

***United States v. Nixon* / President Clinton: The President as Defendant**

Although a sitting president has immunity from litigation arising from actions performed in their official capacity, that immunity does not extend to actions arising from their private conduct nor does it allow them to postpone litigation while in office.

The issue of executive privilege took front stage when President Bill Clinton was sued for actions alleged to have occurred before he was president. Paula Jones filed a civil suit in 1994, alleging that President Clinton propositioned her in a Little Rock hotel room three years earlier, when he was governor of Arkansas and she was a low-level state employee. She sought damages for “willful, outrageous, and malicious conduct” arising from the allegations of sexual harassment and sexual assault.

President Clinton’s attorneys argued that the trial should be postponed while he was in office because the litigation would distract him from his presidential duties. In December 1994, a federal District Court judge ruled that a trial could not take place while Clinton was in office because of the potential interference with official duties. The U.S. Court of Appeals for the Eighth Circuit reversed the District Court’s decision.

Clinton appealed to the U.S. Supreme Court. The Court agreed to hear the case to decide whether civil litigation against an incumbent president must in all but exceptional cases be delayed until after they leave office. President Clinton’s legal team raised two main arguments in support of its position that the case should be postponed. First, they argued that constitutional immunity for a president’s official actions extends to their unofficial conduct. Second, they argued that the separation of powers doctrine, which ensures that none of the three branches of government infringes on another, forbids a trial judge to force a sitting president to defend themselves in a lawsuit.

The Court rejected both of Clinton’s arguments. In a 9 to 0 decision in May 1997, the Court ruled that Jones could move forward with her sexual harassment lawsuit because nothing in the Constitution allows a sitting president to postpone a private civil damages lawsuit while they are in office. The Court thought it was unlikely the case would burden Clinton’s time. Without commenting on the merits of Jones’ case, the Court said she is entitled to her day in court.

A majority of the Court was un-persuaded by the concern that a failure to postpone private litigation would be an invitation to excessive litigation. They rejected the notion that “our decision will generate a large volume of politically motivated harassing and frivolous litigation.” Writing for the Court, Justice Stevens said: “If the past is any indicator, it seems unlikely that a deluge of ... litigation will ever engulf the Presidency.” The opinion noted that only three sitting presidents—Theodore Roosevelt, Harry Truman, and John F. Kennedy—had been defendants

