

# [***Donald Trump again is trying to bend the Supreme Court and justice system to his will***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BW9-TKM1-JBSS-S017-00000-00&context=1516831)

CNN Wire

April 25, 2024 Thursday 4:00 AM GMT

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**Length:** 1783 words

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**Dateline:** (CNN)

**Body**

(CNN) &#8212; When he was president, [*Donald Trump*](https://www.cnn.com/2024/04/08/politics/donald-trump-abortion-2024/index.html) tried to make the Supreme Court his own.

He bragged that he could have his way, beginning with his appointment of justices who, he vowed, would [*overturn Roe v. Wade*](https://www.cnn.com/2022/06/24/politics/dobbs-mississippi-supreme-court-abortion-roe-wade/index.html). And when his administration lost immigration disputes in lower courts, his social media refrain was, "See you at the Supreme Court."

Now Trump is counting on the court in a very personal way as citizen and candidate. The nine-member bench is dominated by six conservative justices, three of whom he nominated.

On Thursday, the court will hear his claim of absolute immunity from criminal prosecution. It's an argument that Trump hopes will keep him from facing trial on federal chargesbrought by [*special counsel Jack Smith*](https://www.cnn.com/2024/04/08/politics/special-counsel-jack-smith-supreme-court-trump-immunity-claim/index.html) arising from the former president's actions after he lost the 2020 presidential election.

All of the Trump litigation, arising from his 2016 and 2020 presidential campaigns, has shrouded the current race, which is shaping up to be another tight match.

As much as Trump has [*lamented the pattern that has kept him in the courtroom*](https://www.cnn.com/2024/04/24/politics/trump-two-courtrooms-analysis/index.html) rather than on the campaign trail, he has also used his moment in the legal spotlight to reinforce a kind of political martyrdom. Referring to the Supreme Court case, Trump declared in a Sunday post on Truth Social that Democratic President Joe Biden was "weaponizing the DOJ against his Political Opponent, ME."

From his early days in the White House, Trump has also operated under his own code of conduct, challenging democratic norms and the rule of law.

Now, he sits at the center of an untested constitutional question of executive branch immunity. The epic clash between the former president and the US Justice Department will be heard by a court that has experienced its own fraught history with Trump and seen its stature and public approval diminished in recent years.

Trump's appointments across the federal judiciary have transformed the law in America. He points to his selection of Justices Neil Gorsuch, [*Brett Kavanaugh and Amy Coney Barrett,*](https://www.cnn.com/2024/03/27/politics/barrett-kavanaugh-abortion-mifepristone/index.html) all of whom backed the court's June 2022 decision in Dobbs v. Jackson Women's Health Organization, as he takes credit for reversal of the constitutional right to abortion.

In a [*video earlier this month*](https://www.cnn.com/videos/politics/2024/04/08/donald-trump-abortion-treene-cnc-vpx.cnn), Trump announced his campaign position on abortion, including his personal thanks - one-by-one - to the Supreme Court justices who had voted against the 1973 Roe v. Wade milestone.

The court, meanwhile, remains at the center of today's social and cultural maelstrom, largely because of its 2022 decision eviscerating constitutional abortion rights, but also because of decisions enhancing 2nd Amendment protectionsand diminishing federal regulatory power, such as for environmental protection.

The court has increasingly faced criticism, too, for justices' off-bench behavior and opaque standards regarding conflicts of interest. Justice Clarence Thomas, particularly, has been subject to calls for recusal in post-2020, Trump-related cases. His wife, Virginia "Ginni" Thomas, was in regular contact with top Trump insiders protesting the election results, and she attended Trump's "Stop the Steal" rally on January 6, 2021. Justice Thomas has declined to recuse himself.

Over the years, some of the justices have chafed at the overt ***politics*** of Trump and the scrutiny his cases bring to them. Yet, they have assisted him at critical junctures, if not in bottom-line judgments, with delays and orders for additional proceedings.

In the immunity case, the justices already helped the former president by denying the special counsel request last December to resolve the immunity question expeditiously. The court's slower timetable ensured that the original March 4 date for Trump's Washington, DC, trial would never become a reality. (That delay alsoguaranteedthat the first criminal trial of Trump is in New York on business fraud charges related to hush money payments, rather than anything related to January 6, 2021.)

In March, [*Trump won a high court decision*](https://www.cnn.com/2024/03/04/politics/takeaways-trump-scores-big-win-in-colorado-ballot-dispute/index.html) reversing a Colorado ruling that said an anti-insurrectionist provision of the Constitution should keep him off the ballot. As he spoke then from his home in Florida, Trump was already looking ahead, calling for the justices to side with him on immunity as well.

He has continued the drumbeat, and on Sunday posted 10 times on Truth Social about presidential immunity.

"Of course I was entitled, as President of the United States and Commander in Chief, to Immunity," he wrote in one post. "I wasn't campaigning, the Election was long over. I was looking for voter fraud, and finding it, which is my obligation to do, and otherwise running our Country. ..."

The key question for the nine justices is whether the Constitution shields a former president from criminal prosecution for actions he took while in office. In civil cases, the court has allowed a former president immunity, but it has never addressed liability in the more serious situation of a criminal prosecution.

Lower court judges ruled against Trump, saying whatever immunity he might have enjoyed as president ended when he left office. [*A DC US Circuit Appeals Court opinion*](https://www.cnn.com/2024/02/06/politics/takeaways-donald-trump-immunity-appeals-court/index.html) highlighted the charges related to Trump's rejection of the valid election results and obstruction of the peaceful transfer of presidential power.

Trump denies any wrongdoing, and his lawyers tell the justices in written filings that a president cannot function if concerned with possible prosecution for official acts once out of office.

Denial of absolute immunity, his lawyers wrote, would amount to "de facto blackmail and extortion while in office, and condemn (a president) to years of post-office trauma at the hands of political opponents."

Smith responds in his filing that presidents through history have understood that after leaving office they could face potential criminal liability for official acts.

"The closest historical analogue is President Nixon's official conduct in Watergate," Smith's team writes, "and his acceptance of a pardon implied his and President Ford's recognition that a former President was subject to prosecution."

Trump will be in a different kind of courtroom

Trump [*will not be at the Supreme Court*](https://www.cnn.com/2024/04/24/politics/trump-two-courtrooms-analysis/index.html) on Thursday. His attorney in the Manhattan criminal trial said the former president "very much" wanted to attend rather than be in New York court on Thursday.

"Your client is a criminal defendant," Judge [*Juan Merchan*](https://www.cnn.com/2024/04/15/politics/juan-merchan-judge-nyc) in Manhattan responded last week. "He's required to be here."

Trump's singular presence, nonetheless, will be felt.

During his presidency, he regularly posted on social media about the justices, whether with approval or disdain. Cases involving Trump accelerated the maneuverings and friction behind-the-scenes, as some justices sought to distance themselves from the polarizing president.

In 2020, when the court heard a pair of disputes arising from Trump's effort to keep his personal financial records from being turned over to Manhattan prosecutors and, separately, to congressional committees, Chief Justice JohnRoberts struggled for weeks to persuade justices to show greater unity. In the end, Roberts transformed two sets of initial close votes into 7-2 decisions built on compromises.

One of those cases, Trump v. Vance, has been invoked by Smith in the current controversy, because the court rejected Trump's argument then that he should be immune from a state criminal proceeding.

Beyond the substance of cases, Roberts and Trump clashed memorably when Trump in 2018 disparaged a US trial judge in partisan terms.

"This was an Obama judge, and I'll tell you what, it's not going to happen like this anymore," Trump told reporters outside the White House after one loss. "We will win that case in the Supreme Court of the United States."

[*Roberts responded at the time by issuing a rare statement*](https://www.cnn.com/2018/11/21/politics/trump-roberts-judges-judiciary/index.html) reacting to a political branch: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them."

Bound to have the last word, Trump rejoined, "Sorry Chief Justice John Roberts, but you do indeed have 'Obama judges,' and they have a much different point of view than the people who are charged with the safety of our country."

Roberts issued no further comment.

From Marbury v. Madison to Richard Nixon

The Supreme Court already had a consequential slate of cases for its 2023-24 session, including disputes over abortion pills, gun control and federal regulatory power. The Trump-related controversies have only heightened the drama around the high court.

Thursday's immunity case may be the toughest of the series for Trump to win. He's pressing a bold, unprecedented interpretation of absolute presidential immunity from criminal trial.

He cites the court's seminal 1803 decision in [*Marbury v. Madison*](https://www.archives.gov/milestone-documents/marbury-v-madison) for the independence of the presidency from the courts. He also relies on a 1982 case, [*Nixon v. Fitzgerald*](https://supreme.justia.com/cases/federal/us/457/731/), in which the justices ruled that a president could be immune from civil damages for acts undertaken as part of his duties.

"From Marbury through Fitzgerald, and beyond, this Court has consistently held that (federal) courts cannot sit in judgment directly over the President's official acts, whether before or after he leaves office," Trump's legal team wrote. At the Supreme Court, lawyer John Sauer will represent Trump, as he did before the DC Circuit.

Smith argues that Marbury and other precedent involving the separation of powers teach the opposite lesson: that former presidents are bound by law and can be criminally prosecuted for their actions in office. The special counsel invokes the president's constitutional duty to "take care that the laws be faithfully executed" and says that "does not entail a general right to violate them."

Smith answered Trump's argument that past presidents were never criminally prosecuted by saying past presidents never tried to overturn the legitimate results of a presidential election. Trump's indictment said he used false claims of election fraud to obstruct federal efforts to collect, count and certify the results. Smith will be represented by Michael Dreeben. In earlier service in the US solicitor general's office, Dreeben argued more than 100 cases before the high court.

"Since Watergate," Smith's team wrote, "the Department of Justice has held the view that a former President may face criminal prosecution, and Independent and Special Counsels have operated from that same understanding. Until petitioner's arguments in this case, so had former Presidents."

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**Load-Date:** May 14, 2024

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