COMMITTEE ON HOUSE ADMINISTRATION
RANKING MEMBER JOSEPH D. MORELLE (NY-25)

STAFF REPORT

The Drafter's Intent Regarding the Proposed Constitutional Amendment to Reverse *Trump v. United States*

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INTRODUCTION

With its *Trump v. United States*, 603 U.S. ___ (2024) decision, the Supreme Court of the United States (the "Supreme Court") undermined the democratic foundation of our constitutional government. The unrestrained, absolute presidential immunity doctrine the Court imagined invites a federal executive unbound by the constraints of the rule of law. At its core, our nation relies upon the principle that no American stands above another in the eyes of the law — that all people are created equal. Presidents are citizens, not tyrants.

The Supreme Court's severely misguided decision erodes the public's confidence in our institutions and poses as great a threat to our democracy as the behavior that necessitated the indictments against the former president. Illegality must not be excused by the arbiters of our national structure of checks and balances; serious crimes must not go unpunished. Our constitutional republic cannot — will not — accept this coronation of presidential power.

To that end, Congressman Joseph D. Morelle, Ranking Member of the Committee on House Administration, proposed an amendment to the Constitution of the United States (the "Constitution") to remediate this alarming decision and ensure that no president is ever immune from criminal prosecution solely because of the trappings of the presidency. This amendment will restore the constitutional understanding of immunity that served our nation well for 235 years, guaranteeing that no public officer of this country — including the President of the United States — is able to evade the accountability that any other American would face for violating our laws.

This report annotates the text of the proposed amendment so that readers may better understand the drafter's intent. The full text of the proposed amendment is as follows:

> *Section 1.*
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> *No officer of the United States, including the President and the Vice President, or a Senator or Representative in Congress, shall be immune from criminal prosecution for any violation of otherwise valid federal law, nor for any violation of state law unless the alleged criminal act was authorized by otherwise valid federal law, on the sole ground that their alleged criminal act was within the conclusive and preclusive constitutional authority of their office or related to their official duties, except for Senators and Representatives acting pursuant to the first clause of the Sixth Section of the first Article.*
>
> *Section 2.*
>
> *The President shall have no power to grant a reprieve or pardon for offenses against the United States to himself or herself*
>
> *Section 3.*
>
> *This amendment is self-executing, and Congress shall have the power to enact legislation to facilitate the implementation of this amendment.*

Section 1

To rebut[1] the activist majority on the Supreme Court, the first section of the proposed amendment would restore the presidential immunity doctrine to its pre-*Trump v. United States* standard, ensuring that a president — like every American citizen — receives equal justice under the law. In particular, the first section of the proposed amendment would make clear that no official may invoke immunity from prosecution for criminal actions solely on the basis of the duties of their office. It would protect the constitutional prerogatives of the Executive Branch while ensuring that those privileges cannot be used to escape accountability. Readers may find the drafter's understanding of the first section of the proposed amendment herein:

No officer of the United States, including the President and the Vice President . . .

The inclusion of officers of the United States ensures that no person to whom the president has delegated some function of the nation's sovereign power can claim immunity from criminal prosecution for illegal acts. If the states were to ratify this proposed amendment without the inclusion of officers of the United States, the drafter fears that, in the event a president deputizes a subordinate to commit an illegal act, a future Supreme Court could read this amendment too narrowly to hold the subordinate — acting under the authority of the Executive Branch — accountable. The inclusion of officers of the United States precludes a potential loophole through which a president may direct illegality without censure.

. . . or a Senator or Representative in Congress . . .

Americans should have confidence that no one — neither an executive nor a legislator — is above the law. While *Trump v. United States* did not concern illegal acts committed by members of Congress, the Legislative Branch itself holds some conclusive and preclusive constitutional powers and privileges, including those delineated in Article I, section 9, clause 7 of the Constitution. This language prevents a broader reading of *Trump v. United States* that could excuse members of Congress from facing accountability for criminal acts.

. . . shall be immune from criminal prosecution for any violation of otherwise valid federal law . . .

This language protects the prerogatives of the President of the United States without overextending them beyond their constitutional and historical limits, something the Supreme Court failed to do in *Trump v. United States*. The use of "otherwise valid" in this clause plays a vital role, establishing a distinction between a claim of presidential immunity on the one hand and a constitutional defense on the other. *Trump v. United States* addressed only an immunity claim.

By including the language above, the proposed amendment would prevent only unrestrained immunity claims, leaving a president free to raise constitutional defenses to prosecution if necessary. Put simply, the proposed amendment would prevent the president from claiming, "this criminal law may indeed prohibit illegal behavior, but I am immune from prosecution

1 Upon reading the *Trump v. United States* decision, the drafter of this proposed amendment found the dissent of Justice Sonia Sotomayor and the dissent of Justice Ketanji Brown Jackson to each be persuasive.

because I was president when the behavior occurred." This posture, endorsed by the Supreme Court in *Trump v. United States*, conflicts with our republican origin and our fidelity to justice.

By contrast, this amendment would not let Congress infringe on firmly established exclusive presidential powers. For example, if Congress enacted a law — over a presidential veto — to criminalize presidential pardons, that law would clearly infringe on the president's conclusive and preclusive pardon authority. Congress's theoretical prohibition on the exercise of pardon power would not, in this instance, be a criminal law generally appropriate but for a president's position; it would instead be an inappropriate exercise of congressional power and therefore an unconstitutional federal law. In such an event, the president would have a constitutional defense to prosecution under the invalid law rather than a claim of immunity — the president need not contend "I am immune from prosecution for granting a pardon because I was president," but may instead rightfully assert "I cannot be prosecuted because this law is itself unconstitutional." Without the inclusion of the "otherwise valid" language, this proposed amendment would risk infringing on the true prerogatives of presidential power, as bounded by our Constitution.

> *. . . nor for any violation of state law unless the alleged criminal act was authorized by otherwise valid federal law . . .*

The drafter does not intend the proposed amendment to abrogate any existing article, section, or clause of the Constitution.[2] In particular, the drafter seeks no damage to the Supremacy Clause, a hallmark of our federal system allowing Americans to speak with one voice, through our national government, in the management of our civic affairs.

Historically, federal laws have often provided protection for individuals or groups that may face hostility or hardship within the states. The inclusion of the "authorized by otherwise valid federal law" language in the proposed amendment prevents states from relying upon the amendment's text to criminalize valid federal actions, thereby weakening or abolishing the Supremacy Clause. A state may not now, for example, criminalize the deployment of United States Department of Justice ("DOJ") election observers to monitor polling places pursuant to the Voting Rights Act of 1965 — the proposed amendment would not alter this reality.

> *. . . on the sole ground that their alleged criminal act was within the conclusive and preclusive constitutional authority of their office or related to their official duties . . .*

Presidents and other officers of the United States may, of course, avoid criminal prosecution on grounds well established prior to *Trump v. United States*. A president may receive a pardon from a successor, for example, relieving them of the burden of facing criminal sanction. And several opinions by the DOJ Office of Legal Counsel ("OLC") — one issued in 1973, another in 2000 — have concluded that a sitting president may not be prosecuted so long as he or she holds office.

The proposed amendment makes no attempt to disrupt these possible pre-existing presidential protections. As such, the proposed amendment clarifies that a president may not be immune from prosecution on the "sole ground" of their incumbent or former presidency. The word "sole"

2 The majority's opinion in *Trump v. United States* notably lacks any textual basis in the Constitution.

in the above text makes clear that another source of immunity — incumbency or a pardon — are still sufficient (or assumed sufficient by the drafter without deciding, based on current OLC guidance, in the case of incumbency) to prevent prosecution. This amendment would, however, prevent the presidential immunity doctrine, as described by the Supreme Court in *Trump v. United States*, from being the only reason a president is not indicted or tried for criminal acts.

> *. . . except for Senators and Representatives acting pursuant to the first clause of the Sixth Section of the first Article.*

The proposed amendment will not abrogate Speech or Debate Clause protections provided to members of Congress by Article I, section 6, clause 1 of the Constitution.

Section 2

> *The President shall have no power to grant a reprieve or pardon for offenses against the United States to himself or herself.*

The proposed amendment, ensuring that a president does not stand above any other American in the eyes of the law, would be toothless if a president could absolve themselves of accountability by simply issuing a self-directed pardon. The drafter maintains that a president does not currently have a self-pardon power under the Constitution, but the proposed amendment would firmly preclude such abuse of American law and order.

Section 3

> *This amendment is self-executing, and Congress shall have the power to enact legislation to facilitate the implementation of this amendment.*

The drafter intends that this proposed amendment face no enforcement bar or congressional action requirement imposed by a court; that the amendment be self-executing and effective upon ratification. Congress may, however, consider legislation such as specific rules of evidence or expedited judicial consideration for situations in which a president or former president faces criminal charges and may do so pursuant to the proposed amendment, when ratified.

Conclusion

Throughout our history, wise jurists have, sometimes decades too late, overturned disastrous Supreme Court decisions. But if future presidents behave with the dignity that the office demands—which one prosecuted and convicted former president failed miserably to do—the Supreme Court will never again face a question of presidential criminal immunity. And the evidentiary standard suggested by the Supreme Court in *Trump v. United States*—if taken to its most extreme end—could further insulate presidents from accountability by precluding a criminal investigation before one even begins.

Should a future Supreme Court face no live case or controversy through which reconsider this decision, the *Trump v. United States* stain on our Constitution will endure. Repairing the damage done to the fabric of the Republic, therefore, requires the ratification of a constitutional amendment. Ranking Member Morelle's proposed amendment described in this report would restore balance to our federal government, refresh our beleaguered rule of law, and revive the confidence in our national conception of justice that has guided generations of American citizens.

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