The Phyllis Schlafly Report

“Full, Complete” Pardons for 2020 Presidential Electors

By John and Andy Schlafly

November 11, 2025

Fake news was working overtime on Monday by declaring, without authority, that the “full, complete” presidential pardons related to the 2020 presidential election cannot protect against bogus state charges arising from that election. The liberal media wrongly insisted that the Pardon Clause in the U.S. Constitution applies only to charges brought by federal prosecutors.

Not so. The Pardon Clause states that the President “shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.” Every attempt in court to narrow the scope of the Pardon Clause has failed.

Our system of dual sovereigns, federal and state, is subject to the Supremacy Clause, which means that state sovereignty cannot limit the scope of the Pardon Clause. It was modeled on the vast, nearly unlimited pardon power of the King of England.

The newly pardoned 77 alternate electors, federal officials, attorneys and activists who objected to voter fraud in 2020 were acting in defense of the integrity of a presidential election, and thus in defense of the United States. Their conduct is fully pardonable by the President, which Trump has appropriately done.

Yet naysayers argue that the term “United States” in the Pardon Clause means only crimes prosecuted by the federal government. If that were true, then the Supreme Court would not have upheld in *Ex parte Wells* (1856) the last-minute commutation of a death penalty by President Millard Fillmore of a man convicted of murder in a District of Columbia court, as there were no federal common law crimes.

Federal law never denied women the right to vote, but New York prosecuted Susan B. Anthony for voting illegally in the 1872 presidential election, and prosecuted local officials for allowing her to vote. After his reelection as our 18th President, U.S.

Grant pardoned the state officials for their violation of state law, and in 2020 President Trump pardoned Susan B. Anthony for casting an illegal vote.

Just last week an all-Democrat panel of the Second Circuit ruled in favor of Trump's argument that the charges against him in the so-called hush money case that resulted in 34 felonies should have been heard in a federal court. The charges brought by the New York District Attorney Alvin Bragg accused Trump of violating campaign finance laws during his 2016 campaign for President of the United States.

If a case can be heard in federal court, as all Trump-related cases can be, then the charges are pardonable by the president. No one credibly doubted that President Ford's pardon of President Nixon protected him against all potential charges relating to the Watergate scandal, including non-federal ones.

The tradition of complete pardons by the president, which began with President George Washington, has always precluded prosecution of the underlying conduct in state court. Those who doubt this broad scope of the pardon power cannot cite any example of a beneficiary of a presidential pardon being prosecuted in state court for the same conduct.

Even Democrat-dominated New York courts shut down an attempted prosecution of Paul Manafort after President Trump granted him a pardon. While the rationale for that decision was based on New York's strong rule against double jeopardy, the result was to prohibit a first-of-its-kind state prosecution of conduct excused by a presidential pardon.

The ban on slavery in the 13th Amendment to the Constitution prohibits its use "within the United States, or any place subject to their jurisdiction." This is not a reference to the federal government but to all of the States and territories, as demonstrated by the plural pronoun for jurisdiction.

The U.S. Supreme Court emphatically held after the Civil War, in *Ex parte Garland* (1867), that the presidential pardon "is unlimited, with the exception" for cases of impeachment. "It extends to every offence known to the law," not merely to federal crimes.

Alexander Hamilton, a Framer of our Constitution, wrote favorably of a broad pardon power in The Federalist No. 74. Hamilton explained, "The criminal code of every

country partakes so much of necessary severity that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel."

The use of the term "United States" to mean only the federal government and only federal laws is a modern distortion of the elite in Washington, D.C., to puff themselves up. The national liberal media distorts this further by obsessively reporting on D.C. as if that enclave represented the entire United States.

As the Supreme Court recognized in *Schick v. Reed* (1974), the Framers of the Pardon Clause stated that this power is a "prerogative" of the President, which ought not be "fettered or embarrassed." The presidential pardon power would be impermissibly undermined if federal charges could be refiled as state charges by an unscrupulous local prosecutor like Alvin Bragg.

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