



Written by [Steve Byas](#) on May 23, 2019

## New York's Law to Prosecute Anyone Trump Pardons Is of Dubious Constitutionality

In an act seething in partisanship and lack of regard for the clear wording of the Constitution and the principles found therein, the New York State Assembly voted Tuesday, by 90-52, to allow the state to prosecute a person pardoned of a federal crime, in certain cases. Those certain cases vividly illustrate the blatant partisanship of the bill: If someone was working for or was related to Donald Trump at the time of the pardon, they're fair game.



No, the bill does not actually name Donald Trump, but it does provide that a person working for or related to the president at the time of the pardon can be prosecuted — and everyone voting on the bill knew the legislation was aimed at thwarting any potential pardon of the present occupant of the White House.

Governor Andrew Cuomo, a very liberal Democrat, has already expressed support for the legislation, and is expected to sign the bill. Cuomo, in a statement in August of last year, said, “President Trump has shown that he is willing if not eager to abuse his executive authority, including pardon power, to protect himself.”

Adding evidence to the case that can be made that the New York Legislature is targeting Trump, and not just some generic president of the United States, the Legislature is considering another piece of legislation requiring the New York Tax Commissioner to turn state tax returns over to Congress, if requested. Again, it just so happens that the U.S. House of Representatives, run by the Democratic Party, are wanting to obtain the supposedly private tax returns of President Trump.

Democratic Assemblyman Joe Lentol lamely tried to spin the bill providing for prosecution in spite of a federal pardon as somehow nonpartisan. “This new law will confront any president — not just this one — who thinks he or she can get away with washing away illegal behavior.”

The minority leader of the New York State Assembly, Brian Kolb, a Republican, criticized the effort. “The job of the State Legislature is to develop measures that help New Yorkers. This bill does absolutely nothing to achieve that. The endless political grandstanding involved in targeting President Trump at a state level is a total waste of time, energy and taxpayer money.”

No doubt what Assemblyman Kolb has to say is true, but what the New York Legislature has done is far worse than simply a waste of time and money for New York.

When delegates met in Philadelphia in the summer of 1787 and drafted what became the Constitution of the United States, they infused the document with certain principles, such as limited government, liberty, federalism, separation of powers, and checks and balances. Under the principle of checks and balances, the framers gave to each of the three branches (legislative, executive, judicial) certain powers designed to check the powers of the other two branches.



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To the president, the Constitution gives the power to veto an act of Congress. While not an absolute veto, since Congress can override any such veto by two-thirds vote of each house of Congress, less than 10 percent of presidential vetoes are ever over-ridden. Even the threat of a veto can force changes in the bill. The purpose is not to so much to give the president more power, but to limit the power of the Congress.

Likewise, the president was given the power to pardon individuals convicted of federal crimes. Clearly, this power was intended as a check on potential abuse of power by the federal courts. The president's power in this area is absolute — for federal crimes. A president cannot pardon someone for speeding through a little town in South Dakota, as that would violate another principle found in the Constitution known as federalism.

New York's action also violates the clear wording of the Constitution, found in Article I, Section 10, in which states are expressly forbidden from enacting an *ex post facto* law. An *ex post facto* law makes criminal an action which was not criminal at the time of the action. In this case, being convicted of a federal crime while working for President Trump was not against the law in New York at the time the action took place, but New York is proposing to criminalize such *after the fact*, or *ex post facto*.

While not required, since it was a proposal to amend the Constitution, when Congress passed the 22<sup>nd</sup> Amendment in 1947 to limit the president to two terms in office, the Republicans who were in the majority of both houses of Congress opted to not make the two-term limit apply to the present occupant of the White House, Democrat Harry Truman. In other words, even after the amendment was ratified in 1951, Truman was free to run again in 1952. Congress clearly recognized the unfairness of applying a law to Truman, *ex post facto*.

But the New York Legislature evidently does not recognize fairness, constitutional restrictions, or the principles embedded in our federal Constitution.

*Image: photographer3431*



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