Negative Brief: Clemency Board

By Jonathan T. Helton

The AFF creates a federal clemency review board to place in the Executive Office of the President. They argue that the DOJ has a conflict of interest, and the current process limits the number of pardons presidents give out. Your position will be that state review boards, which the AFF may point to as a model, have their flaws. Further, it’s unclear how a new level of review will improve the process, apart from speculation. The AFF case also opens the clemency process to politicization, as it may allow the president to easily signal his interest in reforming certain policies.

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Negative: Clemency Board

EXTRA-TOPICALITY – Plan goes beyond the resolution

1. Pardons include not-convicted, not in prison

Link: Presidential pardon power happens before charges, before or after convicted, before or after imprisonment

Paul Larkin 2020. (J.D.; Senior Legal Research Fellow, The Heritage Foundation; M.P. P. George Washington University) GUIDING PRESEDENTIAL CLEMENCY, THE GEORGETOWN JOURNAL OF LAW & PUBLIC POLICY <https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2020/10/Guiding-Presidential-Clemency-18-2.pdf>

Although the President might not be able to pardon someone for a crime he has not yet committed, that limitation disappears once someone has broken federal law. The case law makes clear that the President can intervene in the criminal process at any time: before or after the government has brought charges and before or after an offender is convicted or punished. The President can even pardon someone after his death to remedy an unjust conviction and clear the recipient’s name.

Violation: Resolution limits AFF to those who are convicted and in federal prison

But the pardon power includes those not convicted and even dead people obviously not in prison.

Impact: Plan shouldn’t be debated

When an Affirmative plan relies on things outside the resolution for it to work, it needs to be rejected and they need to go home and rewrite it and come back with one that stays within the resolution we all agreed to debate.

INHERENCY

1. No barrier to more pardons

Constitution puts zero limits on Presidential pardon power. He can pardon anyone any time

Prof. Daniel T. Kobil 2001. (Prof. of Law at Capital Univ Law School, Ohio) 28 Feb 2001, Testimony before the House Judiciary Committee, Subcommittee on the Constitution, (brackets and parentheses in original) <http://jurist.law.pitt.edu/pardonsex6.htm> (accessed 24 July 2021)

The Court also has rejected the notion that the coordinate branches of government can in any way limit the executive's clemency power. In *Ex parte Garland*, 71 U.S. (4 Wall.) 333,380 (1866), the Court gave perhaps its broadest characterization of the plenary scope of executive clemency:  
The [clemency] power thus conferred is unlimited, with the exception [in cases of impeachment]. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions.

Example: Pres. G. W. Bush pardoned Scooter Libby hours after his court appeal, bypassing Justice Department

Margaret Colgate Love 2007. (former United States Pardon Attorney) October 2007 American Constitution Society for Law & Policy, Reinventing the President’s Pardon Power <https://www.acslaw.org/wp-content/uploads/old-uploads/originals/documents/Presidential%20Pardons%20Issue%20Brief%20-%20October%202007.pdf> (accessed 24 July 2021)

The president’s pardon power took center stage for the second time in this young century when, on July 2, 2007, President Bush commuted the prison sentence imposed on White House Aide I. Lewis “Scooter" Libby. Libby, Vice President Cheney’s former chief of staff, had been convicted the previous March of perjury and obstruction of justice in connection with the leak of CIA agent Valerie Wilson’s identity, and sentenced to 30 months in prison. The President acted just a few hours after the court of appeals rejected Libby’s request to remain free on bail while pursuing his appeal, bypassing entirely the Justice Department clemency review process.

Results of unlimited clemency authority abuse suggest we need LESS clemency, not more

*Kenny Lo, Betsy Pearl, and Akua Amaning 2020 (Lo is a research associate for Criminal Justice Reform at the Center for American Progress. Pearl and Amaning are associate directors for Criminal Justice Reform at the Center.) “Clemency 101” 1 May 2020* <https://www.americanprogress.org/issues/criminal-justice/reports/2020/05/01/484300/clemency-101/>(accessed June 24, 2021)

The president has virtually unlimited authority to grant clemency for federal crimes, which can raise concerns about misuse of power. Throughout [history](https://www.nytimes.com/2020/02/21/us/politics/presidential-pardons.html), presidents have created controversy by granting clemency to divisive public figures and have been [scrutinized](https://www.nytimes.com/2020/02/19/us/politics/trump-pardons.html) for using their powers of clemency to benefit their personal contacts and political allies.

HARMS / SIGNIFICANCE

1. Less need for clemency

Judges are more likely to hand out a fair sentence in modern times. Better processes and lots of appeals

Andrew McCarthy 2021 (senior fellow at National Review Institute, an NR contributing editor) “Repeal the Pardon Power” 25 January 2021 <https://www.nationalreview.com/magazine/2021/01/25/repeal-the-pardon-power/> (accessed July 11, 2021)

Criminal justice is now night-and-day different from Founding-era conditions. Federal jurisprudence has yielded a revolution in the due-process rights of criminal defendants and in Eighth Amendment protections against cruel and unusual punishments. Death sentences are nearly unheard of and, despite a spurt in the last year, will return to dormancy with Joe Biden’s inauguration. The robust federal court system, furthermore, provides for multiple levels of direct appeal, then seemingly endless collateral appeal (habeas corpus). Might we still encounter a gross miscarriage of justice that’s incapable of being reversed? Yes, but the chance of that has been drastically reduced in today’s legal system. On the rare occasion when a correction is needed, the courts are far more likely than a president to proceed fairly.

Sentencing guidelines increase uniformity, reduce discrimination by individual judges

Andrew McCarthy 2021 (senior fellow at National Review Institute, an NR contributing editor) “Repeal the Pardon Power” 25 January 2021 <https://www.nationalreview.com/magazine/2021/01/25/repeal-the-pardon-power/> (accessed July 11, 2021)

Moreover, since their inception in the 1980s, the federal sentencing guidelines have substantially succeeded in enforcing uniformity in sentencing for similarly situated defendants. Though the guidelines are advisory, judges usually follow them. Formerly, the system was sullied by disparate sentences based on the proclivities of the judge rather than on the nature of the offense or the recidivism of the offender. Now, sentencing is more just. And while plea-bargaining undeniably raises the conviction rate, defendants benefit from reduced charges and diversion from prison sentences.

After all the existing reforms, there’s a very tiny number of cases where pardons are appropriate today

Andrew McCarthy 2021 (senior fellow at National Review Institute, an NR contributing editor) “Repeal the Pardon Power” 25 January 2021 <https://www.nationalreview.com/magazine/2021/01/25/repeal-the-pardon-power/> (accessed July 11, 2021)

All of this renders vanishingly small the number of cases in which the pardon power might be appropriate to address true injustice. And there are other, fairer ways to do that. Convictions may be vacated and expunged by legislation. The president could seek Congress’s cooperation in granting clemency when justice and consensus warrant doing so. As we have seen throughout the pandemic, moreover, the executive branch has the power to grant early release on humanitarian grounds.

2. No federal prison overcrowding

Federal prison population is declining

John Gramlich 2021. (senior writer/editor at Pew Research Center) 17 Feb 2021 “Under Trump, the federal prison population continued its recent decline” <https://www.pewresearch.org/fact-tank/2021/02/17/under-trump-the-federal-prison-population-continued-its-recent-decline/> (accessed 24 Feb 2021)

The number of federal prisoners sentenced to more than a year behind bars decreased by 5% (or 7,607 inmates) between 2017, Trump’s first year in office, and the end of 2019, the most recent year for which final data is available from the Bureau of Justice Statistics. Preliminary figures for 2020 show that the decline continued – and even accelerated – during Trump’s last full year in office, meaning that the overall reduction in inmates during his tenure will likely exceed 5% once final data is available. Part of the decrease in prisoners in 2020 may have been attributable to policy changes [in response to the coronavirus pandemic](https://www.themarshallproject.org/2020/07/16/prison-populations-drop-by-100-000-during-pandemic). Obama made criminal justice issues a [focus of his presidency](https://www.pbs.org/newshour/show/obama-left-mark-criminal-justice-system) and became the first president since Jimmy Carter to leave the White House with fewer inmates than when he arrived. Among other things, he oversaw a [Justice Department initiative](https://www.justice.gov/archives/ag/attorney-generals-smart-crime-initiative) that emphasized lighter sentences for those convicted of lower-level crimes and used his executive clemency power [more frequently](https://www.justice.gov/pardon/clemency-statistics) than any modern president. The number of prisoners fell by 10% (or 14,988 inmates) during Obama’s tenure, the biggest decline in absolute numbers of any president on record.

Downward trend in federal prisoners during the last 2 Presidents (Obama and Trump)

Niall McCarthy 2021 (journalist) The Evolution Of America’s Federal Prison Population [Infographic] 25 Feb 2021 <https://www.forbes.com/sites/niallmccarthy/2021/02/25/the-evolution-of-americas-federal-prison-population-infographic/?sh=3e53aad0b068> (accessed 24 July 2021)

Under President Obama, the U.S. federal prison population finally peaked and started trending downwards, a decline that continued under the Trump administration. The data comes from an interesting [Pew Research Center analysis](https://www.pewresearch.org/fact-tank/2021/02/17/under-trump-the-federal-prison-population-continued-its-recent-decline/)which found that the number of inmates in federal custody fell by 7,607 (5%) between 2017 and 2019. Preliminary figures indicate that the decline continued in 2020, Trump's last full year in office, which makes it likely that the federal prison population will have contracted 5% during his full stint in the White House.

3. A/T “Harsh sentences”

First Step Act shortened sentences for thousands of federal offenders

John Gramlich 2021. (senior writer/editor at Pew Research Center) 17 Feb 2021 “Under Trump, the federal prison population continued its recent decline” <https://www.pewresearch.org/fact-tank/2021/02/17/under-trump-the-federal-prison-population-continued-its-recent-decline/>

At the same time, Trump signed into law the [First Step Act](https://www.bop.gov/inmates/fsa/overview.jsp), a significant overhaul of criminal justice policies aimed in part at reducing the federal prison population. In its first year, the law led to shorter sentences for thousands of federal offenders and earlier release dates for many others, according to a [2020 report](https://www.ussc.gov/research/research-reports/first-step-act-2018-one-year-implementation) from the U.S. Sentencing Commission.

SOLVENCY

1. State boards flawed

Colorado

David Migoya 2021 (journalist) “Sometimes it’s anybody’s guess who gets pardoned or given clemency in Colorado” 30 May 2021 DENVER POST <https://www.denverpost.com/2021/05/30/colorado-pardons-clemency-records/> (accessed July 11, 2021)

In 1989, Gov. Roy Romer pardoned four people and commuted the sentences of four others. That’s about all we know. We know even less about clemency orders Romer issued in 1992, 1996, 1997 and 1998. No official names; no official reasons; not even how many there were. Nothing. Just before Christmas 2010, Gov. Bill Ritter issued pardons to 20 people. There are no official records for any of them, either. The same for January 2011, when Ritter pardoned 19 more – including a wrongly convicted mentally disabled man who the state executed for murder in 1939 – and commuted the sentences of 10 others. In a review of gubernatorial pardons and commutations issued in Colorado since 1979, The Denver Post found a messy and inconsistent system of record-keeping and procedure that frequently means there is no reliable way of identifying who was given clemency, for what conduct, or even why the governor thought it a good idea.

North Carolina

Katie Jane Fernelius 2021 (journalist and radio producer based in New Orleans; attended Duke University and studied at their Center for Documentary Studies.) “NORTH CAROLINA’S CLEMENCY PROCESS IS A ‘BLACK BOX,’ ADVOCATES SAY” 21 May 2021 <https://theappeal.org/north-carolinas-clemency-process-is-a-black-box-advocates-say/> (accessed July 3, 2021)

“The clemency process in North Carolina is a black box,” said Jamie Lau, a professor of law at Duke University and supervising attorney at the school’s Wrongful Convictions Clinic. According to Lau, Cooper’s office does not make public the list of people who are seeking clemency—a change from prior administrations. Further, it has also been difficult to obtain any information about the considerations or processes of how the governor might decide who receives clemency.

Florida

Steve Bousquet 2018 (former Tampa Bay Times' Tallahassee bureau chief. ) “Florida’s clemency system riddled with bias and discrimination, lawyers argue” 22 June 2018 <https://www.tampabay.com/florida-politics/buzz/2018/06/22/floridas-clemency-system-riddled-with-bias-and-discrimination-lawyers-argue/> (accessed July 3, 2021)

Florida's system of restoring voting rights to people who have committed a crime is riddled with discrimination and bias, including bias in favor of a political party, and violates the U.S. Constitution, lawyers argue in a new brief in a federal court.  
  
**[END QUOTE. HE GOES ON LATER IN THE ARTICLE TO WRITE QUOTE:]**  
  
In its brief, the Fair Elections Center, a Washington, D.C. voting rights group, says state officials "invoke a variety of ad hoc, shifting, subjective and vague standards and factors: whether the applicant has 'turned [his or her] life around,' has shown sufficient remorse, or has an 'attitude' the board appreciates. Governor Scott has bluntly stated that the process is not constrained by any law."

Texas

Patrick McCann 2018 (death penalty attorney and a past President of the Harris County and Fort Bend criminal bar associations.) “There's a cruel truth about mercy in Texas” 25 August 2018 <https://www.houstonchronicle.com/opinion/outlook/article/There-s-a-cruel-truth-about-mercy-in-Texas-13158691.php> (accessed July 12, 2021)

The truth is that the process of clemency in Texas is so random and isolated that it effectively does not exist. Pardon and commutation exist only if the Texas Board of Pardons and Paroles executive clemency section votes to recommend relief to the governor, and the governor agrees. No one knows what rules board members follow because they are not published. No one knows what things move the board or fail to move it because it issues no opinions or statements. It keeps no records. It does not even publish minutes of members’ discussions or debates. It has nothing to say to the world when members deny a recommendation to a soul hoping for life over death, for a pardon to forgive past mistakes or for a person hoping for a chance to go home. Nothing the board does, says or discusses, other than the final vote, is recorded.

2. Clemency reform won’t reduce mass incarceration

State-level mass incarceration

Andrea Cipriano 2021 (She a staff writer for The Crime Report) “Biden Administration Set to Tackle Clemency Backlog” 5 May 2021 <https://thecrimereport.org/2021/05/05/biden-administration-set-to-tackle-clemency-backlog/> (accessed July 11, 2021)

However, clemency won’t address or fix mass incarceration or the war on drugs on its own — mainly because clemency is only reserved for federal inmates, while the majority of people experiencing incarceration for drug-related offenses are held at the state or local level, *Vox News*explains.

“Couldn’t make a major dent” in mass incarceration

Zak Cheney-Rice 2021 (Staff writer for New York Magazine) “When Will Joe Biden Start Using His Clemency Powers?” 5 July 2021 <https://nymag.com/intelligencer/2021/07/when-will-joe-biden-start-using-his-clemency-powers.html> (accessed July 11, 2021)

Whatever the route, two things are clear about Biden’s plan so far: he hasn’t done anything yet, despite his signaling, and people close to him have indicated to the [Times](https://www.nytimes.com/2021/05/17/us/politics/biden-pardons-racial-justice.html) that he’s “not inclined to circumvent” the Justice Department — meaning he’s probably committed to an approach that preserves conflicts of interest and retains more political calculation than it needs to. This is bad for normalizing clemency. The president couldn’t end mass incarceration or even make a major dent in it, even with a more proactive strategy — the federal incarcerated population is too small as a portion of the whole, for one. But he can wield clemency symbolically, telegraphing to federal prosecutors which cases are worth pursuing, for example. And in more practical terms, he can spare as many people as he can from what is functionally a life of terror, torment, and uncertainty, and can do so now and regularly moving forward to prevent needless suffering.

Very limited ability of President to affect size of the prison population

John Gramlich 2021. (senior writer/editor at Pew Research Center) 17 Feb 2021 “Under Trump, the federal prison population continued its recent decline” <https://www.pewresearch.org/fact-tank/2021/02/17/under-trump-the-federal-prison-population-continued-its-recent-decline/>

It’s important to note that presidential policies are just one of many factors that can affect the size of the federal prison population. Crime rates, law enforcement practices and judicial sentencing patterns all play a role. For instance, crime rates rose sharply during the 1980s and early 1990s but have [fallen dramatically since then](https://www.pewresearch.org/fact-tank/2020/11/20/facts-about-crime-in-the-u-s/). It’s also important to keep in mind that the vast majority of people who are behind bars in the United States are held in state and local correctional facilities, not the federal system. As of the end of 2019, the federal system held 11% of all U.S. inmates sentenced to more than a year in prison, according to the Bureau of Justice Statistics.

3. Won’t achieve justice

Pardon is not justice and no way to ensure it’s “fair”

Margaret Colgate Love 2007. (former United States Pardon Attorney) October 2007 American Constitution Society for Law & Policy, Reinventing the President’s Pardon Power <https://www.acslaw.org/wp-content/uploads/old-uploads/originals/documents/Presidential%20Pardons%20Issue%20Brief%20-%20October%202007.pdf>

There is a fine line between using the pardon power to point out and remedy shortcomings in the law, and relying on it to compensate more generally for failures in the system. Pardon is not justice, and there can be no expectation that it will be "fair" in the same sense that an equitable justice system is. Pardon cannot fix every case of “unfortunate guilt,” and should not be expected to.

4. Reverse advocacy – A/T “Founders advocated pardons”

A/T “Founders / Hamilton advocated pardons” - The world is different now than in the 18th century

Andrew McCarthy 2021 (senior fellow at National Review Institute, an NR contributing editor) “Repeal the Pardon Power” 25 January 2021 <https://www.nationalreview.com/magazine/2021/01/25/repeal-the-pardon-power/> (accessed July 11, 2021)

The authority described by Hamilton as “the benign prerogative” in Fed­eralist No. 74 is inscribed in Article II, Section 2 of the Constitution. It endows the president with “Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.” In the late 18th century, there were sound reasons for it. Federal crimes were few and far between then. They are the only ones that the presidential power reaches. Governors have traditionally enjoyed clemency power with regard to the multitude of state offenses, and it was then assumed that law enforcement would remain predominantly a state concern.

A/T “Founders advocated pardons” – They got it wrong, and States refused to follow their example, for good reason

Prof. Keith E. Whittington 2020 (Professor of Politics at Princeton University) 14 July 2020 “Time to Amend the Presidential Pardon Power” <https://www.lawfareblog.com/time-amend-presidential-pardon-power> (accessed 24 July 2021)

A single, responsible chief magistrate, they hoped, could grant mercy in a more deliberate manner, and if necessary the president could be called to task in an impeachment inquiry if he abused that power. Unfortunately, experience has suggested that the Founders leaned too far in favor of the president. The Framers in Philadelphia built a relatively strong chief executive, and the president’s unchecked pardon power was part of that design. American state constitutions written since 1787 have often borrowed from the federal example, but the president’s pardon power is one that states have generally rejected.

DISADVANTAGES

1. Drug Policy

Link: AFF plans grants more pardons

It’s the goal of their plan.

Link: Clemency use precedes policy changes

Leah Sakala, Roderick Taylor, Colette Marcellin and Andreea Matei 2020 (Sakala: senior policy associate at the Urban Institute’s Justice Policy Center. Taylor: former research analyst at Justice Policy Center. Marcellin: research assistant at the Justice Policy Center, where she works on projects related to criminal and juvenile justice reform. Matei: is a research analyst at the Justice Policy Center) “How Governors Can Use Categorical Clemency as a Corrective Tool” Nov 2020 <https://www.urban.org/sites/default/files/publication/102696/how-governors-can-use-categorical-clemency-as-a-corrective-tool_0_1.pdf> (accessed June 30, 2021)

Recent examples align with a longer history of states using clemency power to advance reform and decarceration. A National Governors Association survey of 36 states’ self-reported clemency grants between 1981 and 1986 found that several states reported making grants in relation to legislative changes (NGA 1988). States have also used clemency as a tool to reduce prison overcrowding. A 1980 report found that at least 10 states had “used clemency on a regular basis as a means of prison population control.” For example, from 1979 to 1980, Maryland’s governor granted pardons and commutations to 1,142 people in prison, avoiding a potential court order to reduce the prison population. Furthermore, the National Governors Association survey found that West Virginia and Wyoming reported “crowding” as a reason for clemency decisions (NGA 1988).

Link + application: Governors undermining federal marijuana law

Leah Sakala, Roderick Taylor, Colette Marcellin and Andreea Matei 2020 (Sakala: senior policy associate at the Urban Institute’s Justice Policy Center. Taylor: former research analyst at Justice Policy Center. Marcellin: research assistant at the Justice Policy Center, where she works on projects related to criminal and juvenile justice reform. Matei: is a research analyst at the Justice Policy Center) “How Governors Can Use Categorical Clemency as a Corrective Tool” Nov 2020 <https://www.urban.org/sites/default/files/publication/102696/how-governors-can-use-categorical-clemency-as-a-corrective-tool_0_1.pdf> (accessed June 30, 2021)

In addition to commutations, governors can grant pardons to groups of people who have been convicted of specific types of offenses. For example, in 2019, Governor J. B. Pritzker pardoned 11,017 low-level marijuana convictions a day before an Illinois law legalizing marijuana use (House Bill 1438) took effect. According to state officials, approximately 116,000 convictions for possession of 30 grams or less of marijuana were eligible to be pardoned under the law at the time it was enacted. Similarly, in 2019, several years after Washington legalized recreational marijuana, Governor Jay Inslee created an expedited pardon petition process for people convicted of a single minor marijuana possession offense, saying, “[We] should not be punishing people for something that is no longer illegal.” Colorado has also followed suit. In October 2020, Colorado governor Jared Polis issued an executive order that pardoned more than 2,700 convictions of possession of an ounce or less of marijuana that were issued before the state legalized personal marijuana use in 2012 through Amendment 64. The executive order followed legislation passed in June 2020 designed to make Colorado’s cannabis industry more equitable, including by granting streamlined pardon powers to the governor for people convicted of possession of up to two ounces of marijuana.

Link: Obama Administration precedent

Letter signed by 18 U.S. Representatives. 2015 (Reps are: Mike Bishop of Michigan, Ken Buck of Colorado, Steve Chabot of Ohio, Jason Chaffetz of Utah, Doug Collins of Georgia, Blake Farenthold of Texas, Randy Forbes of Virginia, Trent Franks of Arizona, Louie Gohmert of Texas, Trey Gowdy of South Carolina, Jim Jordan of Ohio, Steve King of Iowa, Tom Marino of Pennsylvania, Ted Poe of Texas, John Ratcliffe of Texas, Jim Sensenbrenner of Wisconsin, Lamar Smith of Texas and Dave Trott of Michigan. The letter was covered by journalist Steven Dennis) “GOP Cries Foul on Obama’s Commutations of Drug Offenses” 14 July 2015 <https://www.rollcall.com/2015/07/14/gop-cries-foul-on-obamas-commutations-of-drug-offenses-2/> (accessed July 3, 2021)

Yesterday, President Obama commuted the sentences of 46 drug offenders. That means that, during his presidency, the President has granted executive clemency, in the form of commutations, to no fewer than 89 offenders. All but one of those commutations has been issued since December 2013. The vast majority of commutations under this President have been awarded to drug offenders – though in December 2014, the President did use his clemency power to commute the sentences of three Cuban spies and murderers who were serving life sentences.

Link + application: Clemency advocates want Biden to use clemency as part of drug policy reform

**Last Prisoner Project accessed 2021 (The Last Prisoner Project fights for a just, equitable and effective approach to American drug policy.) “It's Time to Heal: Urge President Biden to Grant ‘Federal Cannabis Clemency’”** <https://actionnetwork.org/petitions/federal-cannabis-clemency>(accessed July 3, 2021)

**The Last Prisoner Project, in partnership with a coalition of other activists, celebrities, and public figures, is calling on President Biden to continue to act on broad-based criminal justice and drug policy reform by granting clemency to then tens of thousands of individuals currently incarcerated due to — or otherwise unduly burdened by — federal cannabis-related convictions.  
[END QUOTE. THEY GO ON LATER IN THE SAME ARTICLE TO WRITE QUOTE:]**t the same time President Biden moves to grant "cannabis clemency", Congress, as well as state and local authorities, must also proactively seek to alleviate the burden of cannabis convictions and their collateral consequences through legislative action.

Link: Biden’s campaign promises: Use clemency to change drug sentencing

Morgan Chalfant 2021 (journalist) “Biden set to flex clemency powers” 5 May 2021 THE HILL <https://thehill.com/homenews/administration/551842-biden-set-to-flex-clemency-powers> (accessed July 3, 2021)

As part of the criminal justice platform he unveiled on the campaign trail, Biden promised to use his clemency power to “secure the release of individuals facing unduly long sentences for certain non-violent and drug crimes” if elected.

Link: Drug policy by clemency usurps Congressional power over lawmaking

Letter signed by 18 U.S. Reps. 2015 (Reps are: Mike Bishop of Michigan, Ken Buck of Colorado, Steve Chabot of Ohio, Jason Chaffetz of Utah, Doug Collins of Georgia, Blake Farenthold of Texas, Randy Forbes of Virginia, Trent Franks of Arizona, Louie Gohmert of Texas, Trey Gowdy of South Carolina, Jim Jordan of Ohio, Steve King of Iowa, Tom Marino of Pennsylvania, Ted Poe of Texas, John Ratcliffe of Texas, Jim Sensenbrenner of Wisconsin, Lamar Smith of Texas and Dave Trott of Michigan. The letter was covered by journalist Steven Dennis) “GOP Cries Foul on Obama’s Commutations of Drug Offenses” 14 July 2015 <https://www.rollcall.com/2015/07/14/gop-cries-foul-on-obamas-commutations-of-drug-offenses-2/> (accessed July 3, 2021)

Additionally, the fact that the Department’s clemency initiative is focused solely on federal drug offenders continues this Administration’s plainly unconstitutional practice of picking and choosing which laws to enforce and which to change. This is not, as the Founders intended, an exercise of the power to provide for “exceptions in favour of unfortunate guilt,” but instead the use of the pardon power to benefit an entire class of offenders who were duly convicted in a court of law – not to mention a blatant usurpation of the lawmaking authority of the Legislative branch.

Impact 1: Separation of powers is key to preventing tyranny

Leslie Gray and Wynell Burroughs 1987. (Burroughs – education specialist at National Archives. Gray – Fairfax County Va. public schools) "Constitutional Issues: Separation of Powers." *Social Education,* January 1987 <https://www.archives.gov/education/lessons/separation-powers> (accessed 24 July 2021)

It is safe to say that a respect for the principle of separation of powers is deeply ingrained in every American. The nation subscribes to the original premise of the framers of the Constitution that the way to safeguard against tyranny is to separate the powers of government among three branches so that each branch checks the other two. Even when this system thwarts the public will and paralyzes the processes of government, Americans have rallied to its defense.

Impact 2: Marijuana use harms people

Alex Berenson 2019 (He is a former New York Times reporter and the author of the forthcoming “Tell Your Children: The Truth About Marijuana, Mental Illness, and Violence.”) “What Advocates of Legalizing Pot Don’t Want You to Know” 4 January 2019 <https://www.nytimes.com/2019/01/04/opinion/marijuana-pot-health-risks-legalization.html>

With large studies in peer-reviewed journals showing that marijuana increases the risk of psychosis and schizophrenia, the scientific literature around the drug is far more negative than it was 20 years ago. Comparing two major reports from the National Academy of Medicine, the nonprofit group that advises the federal government on health and medicine, makes the difference clear. In a report in 1999, the academy (then called the Institute of Medicine) reported that “the association between marijuana and schizophrenia is not well understood.” It even suggested the drug might help some people with schizophrenia. But in its next major report on marijuana, released in 2017, the academy reached a very different conclusion: “Cannabis use is likely to increase the risk of schizophrenia and other psychoses; the higher the use, the greater the risk.”

2. More pardons = less justice

Pardons subvert justice

Andrew McCarthy 2021 (He is a senior fellow at National Review Institute, an NR contributing editor) “Repeal the Pardon Power” 25 January 2021 <https://www.nationalreview.com/magazine/2021/01/25/repeal-the-pardon-power/> (accessed July 11, 2021)

Today, the pardon power, more often than not, stokes scandal and reinforces the corrosive perception of a two-tiered justice system that favors the politically connected. This significantly outweighs its benefits. It is not worth preserving.

Pardons are too easy to abuse

Prof. Daniel Carpenter 2020 (He is the Allie S. Freed Professor of Government at Harvard University.) “Get Rid of the Presidential Pardon” 11 January 2020 <https://washingtonmonthly.com/2020/01/11/get-rid-of-the-presidential-pardon/> (accessed July 11, 2021)

Pardons have been used by monarchs since the European Middle Ages, when subjects often petitioned the king for mercy. That executive history of the pardon is one reason why the federal Constitution and many state constitutions leave pardon power in the hands of the chief executive. Yet we are now in a world where this power can be too readily abused, in part to obstruct anticorruption efforts, legislative oversight, and judicial functioning. Clinton’s pardon of the financier Marc Rich—who had previously donated to his campaign—shows that Republicans do not have a monopoly on this abuse.

Corruption means we should be LIMITING pardons, not granting more

Prof. John Vile 2021 (He a professor of political science at Middle Tennessee State University.) “Trump's last-minute pardons are just one reason why it's time to reconsider presidential pardon power | Opinion” 19 January 2021 <https://www.tennessean.com/story/opinion/2021/01/19/reconsider-presidential-pardon-power-avoid-future-forgiveness-spree/4207705001/> (accessed July 11, 2021)

The Founders did not intend to elevate the president and his friends above the law through the pardon power, and limiting pardons to those that the public can assess prior to a presidential election would provide a proper remedy.

Unilateral pardons undermine the criminal justice system

Prof. Daniel Carpenter 2020 (Allie S. Freed Professor of Government at Harvard Univ.) “Get Rid of the Presidential Pardon” 11 January 2020 <https://washingtonmonthly.com/2020/01/11/get-rid-of-the-presidential-pardon/> (accessed July 11, 2021)

These unilateral actions don’t just undermine fairness. They invite a range of future crimes, ranging from reckless and racist law enforcement (Arpaio), to fleeing justice and tax fraud (President Clinton’s pardon of financier Marc Rich), to wanton military atrocity in defiance of the chain of command (Gallagher). As the Post’s Colbert King recently [predicted](https://www.washingtonpost.com/opinions/its-a-good-bet-trump-pardons-his-felon-allies-heres-when-thats-most-likely/2019/11/29/3cdd83d8-12bd-11ea-b0fc-62cc38411ebb_story.html), there is now a good chance Trump will use the pardon to reverse legitimate criminal investigations, indictments and convictions of his associates, ranging from Gen. Michael Flynn to Paul Manafort and Roger Stone. (Restricting the pardon power during impeachment investigations, as some have [argued](https://www.nytimes.com/2019/12/05/opinion/impeachment-pardon-power.html?action=click&module=Opinion&pgtype=Homepage), wouldn’t address these and the vast majority of other pardons, which were separate from the impeachment investigation.) The president can summarily undo the results of painstaking investigations and, not least, the unanimous decisions of juries. Because federal investigations (including congressional subpoenas) depend upon the threat of penalty for non-compliance, perjury or obstruction of justice, the entire architecture of presidential and administrative oversight can, in theory, be undone by abusive pardons.

Allows the president to commit crimes

Prof. Daniel Carpenter 2020 (Professor of Government at Harvard University.) “Get Rid of the Presidential Pardon” 11 January 2020 <https://washingtonmonthly.com/2020/01/11/get-rid-of-the-presidential-pardon/> (accessed July 11, 2021)

Any attempt to reform the pardon power has to confront two realities in tension. First, the pardon power as currently constructed threatens to undermine the separation of powers and enable vast corruption. If the president directs others to do all of his wrongdoing and then promises (ahead of time or after the fact) to pardon those involved, he can thwart legitimate investigations. Impeachment, conviction, and removal are no bulwark against this threat. In a polarized world, the supermajorities required for Senate conviction will not materialize unless the president loses an appreciable chunk of his legislative allies.

Impact: Encourages lawbreaking

Prof. James Pfiffner and Justin Florence 2019 (Priffner is Professor of Public Policy at George Mason University. Florence is Legal Director at Protect Democracy.) “Using the pardon power to encourage law breaking” 31 July 2019 <https://thehill.com/blogs/congress-blog/judicial/455530-using-the-pardon-power-to-encourage-law-breaking> (accessed July 11, 2021)

Using the pardon power to encourage future law-breaking is inconsistent with the Framers’ purpose for the pardon power, which was to ensure an avenue for mercy and justice. This is a noble purpose and we should protect it from being tainted. Fortunately, the Constitution also requires the president to use all of the powers of his office, including the pardon power, to uphold the Constitution and the law. President Trump raised his right hand and swore an oath to abide by this duty. It’s up to all of us to make sure that he does.