



LAW

## What Biden's preemptive pardons for family members could mean for presidential powers

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A Martínez

Before leaving office, President Biden issued preemptive pardons for five family members. Legal expert Kim Wehle discusses the move and what it means for future presidential powers.

A MARTÍNEZ, HOST:

In his final hours as president, Joe Biden issued preemptive pardons for five family members - his siblings and their spouses. Now, in a statement yesterday,

Biden said his family had faced partisan attacks and threats and he had, quote, "no reason to believe these attacks will end." Kim Wehle is now back on the show. She's the author of "Pardon Power: How The Pardon System Works—And Why." Kim, what did you make of those last-minute announcements?

KIM WEHLE: I think they were both surprising and somewhat disappointing. Of course, there was controversy over Joe Biden's pardoning of his son, Hunter. But that was after years of investigation - both under Donald Trump's Department of Justice and with a special counsel - produced two criminal trials, a guilty plea, as well as a jury verdict. These are sort of open-ended, nebulous pardons for unidentified conduct. And it really smacks of nepotism and favoritism when, you know, really we have thousands of pardon applicants that were turned down, presumably, moving into the Trump administration.

MARTÍNEZ: Kim, I'm going to go back to the title of your book, which is "How The Pardon System Works." I mean, is what we've seen - is that how it's supposed to work or just how it's allowed to work?

WEHLE: It's how it's allowed to work, although I argue in the book these kinds of shady pardons really began probably with George H. W. Bush and the Iran-Contra pardons. Some believe that was to silence witnesses who could testify, potentially, against the president. And then we saw controversial pardons with Bill Clinton. It really mushroomed with Donald Trump's first administration. But I think some are surprised that Joe Biden would take this kind of step at the very waning moments really of his presidency.

MARTÍNEZ: And how might Biden's decision affect maybe how President Trump or future presidents beyond Trump might use that pardon power?

WEHLE: Well, even before this, you know, I traced the question back to Trump v. U.S., when the Supreme Court manufactured criminal immunity in response to January 6 and Trump's alleged wrongdoing. The pardon power allows presidents to essentially pardon accomplices in crimes in the White House now - that they have immunity - and create, you know, this big crime spree where people get off doing the bidding of the president so long as they're pardoned. And I think if Donald Trump or others are going to do it moving forward, Joe Biden has set a precedent for really these open-ended pardons that we have never really seen in - to this extreme prior to yesterday.

MARTÍNEZ: And just to be clear, can a president pardon themselves?

WEHLE: I argue no, but again, immunity makes self-pardons irrelevant. If you can't be prosecuted for a crime that you commit using the massive power of the office, there's no need to pardon anything because you're already immune.

MARTÍNEZ: Now, should the rules around pardons need reform? I mean, that power comes from the Constitution, so would it be like moving a mountain?

WEHLE: It would be. To amend it, especially after the court called it core power, would require a constitutional amendment, which is quite laborious and almost impossible these days.

MARTÍNEZ: So quite the big mountain, then.

WEHLE: Right, although Congress could try to amend the Freedom of Information Act and require some transparency. And that's unclear if the court would even uphold that much of a limit on the pardon power.

MARTÍNEZ: All right. So let's assume for the sake of argument here that it can be moved - the mountain can be moved. If the reform happens, should it be wide or narrow?

WEHLE: I argue that it's - the time has come for no more pardon power because...

MARTÍNEZ: Oh, wow. OK.

WEHLE: ...Really it's benefiting the wealth and - people with wealth and power, just like the criminal justice system. But at a minimum, an amendment to stop these last-minute pardons at - you know, stop them prior to the Election Day - that would put some pressure on outgoing presidents maybe to rein in these controversial pardons.

MARTÍNEZ: Considering you just said that there should be no more pardon power, are you leaning more toward wide or more, like, narrow reform?

WEHLE: Yeah, wide reform.

MARTÍNEZ: Wide. OK.

WEHLE: You know, there's an argument that - and this goes - dates back to the Enlightenment, pre-constitutional - that the pardon power not only incentivizes people to commit crimes, but it also disincentivizes Congress to clean up the criminal justice system. The idea being, well, you can always ask for a pardon. And that just seems like unfairness all the way around.

MARTÍNEZ: Kim Wehle is a law professor and the author of a book on the president's pardon power. Kim, thanks.

WEHLE: Thanks for having me.

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