

PREVENTING AND DETERRING UNLAWFUL PARDONS

The pardon power is limited by the entire Constitution, the system of checks and balances it establishes, and the individual rights it protects. If the pardon power were allowed to be absolute, it would permit the president to place himself above the law and undermine the rest of the Constitution. Congress has a critical role to play in preventing improper pardons.

The pardon power is not absolute, but is constrained by the rest of the Constitution.

- **The president may not use the pardon power in a way that violates core constitutional rights or undermines the role of the judiciary in protecting constitutional rights.** Thus, the president could not issue a pardon for a category of offenses to all, and only, people of a certain race or religion. Nor can the president issue a pardon that prevents a court from protecting people's constitutional rights.
- **The president may not use the pardon power to place himself above the law.** The president may not issue a self-pardon. Similarly, he cannot issue a pardon to impede an investigation into himself or his campaign or business interests; such a pardon, if effective in impairing an investigation, would amount to a self-pardon.
- **The pardon power is constrained by laws of Congress prohibiting bribery and obstruction of justice.** Congress has enacted laws to prohibit certain types of corruption, such as bribery, and these apply to the president's use of the pardon power. As a result, the president may not issue a pardon in exchange for a bribe. Nor may he offer or issue a pardon to influence or tamper with a witness's testimony in an ongoing investigation.

As a co-equal branch of government, Congress has an important role to play in preventing the president from abusing the pardon power.

Congress should use its oversight authority to investigate potential improprieties and can use its power to impeach if it finds abuses of the pardon power.

- **Congress should deter abusive pardons by demarking clear boundaries.** Members of Congress should make clear, public statements that the pardon power is not absolute and cannot be used for unlawful purposes.
- **Congress should investigate potentially unlawful pardons or promises of pardons.** It should use its full oversight authority to seek documents and testimony on whether the president is using, or seeking to use, the pardon power for any improper purpose as described above.
- **Congress should ensure accountability for impermissible or abusive pardons.** Congress should use its full set of powers, up to and including the impeachment power, as necessary to uphold the Constitution and the rule of law.