The Phyllis Schlafly Report

Indictment Imperils the Rights of All

By John and Andy Schlafly

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By indicting President Trump, the New York County prosecutor is infringing on the First Amendment rights of all Americans. Every American has a right to an unfettered debate and campaign by candidates, including Trump, for our nation's highest elective office.

This indictment interferes with the 2024 presidential election by hampering the full participation of a leading candidate, and the right of Americans to benefit from his undivided attention to his campaign. One Democrat district attorney in Manhattan infringes on all these rights by indicting the front-runner Republican candidate, Donald Trump.

"The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin," declared Justice Thurgood Marshall in 1972. Democrats are interfering with the right of every American to hear from Donald Trump without distraction by an improper prosecution.

Democrat prosecutors have the right to cast their own ballots in the presidential election, but not more than that. Trump's ability to hold campaign rallies and meet with supporters is impeded by this and potentially other unprecedented indictments of him.

The U.S. Supreme Court should shut down this and any other criminal prosecution of a prominent presidential candidate. Federal lawsuits based on the First Amendment should be filed by Trump, the Republican Party, and any American voter to object to this governmental action against Trump.

Criminal prosecutions are an enormous distraction to any innocent victim, as Trump is. It shifts his time and focus away from devoting all of his energy to his reelection campaign.

Infringing on Trump's free speech rights to campaign violates the rights of all Americans to hear everything that this candidate has to say. "The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the means indispensable to the discovery and spread of political truth," Democrat-appointed Justice Marshall observed.

Federal courts have the full power to shut down interference with presidential campaigns by state officials and state courts. No arrest warrant issued by a state official against a leading presidential candidate should be enforceable during the campaign, particularly when an arrest is not needed to protect the safety of anyone.

Chief Justice Roberts joined three liberal Justices on the High Court to emphasize the power of federal courts to halt state court proceedings that impinge on constitutional rights. When someone is "harassed with a multiplicity of suits or litigation generally in an endeavor to enforce penalties" that would have an unconstitutional effect, then Roberts said it should be stopped.

That was less than two years ago when Roberts and the liberal Justices so stated, on an emergency appeal of an abortion-related law in *Whole Woman's Health v. Jackson* (2021). "Under these circumstances, where the mere commencement of a suit, and in fact just the threat of it, is the actionable injury to another, the principles … authorize relief against the court officials who play an essential role in that scheme," they wrote.

In other cases the Supreme Court has held likewise. In *Mitchum v. Foster* (1972), without dissent it shut down a state court proceeding for threatening to close the doors of a bookstore, much as the New York City district attorney's new state court prosecution is disruptive to Trump's presidential campaign.

This decision by the Supreme Court in halting a state court proceeding has been favorably cited by more than a thousand decisions since, including dozens of invocations by the Supreme Court itself. In *Pulliam v. Allen* (1984), it likewise ruled in favor of a federal court shutting down a state court process, which a federal court should do now with respect to any county-level prosecution of Trump.

Federal courts are empowered by these and other decisions to protect presidential candidates against harassment by state officials, as being done now to Trump. A presidential candidate must be allowed to devote his complete attention to his campaign without interference by a county prosecutor.

This unprecedented prosecution could further divide red from blue states, as conservatives feel strongly that the People rather than a handful of liberal prosecutors should

be picking our next president. “Texit” legislation was filed earlier this year in Texas to assert independence from control by New York City and Washington, D.C.

“In a democracy, you can’t threaten to jail your opponents,” declared former President Obama in 2016. “We have fought against those kinds of things,” yet now Democrats are doing precisely that: threatening to imprison Trump.

As patriotism declines in polls and millions of immigrants fail to assimilate into our traditional culture, the glue binding our vast country together may have lost some strength. In 1857, the *Dred Scott* decision arrogantly denied rights to slaves rather than allow the political process to work, and a few years later our Nation broke up.

John and Andy Schlafly are sons of Phyllis Schlafly (1924-2016) and lead the continuing Phyllis Schlafly Eagles organizations with writing and policy work.