

## **United States v. Nixon (1974)**

Argued: July 8, 1974

Decided: July 24, 1974

### **Background**

**Executive privilege** is the idea that the president can keep certain information private from Congress, the courts, or the public. Sometimes presidents want to keep information private because they worry that sharing the information might put the nation at risk. For example, a president might claim executive privilege so that they would not have to share information about the location of military troops in the Middle East. The president might worry that sharing this information with the courts or Congress would endanger a military mission and the lives of the soldiers. Presidents also want to keep their conversations private for another reason. They want their advisers to give them honest advice without criticism from other people. Throughout history, several presidents have used executive privilege to keep information private from the courts or Congress.

The U.S. Constitution never actually mentions the words “executive privilege.” At times, the courts have allowed it because it is seen as part of the **separation of powers**. This is the idea that the three branches of government need to have their own separate powers in order for them to be balanced.

This is a case about how far a president’s executive privilege can go. Is it an **absolute right** of the president, or can it be limited by the courts or by Congress?

### **Facts**

In 1972, five burglars broke into the Democratic National Committee Headquarters at the Watergate Office Building in Washington, DC. They were caught and arrested. Investigations showed that the burglars were involved in President Richard Nixon’s re-election campaign. The investigations also showed that the president and his aides probably abused their power in other ways as well. When a president abuses their power, it means that they went beyond the limits of the powers given to them in Constitution or established informally by earlier presidents.

The Senate wanted a special group of people to investigate the potential crime. The **attorney general**, who heads the Department of Justice, chose a **special prosecutor** to investigate the case. Because all people who work at the Department of Justice are part of the executive branch, which the president leads, it was important to have someone who did not work for the president and was impartial to investigate.

During his time in office, President Nixon set up a tape recorder in the Oval Office. He used the recorder to tape the conversations he had there. The special prosecutor found out about the tapes and wanted to hear what was on them. He thought they could help prove that President Nixon and his aides had abused their power and broken the law. President Nixon refused to hand over the

tapes. A federal court ordered the president to do so. The special prosecutor asked the Supreme Court of the United States to hear the case instead. The Supreme Court agreed.

### **Issue**

Does the president have an **absolute right** to withhold certain information based on “executive privilege?”

### **Arguments for the United States (petitioner)**

- Executive privilege is not absolute. There must be a balance between a president’s need for privacy and the judicial system’s need for fair trials. In this case, the needs of the legal system should win. The tapes are important evidence and needed for a fair trial.
- If the court decides that the president’s executive privilege is absolute, then that means he would have more power than the judicial branch. This would also go against the idea that no person including the president is above the law.
- The president can still use executive privilege in other ways. A judge can decide that there is a very strong reason why the government needs the secret information. If they decide that, then the president must give them the information.

### **Arguments for President Nixon (respondent)**

- Even though the Constitution does not mention it, the Constitution protects the president’s executive privilege. The president must have the powers that he needs to do his job. The power to keep conversations private is a necessary for the president to the duties of his office.
- Executive privilege should be allowed in certain conversations between the president and his advisers, even when national security is not at risk. In order for aides to give good advice, they have to be able to be honest. They will only be honest if they know that what they say will stay private.
- The president has absolute executive privilege. This means that keeping certain information private is completely up to the president.

### **Decision**

In a **unanimous** decision, the Court ruled in favor of the United States and against President Nixon. Chief Justice Burger wrote the opinion for the Court.

The Supreme Court said that presidents can use executive privilege. They also said that the privilege was not an absolute right. In this case, the president’s use of executive privilege did not allow for a fair trial about the burglary.

The president can claim executive privilege when it is based on “military, **diplomatic** or sensitive national security secrets.” This is when the president’s need for privacy will outweigh the judicial

branch's need for "fair administration of criminal justice." But when the president's only reason for using executive privilege is to keep conversations private to protect himself, like it is here, then the judicial system's reasons will outweigh those of the president.

### **Impact**

President Nixon turned over the tapes, which showed that he was involved with the criminal coverup of the burglary. Exactly one month after oral arguments and just over two weeks after the Supreme Court's decision, Richard Nixon became the only president in U.S. history to resign from office.

The decision in *United States v. Nixon* still sets the precedent for the use of executive privilege. Executive privilege has also been extended to other senior officials who work with the president. Every president since Ronald Reagan has used executive privilege to block the release of specific documents or the testimony of some members of their administration.

### **Glossary**

- **absolute right**: a right that cannot be taken away for any reason.
- **attorney general**: the head of the U.S. Department of Justice.
- **challenge**: objection; disagreement.
- **diplomatic**: dealing with international relations.
- **executive privilege**: the idea that a president can keep certain information private from Congress, the courts, or the public.
- **fair administration**: a fair way to carry out a procedure.
- **judiciary**: the court system in a country.
- **necessary power**: power that is required to perform a job.
- **special prosecutor**: a prosecutor is a lawyer who argues in a court that the defendant should be found guilty of their accused crime. The attorney general hired a "special prosecutor" because he could not prosecute the president himself because of potential bias.
- **separation of powers**: the idea that the three branches of government have to have separate powers to work correctly.
- **unanimous**: agreed upon by everyone.

Additional information about *United States v. Nixon*, including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>.