



Written by [Steve Byas](#) on June 5, 2018

Could President Trump Pardon Himself?

Is it constitutional for President Donald Trump, or any other president, to pardon himself? At this point, it is an abstract question because the Mueller Russia/collusion investigation has not presented any evidence of illegality by Trump. Of course, if many on the Left have their way, we will find out, first if Trump will attempt to pardon himself, and second, if such a move is within his constitutional authority as president of the United States.



In an interview with *ABC News*, Rudy Giuliani, a former mayor of New York City (and more importantly in this case, a former federal prosecutor) and a member of the Trump legal team, said the president “probably does” have the power to issue himself a pardon. Giuliani was quick to add that Trump “has no intention” of doing so.

Whether a president has constitutional authority to give himself a pardon has been largely an academic issue; however, Trump’s recent pardon of Dinesh D’Souza, an anti-Democrat filmmaker who was convicted of making an illegal campaign contribution, has renewed interest in the debate.

Special Counsel Robert Mueller has secured more than a dozen indictments in the probe of alleged Russian influence in the election. They include indictments against some Russians, but also Trump associates such as Paul Manafort (who has been credited with stopping the surge of Texas Senator Ted Cruz, in their battle for delegates to the Republican National Convention), Michael Flynn (who served briefly as Trump’s national security advisor), and some others.

Not one of the indictments, however, provides evidence that Trump or his campaign aided any Russian meddling in the campaign. Flynn, for example, copped a plea after having been charged with lying to the FBI, not to any collusion with Russian agents during the campaign. And some of the indictments seem laughable: One Russian company Mueller indicted [apparently didn’t even exist at the time](#) that Mueller said wrongdoing was done.

Some have speculated that Trump’s pardon of D’Souza, a strong critic of both President Barack Obama and Trump’s presidential campaign opponent, Hillary Clinton, was a signal to Mueller, Manafort, Flynn, and others that he is prepared to use the presidential pardon power to thwart Mueller’s investigation. In other words, Manafort and Flynn could “cooperate” with Mueller to implicate Trump, in exchange for the special counsel dropping the charges, but if they know Trump would simply then issue a pardon, they would clam up instead.

But the question remains. May a president pardon himself?

We know that President Bill Clinton pardoned his brother, and that certainly raised eyebrows, but could President Clinton have pardoned himself? If Trump were actually indicted for something (which seems increasingly unlikely, considering that there appears to be no evidence that he did anything illegal), would he just give himself a pardon? Could he, under the Constitution?

In 1974, the Justice Department crafted a memorandum that argued that a president does *not* possess



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such a power. (This was issued just before the resignation of President Richard Nixon.) Mary Lawton, who was an acting assistant attorney general for the Office of Legal Counsel at the time, wrote, “Under the fundamental rule that no one may be a judge in his own case, the President cannot pardon himself.”

But Mark Osler, a former federal prosecutor who is now with the University of St. Louis, disagreed, stating, “He can issue himself a pardon warrant. There is nothing to stop him from doing so.”

Indeed, if one reads the Constitution itself, the presidential power to issue pardons in federal cases appears complete. Article II, Section 2 says of the president, “[He] shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.”

The last five words, however, provide the real check on a president who deserves to be removed from office. The president cannot block Congress from impeaching and removing from office any federal officeholder, including himself.

As Osler added, “The question [after a president pardoned himself] is what happens next. It could be that it could not be challenged until a prosecutor presented a charge against him, and he relied on the pardon as a defense.” If a president were to be indicted, and he then issued himself a pardon, it would almost certainly provoke an effort to impeach the president.

At this point, all the special counsel’s evidence would then be turned over to the appropriate committee of the House of Representatives — the Judiciary Committee. The committee would then examine the evidence and consider if the president had committed any one of four offenses listed in the Constitution as grounds for impeachment: treason, bribery, high crimes, or misdemeanors (serious misbehavior). Treason is the only crime specifically defined in the Constitution, because the Founders, aware of their history, knew full well that treason was a convenient charge of tyrants to quash dissent. “Treason,” the Constitution states, “shall consist only in levying war against them [the United States], or in adhering to their enemies, giving them aid and comfort.”

Only a rabid partisan Democrat would even attempt to argue that Trump has made “war” against America. It would be difficult to prove that he had given aid and comfort to any enemies of America. After all, the charge (so far lacking evidence) is that the Russians helped Trump, not the other way around. No one has even hinted that multimillionaire Trump has taken a bribe, and if he has committed a “high crime,” no one has presented any actual evidence of such. While Trump has certainly tweeted a string of insults at political enemies since he has been president, and he has behaved differently from most other presidents, it would be hard to make the case that any “misbehavior” by Trump is “serious” enough to warrant impeachment.

But then, the Congress is the sole judge of what is “serious misbehavior,” since it is not defined. So, if the House enemies of Trump could muster a majority vote against him, he would be impeached, and if two-thirds of the Senate voted to convict him, he would be removed from office. But Congress is forbidden by the Constitution from issuing a bill of attainder — congressmen have no power to imprison someone on their own. Their power of impeachment is limited to removal from office, denying the officer the opportunity to ever serve in federal office again, and stripping the removed officer of any pensions.

The Constitution does say, however, that once a person is convicted of an impeachment charge, and removed from office, he would “nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. But, of course, were the president to have already given himself a pardon, “the law” would not permit such punishment.



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The question is not whether we think this is fair or just, but rather is it in accordance with the Constitution? After all, it is “the supreme law” of the land in the United States, not some memorandum prepared by a member of the Department of Justice.

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