranium to Iraq was logistically impossible.

Yet, a year later, President G.W. Bush continued to make Iraq’s alleged possession of weapons of mass destruction [WMDs] a main reason for the Second Iraq War. In his 2003 State of the Union, President G.W. Bush said so-called “Sixteen Words”: “The British Government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.” When G.W. Bush said “Africa,” he really meant Niger, the country which Ambassador Wilson had checked-out for Vice President Cheney and the CIA a year before. The documents forming the report had been given to an Italian reporter. On March 7, 2003, the International Atomic Energy Agency reported to the United Nations that the documents were forged.

Even so, the United States invaded Iraq on March 20, 2003.

During and after the invasion, various United States and international agencies failed to find WMDs in Iraq.


On July 9th, President G.W. Bush retracted the Sixteen Words.

On July 14th, syndicated columnist Robert D. Novak wrote:

Wilson never worked for the CIA, but his wife, Valerie Plame, is an agency operative on weapons of mass destruction. Two senior administration officials told me that Wilson's wife suggested sending him to Niger to investigate the Italian report. The CIA says its counterproliferation officials selected Wilson and asked his wife to contact him. “I will not answer any question about my wife,” Wilson told me.

This statement exposed Plame, her CIA front firm, and other agents associated with that firm.

Novak’s announcement of Plame’s covert status strongly suggested his sources had broken the Intelligence Identities Protection Act of 1982’s
Due to “the systematic effort by a small group of Americans, including some former intelligence agency employees, to disclose the names of covert intelligence agents,” Congress passed the IIPA as an Amendment to the National Security Act of 1947. The Senate Judiciary Committee’s report also discussed the efforts of Philip Agee, Lewis Wolf, and others to identify and disclose U.S. intelligence officers as part of a systematic effort to destroy the ability of [U.S.] intelligence agencies to operate clandestinely.”

Disclosing the intelligence officers’ identities may have contributed to death and assassination attempts of CIA officers and informants, expulsion of officers from foreign countries, and impaired relationships with foreign sources. The IIPA’s criminal section made it a felony to intentionally disclose a covert agent or informant’s identity. Penalties included imprisonment up to 10 to 15 years, depending on the specific violation, along with a $250,000 fine or twice the amount of loss or gain.

The CIA asked the Department of Justice to investigate the leaking of Plame’s identity. Attorney General John Ashcroft recused himself and delegated the investigation to Deputy Attorney General James B. Comey. Comey appointed Special Counsel Patrick J. Fitzgerald to investigate possible crimes related to leaking Plame’s identity.

New York Times Reporter Judith Miller spent 85 days in jail for refusing to reveal her source, Scooter Libby, in response to a subpoena.

Several G.W. Bush staffers had revealed Plame’s identity to multiple reporters shortly before Novak’s column. Before Ambassador Wilson’s essay, almost no one outside the CIA knew of Plame’s association with the CIA. Deputy Secretary of State Richard Armitage revealed Plame’s CIA affiliation to Novak, and White House Advisor Karl Rove confirmed it. Rove also informed Time Magazine’s Matthew Cooper about Plame’s CIA affiliation, but Time did not publish the information.

Libby testified his “superiors” authorized him to leak part of the National Intelligence Estimate to reporters in the Summer of 2003.

No one was prosecuted for the leak, but based on Independent Counsel Patrick Fitzgerald’s investigation, a jury convicted Vice-President Cheney’s Chief of Staff and Assistant for National Security Affairs I. “Scooter” Libby of four coverup felonies: two Perjury counts; Obstruction of Justice; and False Statements (i.e. lying to investigators). (Coverup crimes are outlined in the Appendix). In federal court, jurors must unanimously agree to convict. The jurors fully agreed Libby was guilty but were surprised others, such as Karl Rove, had not been charged. In sentencing Libby, Judge Thomas

On July 2, 2007, President G.W. Bush commuted Libby’s prison term for no particular reason except that he liked Libby.
D. In threats to Special Prosecutor’s Robert Mueller’s criminal investigation of Russian interference with the 2016 Presidential Election, President Trump fully pardoned Libby and told Mueller in January 2018 that Trump can pardon himself and has expressly threatened to pardon the convicts in Mueller’s investigation.

On July 27, 2016, at a Miami, Florida, press conference, Donald Trump urged Putin and the Russians to hack Clinton’s emails: “I will tell you this: Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing.”

1. So far, resulting from Special Counsel Mueller’s investigation, juries have convicted and/or grand juries have charged: Paul Manafort, Michael Cohen, 13 Russian nationals and firms, Rick Gates, Michael Flynn, George Papadopoulos, Richard Pinedo, Alex van der Zwaan, 12 Russian GRU, i.e. Military Intelligence, officers, and Sam Patten.

It is impractical to list all the defendants and charges springing from Mueller’s investigation here. Grand juries in the District of Columbia, Virginia, and New York have charged many people and businesses as a result of the Special Counsel Mueller’s investigation. The full list of charges and defendants is too large and complex to list here due to the large number of entities and multiple charges against most of the defendants and alleged multiple conspiracies. Almost every defendant who has pled guilty has cooperated with prosecutors. In turn, based on the defendants’ cooperation, grand juries have added charges to other defendants and charged new defendants.

So far, the following persons have been convicted, pled guilty, and/or charged:

Paul J. Manafort, Trump’s unpaid Ex-Campaign Chairman—

convicted by (unanimous) jury in Eastern District of Virginia on August 21, 2018 of 8 crimes, i.e. 5 counts of Filing False Tax Returns, Bank Fraud, Conspiracy to Commit Bank Fraud, and Conspiracy to Launder Money; mistrial declared for 10 counts of other financial crimes in Eastern District of Virginia, unclear whether will be retried on the 10 counts;

indicted in District of Columbia on Conspiracy Against the United States, Conspiracy to Launder Money; Failure to File Reports of Foreign Bank and Financial Accounts; Unregistered Agent of a Foreign Principal; False and Misleading Foreign Agent Registration Act [FARA]
Statements; False Statements, Obstruction of Justice; and Conspiracy to Obstruction Justice, trial set for September 2018;

Michael Cohen, Trump’s ex-lawyer—pled guilty on August 21, 2018, to 8 crimes: 5 counts of Tax Evasion, False Statements, Unlawful Corporate Campaign Contribution; and an Excessive Campaign Contribution;

13 Russian nationals and firms—indicted on February 16, 2018, on Conspiracy to Defraud the United States; Conspiracy to Commit Wire Fraud; Conspiracy to Commit Bank Fraud; Aggravated Identity Theft;

Richard “Rick” Gates, Manafort’s Ex-Partner, Trump’s ex-campaign advisor—pled guilty to Conspiracy to Defraud the United States, False Statements;

Michael Flynn—Trump’s ex-campaign advisor, ex-National Security Advisor—pled guilty on December 1, 2018 to False Statements (about contacts with Russian Ambassador at request of Trump Transition “senior official” about President Obama’s Russia sanctions, delaying vote in United Nations as directed by “a very senior member” of Trump’s transition team, and work for Turkey in FARA filings);

George Papadopoulos—Trump’s ex-campaign adviser—pled guilty to False Statements on October 5, 2018 first defendant known to have pled guilty.

Richard Pinedo—pled guilty on February 16, 2018, to Identity Fraud, cooperated in indictment of 13 Russian nationals and firms.

Konstantin Kliminik—indicted June 8, 2018, on Conspiracy to Obstruct Justice, and Obstruction of Justice (witness tampering);

Alex van der Zwaan, ex-lawyer in London for Gates and Manafort—pled guilty to False Statements, did not cooperate with prosecutors, served prison sentence, disbarred, and self-deported;

12 Russian GRU, i.e. Military Intelligence, Officers: in particular:

“on or about July 27, 2016, the Conspirators attempted after hours to spearphish for the first time email accounts at a domain hosted by a third-party provider and used by Clinton’s personal office. At or around the same time, they also targeted seventy-six email addresses at the domain for the Clinton Campaign.” (charged Friday before Monday, July 13, 2016, meeting one-on-one private meeting
with Putin in Helsinki, Finland, where Trump disavowed U.S. intelligence on Russian hacking); and

Sam Patten, ex-Trump Campaign consultant pled guilty to violating the Foreign Agents Registration Act [henceforth FARA] by laundering $50,000 from a Ukrainian national through a shell partnership of Patten and to donate $50,000 to Trump’s Inauguration writing and placing opinions in U.S. media and channeling over $1,000,000 dollars through a Cypriot bank account.  

2. Special Counsel Mueller and other agencies have investigated Trump, Trump’s family members, and his employees: Jared Kushner, Donald Trump Jr., Roger Stone, and Rudy Giuliani.

Special Counsel Mueller and other government agencies have investigated, but not charged, the following Trump associates:

Jared Kushner, Jr., Trump’s son-in-law and ex-campaign staff (investigated due to Flynn’s guilty plea, attempts to form a secret channel to Russia during the transition, and the Trump Tower meeting with Russians for information on Clinton);  

Donald J. Trump, Jr., Trump’s son (investigated due to the Trump Tower meeting and statements about the meeting);  

Roger Stone, Trump’s ex-campaign adviser and Manafort’s former partner (investigated over contacts with Gucifer 2.0, a Russian-linked account, and Wikileaks regarding emails stolen from Clinton’s campaign).

Separately, the FBI was investigating Trump’s lawyer Rudy Guiliani about the leak of FBI Director Comey’s announcement of an investigation to Hillary Clinton’s emails in October 2016. Comey revealed the investigation of the leak in congressional testimony on May 3, 2017. Representative Devin Nunes (R-CA) and Rudolph Giuliani were part of Trump’s Transition Team. Nunes heads the House Intelligence Committee, and President Trump employs Guiliani as a lawyer.

3. Trump urged Russia to hack Clinton’s emails, fired FBI Director Comey to stop the Russian investigation, gave highly classified information to Russian Ambassadors, has tried to impede Special Counsel Mueller’s investigation, and has expressly threatened to pardon himself and others under investigation.

On July 27, 2016, at a Trump’s golf club in Miami, Florida, during a press conference, Donald Trump urged Putin and the Russians to hack Clinton’s
emails: “I will tell you this: Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing.”

Within three weeks after his January 20, 2017, Inauguration, President Trump had well acquainted himself with the CIA-Leak-Case/Plame-Affair. On February 14, 2014, President Trump discussed jailing reporters for leaks. In particular, “[h]e mentioned Judy Miller by name.” As part of the CIA-Leak-Case/Plame-Affair, New York Times Reporter Judith Miller went to jail for contempt of court rather than reveal her source, I. Lewis “Scooter” Libby.

On May 9, 2017, Trump fired Comey expressly due to his investigation into Russian interference in the 2016 Presidential Election.

On May 15, 2017, Trump revealed highly classified information to Russian ambassadors in the White House.

In May 2017, the Department of Justice appointed former (Republican) FBI Director Robert Mueller as Special Counsel to investigate possible crimes related arising from Russian interference with the 2016 Presidential Election and other specific crimes.

Trump argues that he can pardon himself, even to escape a criminal subpoena. Of course, why would Trump even argue he could pardon himself unless he thinks he broke the law or is breaking the law while President?

In April 2018, in a move widely viewed as an implied threat to Special Counsel Mueller’s investigation, President Donald Trump fully pardoned Libby.

Then, in May 2018, like the CIA-Leak-Case/Plame-Affair, someone leaked to multiple press outlets the name and information about a Republican FBI informant who had given information about Trump’s campaign. Unlike the CIA-Leak-Case, no one in the President Trump’s Justice Department seems to be investigating the leak. The leak may have hindered U.S. intelligence gathering.

That leak convinced the FBI to cave-in to Representative Nunes’ and Trump’s pressure to release information to Nunes and Trump about the informant. Adding fuel to concerns over Trump’s pardons, Trump pardoned Jack Johnson moments before meeting with the FBI to view documents related to an informant.

On June 8, 2018, the D.C. Grand Jury entered a superseding indictment for witness tampering against Paul Manafort, Trump’s Ex-Campaign Manager. On Friday, June 15, 2018, Judge Amy Berman Jackson revoked Manafort’s bail due to his indictments on witness tampering and suborning perjury, i.e. trying to get a witness to commit perjury. Previously, Manafort voi-
lated his bail and the D.C. District Court’s gag order by ghost-writing an opinion piece supporting his defense.

In response to the superseding indictment, President Trump’s lawyer, Rudy Giuliani said: “When the whole thing is over, things might get cleaned up with some presidential pardons.”

4. The Amendment would have blocked the pardons of past-president Nixon for Watergate, the Iran–Contra federal officers, Libby’s sentence commutation and full pardon, and will block President Trump’s pardons of Trump himself Trump’s associates investigated by Special Counsel Mueller.

A. The Amendment would have blocked President Ford’s pardoning of past-president Nixon, his ex-boss who hand-picked Ford to be President during the Watergate Scandal.

1. The Amendment would have blocked President Ford’s pardon of past-president Nixon for Nixon’s conspiratorial acts and any other crimes while president.

The Amendment’s Section 1, clause (b) blocks pardons of “past presidents for acts and omissions while President.” While Nixon was President, the District of Columbia Grand Jury unanimously voted 19–0 to name President Nixon as an unindicted co-conspirator in Conspiracy to Defraud the United States and/or Conspiracy to Obstruct Justice.113 When President Nixon resigned, he became a past president. Thus, the Amendment would have blocked President Ford’s pardon of Nixon’s conspiratorial acts while president.

2. The Amendment would have blocked President Ford’s pardon because the D.C. Grand Jury had not yet charged Nixon though it had named Nixon an un-indicted co-conspirator.

The Amendment’s Section 1, clause (g), blocks pardons for “charges which have not been brought.” President Ford pardoned Nixon before the Grand Jury could charge Nixon. When President Ford pardoned Nixon, the D.C. Grand Jury had not yet turned its naming Nixon as a co-conspirator into a formal charge/indictment. Thus, the Amendment would have blocked President Ford’s blanket pardon of Nixon.
B. The Amendment’s Sections 1(c), (h) and possibly 1(f) would have blocked President George H.W. Bush [Bush Sr.] from pardoning the Iran–Contra federal officers.

Under the Amendment’s Section 1, “[t]he President’s Pardon Power does not extend to offenses committed by: . . . (c) other current and past federal officers and federal employees for their acts and omissions while federal officers and employees.” Bush Sr. pardon six federal officers.

Also, Section 1(h) excludes pardoning “before conviction.” Bush Sr. pardoned Duane Clarridge during his trial for seven crimes of Perjury and False Statements. Bush Sr. also pardoned Caspar Weinberger twelve days before his trial on two Perjury counts and one count of Obstruction of Justice. Thus, Section 1(h) would have blocked Bush Sr.’s pardons of Clarridge and Weinberger.

Further, the Amendment’s Section 1 blocks pardons of “(f) the President’s co-conspirators regardless whether the conspiracy started before the President assumed office or during the President’s term of office.” To the extent that Bush Sr. conspired with the six officers in Iran–Contra or its coverup while Vice President under Reagan or as President, the Amendment would have blocked Bush Sr.’s pardoning the six federal officers.

C. The Amendment’s Section 1(b) would have blocked President G.W. Bush from commuting ex-Vice Presidential Chief of Staff and National Security Advisor Libby’s sentences, and President Trump’s full pardon of Libby, for obstruction of justice perjury and false statements thwarting the CIA-Leak-Case/Plame-Affair.

The Amendment’s Section 1, clause (c), would block pardons of “other current and past federal officers and federal employees for their acts and omissions while federal officers and employees.” As Vice President Cheney’s Chief of Staff and National Security Advisor, Libby was a federal officer and/or federal employee. Libby committed the acts constituting obstruction of justice, perjury, and made false statements to the FBI while Vice President’s Cheney’s Chief of Staff and National Security Advisor. Thus, Libby committed the acts constituting Obstruction of Justice, Perjury, and False Statements while a federal officer/employee. Thus, the Amendment would have blocked President G.W. Bush’s commutation of Libby’s sentences and President Trump’s full pardon of Libby.
D. The Amendment will stop President Trump from pardoning: himself; federal officers/employees Libby and Flynn; Trump’s employees Manafort, Gates, Papadopoulos, Cohen, and Guliani; and anyone who may have conspired with Trump before or during his presidency, such as Cohen, Weisselberg, Flynn, Manafort, Gates, Kushner, Donald Trump Jr., Putin, etc.

The U.S. Constitutional Amendment to Limit Presidential Pardon Power will stop Trump from pardoning himself, the President.

The Amendment will also stop Trump from pardoning himself and his vast array of associates under investigation including: current and former employees, current and former federal officers, family members, and possible co-conspirators.

Everyone is presumed innocent of any crime until proven guilty beyond a reasonable doubt. The following analyses apply the proposed Amendment to existing crimes and charges and realistic hypothetical crimes and charges involving President Trump and his associates in the context of current debate about a major public policy controversy.

1. The Amendment’s Sections 1(a), 1(g), 1(h), 1(i), 2, 3, and 4 will stop Trump from pardoning himself to evade a criminal subpoena or any crimes.

The Amendment’s Section 1(a) excludes “the President” from the Pardon Power. Thus, President Trump cannot pardon himself to evade a criminal subpoena. Also, Section 2 excludes from the Pardon Power “a charge which has not yet been brought; a fine which has not yet been levied; and a conviction which has not yet been obtained.” Implicit in Trump’s claim that he can ignore a criminal subpoena is that he could at once pardon himself out of any penalty, such as a fine or imprisonment, for refusing to comply with a subpoena unlike everyone else, e.g. New York Times Reporter Judith Miller for refusing to reveal Scooter Libby as her source. But, Section 2 would deflate that defense because Trump cannot “prospectively,” i.e. preemptively, pardon himself out of hypothetical criminal charges, fines, and convictions.

Further, Section 3 requires: “The President must comply with subpoenas in criminal cases.” Thus, Trump would be required to testify, e.g. before a grand jury, in criminal cases as well as provide subpoenaed documents and tangible items.

Finally, Section 4 expressly provides: “Criminal charges may be brought by a grand jury.” Thus, the President is expressly subject to charges and penalties for evading a criminal subpoena.
2. The Amendment’s Section 1(b) will stop Vice President Pence from pardoning President Trump if President Trump resigns or is impeached and is charged with a crime.

Section 1(b) excludes “past presidents” from the Pardon Power. Thus, if President Trump resigns or is impeached, so Vice President Pence becomes President, President Pence will not be able to pardon past-president Trump.

3. The Amendment’s Section 1(c) will stop President Trump from pardoning federal officers/employees Flynn and Kushner for any acts and omissions while officers/employees.

The Amendment’s Section 1(c) excludes “other current and past federal officers and employees for their acts and omissions while federal officers and employees.” Michael Flynn has pled guilty to false statements while President Trump’s National Security Advisor. Thus, the Amendment will stop Trump from pardoning Flynn.

Though not charged, Jared Kushner works in the White House under President Trump and has been investigated. Though the federal government does not pay Kushner, Section 1’s exclusions of officers “apply regardless whether the federal officers and federal employees are paid or unpaid.” Thus, the Amendment will stop Trump from pardoning Kushner for any crimes he might commit while a federal officer/employee at the White House.

4. The Amendment’s Section 1(d) will stop President Trump from pardoning his employees Manafort, Cohen, Gates, Papadopoulos, and Rudy Giuliani.

The Amendment’s Section 1(d) excludes “the President’s current and past employees regardless whether the President paid the employees” from the Pardon Power.

Paul Manafort worked for Trump as his unpaid 2016 Campaign Manager. Michael Cohen worked for Trump as his lawyer. Gates worked with Manafort for Trump. Papadopoulos was a Trump Campaign policy adviser. Thus, Trump could not pardon Manafort, Cohen, Gates, or Papadopoulos.

Rudy Guiliani works for the Trump as his lawyer. Before Trump fired James Comey as FBI Director on May 9, 2017, the FBI was investigating Guiliani about the leak of FBI Director Comey’s announcement of an investigation to Hilary Clinton’s emails in October 2016. Comey revealed the investigation of the leak to Guiliani in congressional testimony on May 3, 2017. On May 9th, Trump fired Comey expressly because of his investigation into Russian interference in the 2016 Presidential Election. As Trump’s employee, the Amendment would stop Trump from pardoning Guiliani.
5. The Amendment’s Section 1(e) will stop President Trump from pardoning family members Kushner and Donald Jr. if a grand jury were to charge them.

Section 1(e) excludes “the President’s family, including: . . . natural and adopted children and their spouses.” Kushner is a spouse of Trump’s daughter, and Donald Jr. is Trump’s child. (Prosecutors have investigated Kushner and Trump, Jr., but grand juries have not charged them.) Thus, Trump could not pardon either Kushner or Donald, Jr.

6. The Amendment’s Section 1(f) will stop President Trump from pardoning apparent co-conspirator Cohen and possible co-conspirators such as the Trump Organization and its employees, Donald Jr., or Manafort, or Putin.

Realistically, based on news reports, Trump could have conspired with many of the current defendants or those under investigation to commit many illegal acts. For instance, Trump has worked with Trump Jr. in explaining Trump Jr.’s involvement with Trump Tower meeting with Russians.

But, Cohen’s pled guilty to arranging illegal campaign payments to silence women who had affairs with Trump to influence the 2016 Presidential Election. The plea and prosecutor’s criminal information for the plea state Cohen arranged financing from the Trump Organization. Thus, Trump appears to have conspired with Cohen and whoever in the Trump Organization arranged financing, perhaps Weisselberg.

Recall Cato’s warning about Presidents pardoning themselves out of a conspiracy to commit treason:
the unrestrained power of granting pardons for treason, which may be used to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt.”

Also, as explained in the Appendix, traditional conspiracy is the agreement to commit an unlawful act or a lawful act by unlawful means. Cato described a conspiracy to commit treason.

Thus, for argument’s sake, i.e. arguendo, suppose Trump agreed, impliedly or expressly, to commit treason with Manafort, and either Manafort or Trump took some “overt act” to commit Treason. Manafort’s overt act could be running Trump’s campaign, and Trump’s overt act could be such as telling highly classified information to the Russian ambassadors at the White House in May 2017 or to Putin directly at Helsinki in July 2018. The overt acts could be far smaller and simpler. For instance, Trump’s overt act could be simply calling the Russian ambassadors or Putin to arrange the meetings. Then, Manafort and Trump would have formed a Conspiracy to Commit
Treason. (Technically, current statutes might label it “Seditious Conspiracy.”) Let us call it Manafort–Trump.

Manafort’s first trial shows he earned almost no income around 2016, and Trump did not pay Manafort to run his campaign. Thus, it is interesting to assume arguendo that, given Manafort’s work on pro-Putin Ukrainian campaigns, Putin paid Manafort to run Trump’s campaign. Then, there might be a Putin–Manafort–Trump chain conspiracy or a Putin–Manafort and Trump–Manafort hub-and-spoke conspiracy with in essence two conspiracies involving Manafort. Trump’s acts, such as telling secrets to Putin or Putin’s legal agents, the Russian ambassadors, could make a circular conspiracy loop.

In any case, each member of the conspiracy would be liable for all the crimes committed to advance (“in furtherance of”) the conspiracy, and the Amendment would block his pardons of Manafort and Putin.

7. The Amendment’s Section 1(g) will stop Trump from pardoning the Trump Organization and Donald J. Trump Foundation and Trump’s co-owners/partners of any business.

Section 1(g) excludes “any business owned or controlled by the President.” President Trump seems to control the Trump Organization. Likewise, Trump seems to control the Donald J. Trump Foundation.122

Section 1(h) excludes from pardoning “the President’s business partners.” The default business entity is a partnership. The President could not pardon anyone with whom he shares a business ownership.

8. The Amendment’s Section 1(i) will stop Trump from pardoning a principal criminal for which he is an accomplice by helping or encouraging the principal to commit the crime, such as Putin and the 12 Russian Military Intelligence Agents’ theft of Clinton’s emails.

Under federal accomplice liability, 18 U.S.C. § 2(a): “Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”123 On July 27, 2016, in a televised press-conference at Miami, Florida, Donald Trump urged Russian to hack-to-find 30,000 Clinton emails: “I will tell you this: Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing.”124 Also, on the same day, July 27, 2016, the 12 indicted Russian Military Intelligence, i.e. GRU, officers, as part of their charged crimes:

“on or about July 27, 2016, the Conspirators attempted after hours to spearphish for the first time email accounts at a domain hosted by a third-party provider and used by Clinton’s personal office. At or around the same time, they also targeted sev-
Trump’s words surely seem to have abetted, counseled, commanded, or induced the 12 GRU officers. Thus, Trump surely seems to be complicit with, i.e. an accomplice to, the 12 GRU officers’ crimes. Even so, the Amendment will stop Trump from pardoning himself and leave him complicit with the 12 GRU officers, like any other federal criminal defendant.

9. **The Amendment’s Section 4 will permit a grand jury to criminal charge President Trump and a jury to try Trump while Trump remains President.**

The Justice Department has ruled against indicting a current President.\textsuperscript{125} The Amendment’s Section 4 would override that Justice Department policy to permit a grand jury to charge a current President and permit a President to be tried by a jury. Simply put, Trump would not be able to pardon himself out of any crimes.

In entering his guilty plea, Cohen swore before a trial judge that he committed election crimes at a candidate’s request. This statement clearly implies Trump used Cohen to commit crimes and thus conspired with Cohen to commit those crimes.

Regardless, Sections 1(a) and 4 would stop Trump from pardoning himself.

Appendices

A1. **Conspiracy is both the felony of impliedly or expressly agreeing, i.e. colluding, to perform acts and a way for conspirators to be liable for other co-conspirators’ acts furthering the conspiracy.**

Conspiracy has always been a felony.\textsuperscript{126} By traditional common law, conspiracy was an agreement to commit an unlawful act, i.e. a crime, or commit a lawful act by unlawful means.\textsuperscript{127} With some details, modern federal\textsuperscript{128} and state statutes generally follow this conspiracy formulation. In essence, the law views agreements to commit crimes as innately dangerous and a serious crime. As rightly stressed by Officer Kate Moore and Inspector “Dirty” Harry Callahan in the film *The Enforcer*, an agreement to commit even a misdemeanor, such as solicitation, is itself the felony of conspiracy under most states’ laws, but not under the general federal conspiracy statute\textsuperscript{129}. Along with the agreement, the modern general federal conspiracy statutes require “one or more of [the conspirators] do any act to effect the object of the conspiracy,”\textsuperscript{130} known in field as an “overt act”\textsuperscript{131}.
Conspiracy generally comes in two basic types: chain; and hub-and-spoke. More complex conspiracies combine chain and hub-and-spoke conspiracies.

A chain conspiracy has each conspirator interacting with at least one other co-conspirator up or down the chain. For instance, like a legal product distribution chain, a chain conspiracy to distribute illegal drugs could have a distributor/conspirator. The distributor/conspirator could have a drug-maker/co-conspirator up the distribution/conspiracy chain and another seller/co-conspirator down the distribution/conspiracy chain. Though each co-conspirator is part of the conspiracy, each link/co-conspirator may not know all the other links/co-conspirators in the chain.

A hub-and-spoke conspiracy has a central hub conspirator with multiple spoke co-conspirators interacting with the central conspirator. For instance, an illegal drug-maker at the hub can conspire to distribute illegal drugs by selling the drugs to multiple spoke co-conspirator distributors. The hub has a conspiracy with each spoke, but the spokes do not necessarily conspire with the other spokes.

A2. Accomplice liability, i.e. complicity, makes a person liable, i.e. complicit, for a principal’s crimes whom the accessory aided or encouraged the principal.

An accomplice, a.k.a. “accessory before the fact,” helps or encourages the principal to commit the crime; the principal who commits the crime by performing the all criminal acts, a.k.a. actus reus, while having the required mental state, a.k.a. mens rea, at the same time, a.k.a. concurrence. An accessory-after-the-fact helps the principal evade prosecution after the principal commits the crime.

Traditionally, criminal law punishes an accomplice as harshly as a principal. Following this tradition, 18 U.S.C. § 2(a) spell-out the general criminal-law accomplice liability precept: “Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.” The principal commits an offense, but the accessory who aids, encourages, etc., is liable to the same extent as the principal.

Further, § 2(b) states: “Whoever willfully causes an act to be done which directly performed by him or another would be an offense against the United States, is punishable as a principal.” Thus, a person can become complicit with the principal by “willfully caus[ing]” a criminal act to be done by the principal.
A3. Cover-up crimes committed by trying to hide other crimes include obstruction of justice, false statements, and perjury.

Many federal and state criminal statutes ban acts to coverup other crimes. Obstruction of justice generally includes any acts meant to impede a criminal or civil investigation. More specifically, False Statements are typically lies told to law enforcement, such as FBI agents while Perjury is the lying under oath. Subornation of Perjury is encouraging someone to commit perjury like complicity for perjury.


Section 2381 defines “Treason.”:

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States

Section 2384, “Seditious conspiracy” in essence is conspiracy to commit treason:

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

Section 2385, “Advocating overthrow of Government,” in essence defines accomplice liability for treason:

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of over-
throwing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms “organizes” and “organize”, with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

“Misprision” generally means a government officer’s failure to act on knowledge of a crime or hiding a crime. Section 2382 defines “Misprision of treason.”:

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.
A5. President’s Oath of Office

The U.S. Constitution’s Article II, Section 1, Clause 8 specifies the President’s Oath of Office:

Before he enters the Execution of his Office, he shall take the following Oath or Affirmation:—“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

This Petition was drafted by

Mark R. Carter, J.D., Ph.D., a United States citizen, in Detroit, Michigan, on September 1, 2018.
References


4 Chris Sommerfeld, Rudy Giuliani says Mueller probe ‘might get cleaned up’ with ‘presidential pardons’ in light of Paul Manafort going to jail, N.Y. DAILY NEWS (Jun. 15, 2018), http://www.nydailynews.com/news/politics/ny-

5 THE ANTI-FEDERALIST NO. 67 (N.Y.J.) (Cato)
11 Id.
12 Id.
16 Id.
17 Hersh, Kissinger, supra note 13.


25 Id.
26 Id.
27 Id.
28 Id.
29 Id.
30 Id.


33 Id. at 713.


35 Nixon, 418 U.S. at 687 & nn. 3, 4.


43 Werth, supra note 40; Hon Herbers, Ford Gives Pardon to Nixon, Who Regrets ‘My Mistakes’, N.Y. TIMES (Sep. 8, 1974),


47 28 U.S.C. § 591(b) (“PERSONS TO WHOM SUBSECTION (A) APPLIES”).

48 Id. § 591 (“Applicability of provisions of this chapter”).


51 Id. at xxiii (“Summary of Prosecutions”).


*Id.* para. 20.


*Id.*

*Id.*


*Eisner, supra* note 60.

*ElBaradei, supra* note 63.

*CIA’s final report: No WMD found in Iraq*, ASSOCIATED PRESS (Apr. 25, 2005 at 9:24 pm ET) (quoting ADDENDUMS TO THE COMPREHENSIVE REPORT OF THE SPECIAL ADVISOR TO THE DCI ON IRAQ’S WMD (Mar. 2005), https://www.cia.gov/library/reports/general-reports-


Legislative Attorney, *Intelligence Identities Protection Act*, CONGRESSIONAL RESEARCH SERVICE 2 (Apr. 10, 2013) (“Background”) available at

In re Grand Jury Subpoena, Judith Miller, 438 F.3d 1141, 1143–45 (D.C. Cir. 2005)

David Corn, Plamegate Finale: We Were Right; They Were Wrong (Nov. 23, 2007), https://www.thenation.com/article/plamegate-finale-we-were-right-they-were-wrong/ (last accessed Aug. 26, 2018).

PlAME, FAIR GAME supra note 70; Plame, Pardoning Scooter Libby, supra note 70.

Corn, Plamegate, supra note 79.

Id.

84 Fed. R. Crim. P. 31(a), (d).


89 Fed. R. Crim. P. 31(a), (d).


99 Vankin, *James Comey.*


102 Id. l. 9.


Schmidt et al., supra note 3.


IC’S FINAL IRAN/CONTRA REPORT, supra note 46, at xxiii.

Id.

E.g., In re Winship, 279 U.S. 373, 377 (1972).

In re Grand Jury Subpoena, Judith Miller, 438 F.3d 1141 (D.C. Cir. 2005).

James Comey. Rachel Maddow, MSNBC, supra note 98; see also Vankin, James Comey, supra note 98.

Vankin, James Comey; supra note 98.

120 Id.


122 Id.


124 E.g., Graham, The Coincidence, supra note 87; Vitali, Trump Urges Russia, supra note 87 (12:50 pm ET report); Graham, Trump’s Plea to Hack, supra note 87.


126 E.g., see generally RICHARD G. SINGER & JOHN Q. LA FOND, CRIMINAL LAW, EXAMPLES & EXPLANATIONS SERIES Ch. 13, 321–67 (4th. ed. 2007); J. KELLY STRADER, UNDERSTANDING WHITE COLLAR CRIME, Ch. 3 Conspiracy, §§ 3.01–12, 33–62 (3rd ed. 2011) (federal conspiracy statutes).

127 SINGER & LA FOND, supra note 126, at 322.

128 E.g. 18 U.S.C. Ch. 19 (“CONSPIRACY”) including §§ 371–73.

129 Id. § 371 para. 2.


131 SINGER & LA FOND, supra note 126, at 322

132 E.g., SINGER & LA FOND, supra note 126, at 342–45 (“The Scope of the Agreement or How Many Conspiracies?”) (“Single or Multiple Agreements?”).

133 Id. at 345 (citing United States v. Bruno, 10 F.2d 921 (2d Cir.), rev’d on other grounds, 308 U.S. 287 (1939)).

134 Id. at 344–45 (quoting Blumenthal v. United States, 332 U.S. 539 (1947)).

135 Id. at 342–44 (citing Braverman v. United States, 317 U.S. 49 (1942)).

136 Id. at Ch. 3 (“Actus Reus”), 37–51.

137 Id. at Ch. 4 (“The Doctrines of Mens Rea”), 53–88.

138 Id. at 67–68 (“Contemporaneity, Prior Fault, and Time Frames”).


140 Id.

141 E.g., see generally STRADER, supra note note 126, Chs. 10 (“False Statements”), 11 (“Perjury and False Declarations”), 12 (“Obstruction of Justice”) (federal statutes).