


ASTRONAUTS FOR AMERICA

PRESIDENTIAL IMMUNITY WITHOUT A LIMITING PRINCIPLE

Founding Value: Equal Justice Under the Law. Constitutional Principles: Rule of Law. Institutional Norms: Executive Constraint; Truth, Science and Evidence.

BOTTOM LINE

On July 1, 2024 the Supreme Court held 6-3 in *Trump v. United States* that a former president has absolute immunity for official acts within his core constitutional authority and presumptive immunity for other official acts, and that official acts may not be used as evidence even when prosecuting unofficial ones. The Court set no limiting principle for what counts as official, and the ruling binds every lower court. Congress should define “official act” by statute, and make emergency powers expire unless Congress affirmatively votes to continue them.

NARRATIVE

In August 2023 a federal grand jury indicted former President Trump on four counts arising from his conduct after the 2020 election. He moved to dismiss, claiming absolute immunity; the district court and the D.C. Circuit unanimously rejected the claim. On July 1, 2024, the Supreme Court [set that ruling aside, 6-3](#). Chief Justice Roberts, writing for the majority, held that a president has [absolute immunity](#) for actions within his core constitutional authority and presumptive immunity for the outer perimeter of official acts. On remand, official acts were [barred from use as evidence](#) even in prosecuting unofficial ones. Justice Sotomayor, joined by Kagan and Jackson, dissented, warning the ruling [places a president above the law](#) for the first time in the nation’s history. The majority’s central justification rested on a hypothetical: an “[Executive Branch that cannibalizes itself](#)” through future political prosecutions, a scenario for which the Court cited no empirical record, and it did not say that President Trump’s prosecution was political, nor that there has ever been a political prosecution of a president. Chief Justice Roberts dismissed the dissent’s warnings as “[fear mongering on the basis of extreme hypotheticals](#),” though his own opinion rested on a hypothetical, equally unsupported by evidence.

That hypothetical was weighed against a real record: in over two centuries no former president has been indicted, not because none faced jeopardy, but because every close call ended short of trial: in resignation, in a negotiated settlement, or in charges dropped once the defendant held the presidency himself. In 1974 Richard Nixon resigned and accepted a pardon from President Ford to avoid indictment for Watergate crimes. In 2001 Bill Clinton avoided indictment on his last day in office by admitting misleading testimony under oath, paying a \$25,000 fine and surrendering his law license. After Donald Trump won in 2024, the two federal indictments against him were dropped under the Department of Justice’s long-standing policy against prosecuting a sitting president. A 2024 Miller Center analysis by [Ken Hughes](#) concluded that Nixon probably would have survived Watergate without resigning had the ruling existed.

How far the ruling reaches depends on how much a president can do officially, and the widest door to official action is a declared emergency. The [National Emergencies Act of 1976](#) sets no standard for what an emergency is. A declaration unlocks about [150 statutory powers](#), 137 of them on the president’s signature alone, and it renews each year on that same signature. Congress can end one only by a joint resolution the president may veto, so it takes two thirds of both houses, and never has. Fifty-two emergencies sit open today, one renewed every year since 1979, and courts have been reluctant to look behind a president’s finding that an emergency exists. When the Supreme Court [struck down the emergency tariffs](#) in February 2026, it left open whether the declaration itself is reviewable. This administration has declared emergencies for the border, for energy and twice for tariffs. The same reasoning runs through actions taken under other laws entirely: National Guard troops sent into American cities, and lethal strikes on suspected drug boats in the Caribbean and eastern Pacific. Neither rests on the Emergencies Act, but each begins with an executive finding of crisis, and the evidence has not always kept up. The Justice Department itself announced that violent crime in Washington hit a [30-year low in 2024](#), months before troops arrived. What restrains a president here is custom, not law, and the President has [written](#), “He who saves his Country does not violate any Law.” Acts taken under a declared emergency, real or contrived, are the most plainly official acts a president performs, and official acts are precisely what the immunity ruling put beyond prosecution.

FINDINGS
PROXIMATE CAUSE(S)

- The Supreme Court’s 6-3 ruling in *Trump v. United States* granted former presidents absolute immunity

CONTRIBUTING CAUSE(S)

- Rule of Law waived: the ruling removed the only legal check on conduct, criminal liability.
- Truth and Evidence suppressed: the majority’s reasoning rested on

ROOT CAUSE(S)

- Where written law runs out and customary restraint must fill the gap, we have what [Levitsky and Ziblatt](#) call fertile ground for strongman politics.

for official acts within their core constitutional authority. - The Court also granted at least presumptive immunity for the outer perimeter of official conduct. - No settled limiting principle exists for what counts as “official.” - In effect, the Court chose to exempt future presidents doing official business from the rule of law in order to avoid a possible, if unprecedented, future political prosecution.	a hypothetical fear of future “political” prosecutions rather than evidence that such prosecutions had ever occurred or were likely in the future. - Equal Justice impacted: the majority created a categorical immunity doctrine with no limiting principle or Constitutional basis. - Executive Constraint weakened: fear of prosecution after leaving office has long been one of the few checks that discourages a president from abusing power while still in it; removing that fear removes the incentive for self-restraint, most consequentially over emergency powers, where the declaration is itself an official act.	- This ruling isn’t an outlier: the same justices have steadily expanded presidential power under unitary executive theory, from <i>Seila Law v. CFPB</i> (2020) to <i>Trump v. Slaughter</i> (2026), which let a president fire the heads of independent agencies at will. - Roughly three in ten Americans still cannot name all three branches of government, a gap civics researchers link to a weaker grasp of why checks and balances matter, leaving little public pressure to push back. Pew found in 2023 that more than one in four Americans called rule by a strong leader, unchecked by Congress or the courts, a good system, and that 38 percent of adults under 30 favored some nondemocratic alternative. - Courts too often fixate on a vivid worst case while ignoring how unlikely it is; legal scholar Cass Sunstein calls this “probability neglect.”
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Norm Erosion: *Executive Constraint*: the absolute immunity standard removes the deterrent effect of criminal law as a check on a president who might be tempted to cast aside executive constraint by declaring a national emergency to skirt the Constitution. *Truth, Science and Evidence*: when courts construct broad new doctrine without textual or historical grounding, the evidence-based, precedent-bound character of judicial reasoning itself comes under strain.

RECOMMENDATIONS

LEGISLATORS AND JURISTS	GOVERNMENT EXECUTIVES	CITIZENS
- Hold hearings on a statutory definition of “official act” that narrows immunity to legitimate exercises of constitutional authority, reducing the need for courts to decide what counts as official conduct. - Emergency authority needs an expiration date. A declared emergency, and the powers it unlocks, should lapse after a short fixed period unless Congress votes to continue it, and every declaration should name the authorities invoked. - Judges should encourage law schools to train future lawyers in proper use of statistical and probabilistic methods.	- Executive branch attorneys, including the Office of Legal Counsel, should publicly document the legal basis whenever they advise that a contested action falls within “official” conduct, rather than relying on the immunity ruling as a shield for actions never tested in court. - Career officials retain their oath to the Constitution, not to any individual officeholder, and should decline to participate in actions they believe exceed lawful authority. This immunity does not extend to staff. - All government leaders must speak the truth to their staffs and to the American people, and demand that their subordinates speak truth to power.	- Read Justice Sotomayor’s dissent in <i>Trump v. United States</i>. - Ask your representatives whether they support legislation to narrow presidential immunity. - When a ruling or a politician’s argument leans on a scary hypothetical, ask what the actual evidence shows. Hypothetical worst-case fears make poor substitutes for facts. - Visit AstronautsForAmerica.org for the Astronauts For America Candidate Integrity Pledge. - Challenge your school boards to increase emphasis on civics at all levels. - Use social media, and challenge local news outlets, to publicize inspiring examples of good government. - Vote!

Key Sources: *Trump v. United States*, 603 U.S. 593 (2024); *Sotomayor and Jackson dissents*; *Just Security on the prosecutions* (July 2024); Cass Sunstein, *Probability Neglect* (2002); Levitsky and Ziblatt, *How Democracies Die* (2018); Ken Hughes on *Nixon and immunity*, Miller Center (Sept. 2024); Cornell Legal Information Institute on *unitary executive theory*; *Trump v. Slaughter* (U.S. 2026); Annenberg Public Policy Center, *2025 Civics Survey*; Pew Research Center on *government systems* (Feb. 2024); *Lawfare on the scope of the ruling* (July 2024); *National Emergencies Act*, 50 U.S.C. §§ 1601–1651; *INS v. Chadha*, 462 U.S. 919 (1983); *Learning Resources v. Trump* (U.S. 2026); Congressional Research Service on *the definition of a national emergency*; Brennan Center, *guide to emergency powers*

Appeal to Our Crewmates: This “Failure Is Not an Option” briefing is one of a series by Astronauts For America, distilling our “America, We Have a Problem” series briefings into cause factors and actionable recommendations. We are not constitutional scholars; we defer to experts and use primary sources: court decisions, congressional records, peer-reviewed scholarship and news reporting rather than commentary or opinion. Please use the “Contact Us” feature on our website to tell us what we can do to help our democracy keep faith with our American ideals.