

You Might Be Right - Pardon Power - Transcript

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Mike Nelson: You could consider allowing the president to retain the pardon power, unless both chambers of Congress voted to override it within a period of time. The only unchecked power that the president has is the pardon power.

Steve Vladeck: I would be supportive of a safe harbor period where pardons are not allowed. Every four years, have the window between election day and the next inauguration be a pardon-free zone.

Marianne Wanamaker: Welcome to "You Might Be Right," a place for civil conversations about tough topics brought to you by the Baker School of Public Policy and Public Affairs at the University of Tennessee, with funding support from members of our Producers Circle. To learn more about how you can support our work, visit youmightberight.org.

The power of the U.S. president to pardon convicted criminals is enshrined in the U.S. Constitution, but many experts have harshly criticized the recent use of presidential pardons, and calls for reforming the power of the president to pardon have grown louder.

In this episode, our hosts, former Tennessee Governors Phil Bredesen and Bill Haslam, and their guests discuss presidential pardon power. Why did the framers adopt this practice in the first place? Would their vision of the pardon power line up with the ways it is being used today? And, if not, how might the power be reformed to meet the founders' intent?

Phil Bredesen: This segment is about something we both have some direct experience with. I think particularly with what's happened in the last few weeks with President Trump and these pardons, it's something that's on the front of people's minds now, understanding the why and what about this power that presidents have, and governors.

Bill Haslam: Yeah, and I'd actually go back further – President Biden with pardoning his son and then preemptively pardoning some other family members and Dr. Fauci and Gen. Milley and others. This is a topic that's been well discussed and people, depending on who's doing the pardon, have a strong opinion.

Phil Bredesen: I think it'll make a lot of sense just to have some thoughtful people who've thought about this a lot combined with our own personal experience here and see what we can sort out.

Bill Haslam: And my experience is that deciding to grant or not grant a pardon was way harder than I thought it would be.

Phil Bredesen: Absolutely, underline that. But we've got some good guests and I think we'll

learn a lot today.

Bill Haslam: Let's do it.

Phil, as we said, we both have experience, but we have two guests who have put a lot of work into the constitutional basis, the history of this, and I think they're going to bring some great perspective to us. Steve Vladeck, a lot of you will remember, has been a guest before with us on our issue around polarization in the courts. He's a professor of law at Georgetown. He's a nationally recognized expert on federal courts, constitutional law. He's argued dozens of cases before the Supreme Court, written a lot of books, and thrilled to have you back, Steve. Thanks for joining us again.

Steve Vladeck: Thanks, Governor.

Bill Haslam: And Mike Nelson is a former professor of political science at Rhodes down the road from us and also a senior fellow at the University of Virginia's Miller Center. Prior to that, he was a professor right here in Nashville at Vanderbilt University. He, as well, has written numerous articles and books and put a lot of great thought and work into this. So thank you both for joining us and we'll jump right into it.

Phil Bredeesen: I wish we'd had these fellows 25 years ago.

Bill Haslam: Yeah, we could have probably used the help.

Phil Bredeesen: Anyway, I want to just start out with a general question. The pardon power seems something out of the mainstream of what a lot of the Constitution is about and so on. What's the historical basis of this? Is this a leftover, in some way, from the 17th century or is it something that is seen as an important function today in the operation of government?

Mike Nelson: It is indeed a leftover from our time as British colonies. The king and the royal governors had this power and it was essentially a way of turning a government that was, in general, operating according to law into a government that, at least in these limited cases, operated according to the will of an individual. And there wasn't a whole lot of debate and discussion at the Constitutional Convention about this power, but Alexander Hamilton, in his Federalist paper number 78, basically offered two justifications for it.

One is involving sort of individual cases of mercy, where an injustice had been done or somebody had clearly paid their penalty and an act of mercy. And then the other was for kind of collective situations where there'd been a rebellion, as there soon was in 1793, the so-called Whiskey Rebellion, when Hamilton said the offer of a pardon might cause people who otherwise might feel like they might as well keep going because they've already committed crimes to end their rebellion and go home.

Phil Bredeesen: Steve, I'd ask you, has it outgrown its usefulness in regard to those things? You

have a lot of experience in this area. Is it something that if we were designing a constitution today we would leave out or is it still essential to the operation of a smooth-running government?

Steve Vladeck: Governor, it's a fair question. I think part of the tricky part is that the pardon clause today looks a little bit strange because of just how much we think the president gets to control criminal prosecutions in the federal government. So, at the founding, when criminal prosecutions were much more diffuse, when it was possible that you could have not just local U.S. attorneys, but even in some cases maybe private lawyers, bringing criminal prosecutions under federal law, the pardon power was actually a really important check.

And it was a check on the president's part to be able to limit abuses by prosecutors and abuses by courts, miscarriages of justice, as Mike says. And I think as the Supreme Court, for better or for worse, and this is, I think, a topic for another time, but as the Supreme Court has really put all of the prosecutorial power under the president's direct control to an extent that we're seeing right before us in the newspapers, I think that has made the pardon clause a bit vestigial where now the only reason why you would issue a pardon if you're the president is because you're objecting to what one of your predecessors did.

So you're not pardoning to protect against a prosecution that happened under your watch, you're pardoning because you are disputing the consequences of something that one of the prior presidents, if not did directly then at least didn't stop. And I guess that's why I'm not sort of anti a pardon power, but I think the breadth has outrun its real utility and its real significance as a check today.

Bill Haslam: One of the questions we would both have and one the practical uses of pardons we would both see is every now and then the system doesn't work. So like you said, it's something that was prosecuted under a former president. Well, the DOJ is this pretty huge organization and things don't always happen exactly right.

The ability for the executive to correct what feels like a wrong feels different than using it for the political purposes we've seen recently, and we'll go into that, but I guess I'd ask both of you, is that legitimate, there's a legitimate role for the executive to be able to pardon in the circumstances where he or she doesn't think the system worked?

Mike Nelson: Absolutely. If we ever get under the hood of the Constitution again and start thinking, in a serious way, about amendments the way we did in the 60s, for example, it might be that you could consider allowing the president to retain the pardon power unless both chambers of Congress voted to override it within a period of time. I'm just thinking out loud here, but some sort of check.

Right now, it's the only, at least in terms of the document itself, the only unchecked power that the president has is the pardon power. So in a sense, it would be consistent with the structure of the Constitution as a whole to put at least a possibility of a check on it. But I understand what

you're saying, in any chief executive position you're dealing with, I'm sure, a lot of sad stories about people who really could benefit from a pardon with no harm to the state as a whole.

Steve Vladeck: Yeah, I agree with Mike. First, I think that would be a salutary development if you allowed a vote of two-thirds of both chambers, say, to override a pardon. I guess the second thing is one of my favorite Supreme Court opinions that nobody knows is Chief Justice Taft's opinion in a case from 1925 called *Ex Parte Grossman*. And Grossman was basically about whether presidents had the power to pardon criminal contempt of court. And the question was wouldn't that defeat contempt of court as a check on abuses of the judiciary if the president could pardon it? And Taft, who had been president, shockingly upholds the pardon power in that context.

But, Governors, what he said was the real check on the pardon power is politics. The notion that pardons that are deeply politically unpopular will be not possible. And we just have seen time and again from presidents of both parties that that's not true. That presidents, especially lame duck presidents who don't face immediate political consequences, have been able to hand down a raft of unpopular pardons. We saw President Trump hand down pardons in the January 6th context I think were quite unpopular. I guess the bottom line is that Taft's optimism that politics would serve as the check that Mike rightly notes isn't overtly in the Constitution, I think has been increasingly proven too optimistic by our contemporary politics.

Mike Nelson: I moved to Tennessee in December of 1978 and you all will recall that as a time when Governor Blanton, with still a few days left on his term, was selling pardons. And we had, in effect, a coup d'etat when Lamar Alexander took the oath of office beforehand, so to keep that from continuing. We do see, I think in recent pardons and especially those of President Trump, we see almost an opportunity for a president to authorize criminal behavior on the part of his underlings with the explicit or implied promise that, "If you get into trouble on this, I will pardon you." And that is something that I think is new in the American experience. It shows the ways in which the pardon power, if not exercised with good faith, can really turn destructive.

Phil Bredezen: Give me some international comparisons. This pardon power, is it typical in modern democracies or not?

Steve Vladeck: My sense of it is, it's common in the abstract, that is to say, a number of democracies and countries that we would think of as fellow democracies have some version of a pardon power. The difference is that the use is a lot more tempered. And I think parliamentary systems have, I think, a better opportunity to utilize the political checks that Taft was so invested in in 1925 because parliamentary systems, the acts of the head of government are subject to so much more immediate pushback, whether it's by the current members of parliament, whether it's by the electorate.

If you're kicked out of office as the prime minister of the United Kingdom, you're out the next day. So I think the complication, Governors, is not that the pardon power itself is unique to the American Constitution, it's that our presidential system, the way the pardon power is written into

the Constitution and the way that politics have evolved, has made it uniquely powerful compared to how it is structured and utilized in those other countries that have them.

Mike Nelson: I was thinking about that case you mentioned, Steve, the 1925 case. This was at a time when there was no constitutional limit on the number of terms a president could serve. So at least, despite the tradition of no more than two terms, which was obviously still soon to be violated by Franklin Roosevelt, there was still the possibility that a president in office would face a political consequence because it would foreclose the option of running for another term.

And that 22nd Amendment, added in 1951 with the two-term limit, creates the lame duck presidency for second term presidents. And we've seen most recent controversial pardons have been issued kind of on the way out the door. The first President Bush, Bill Clinton, each of them issued a number of pardons that they would not have issued if they had feared political consequences that would jeopardize their ability to stay in office.

Bill Haslam: I want to go to that. I try to neatly separate things into pardons where the system doesn't work versus political pardons, but one of the most famous pardons is Gerald Ford pardoning Richard Nixon, right? And that actually had negative political consequences for Ford, but you could argue whether that was a system breakdown or a political issue.

But Ford, I think rightly said, "For the good of the country, let's put this behind us and move on." It's a little hard. Recently, you've had President Biden pardoning his son and other family members preemptively. We'll go into the recent pardons of all the January 6th, 1,500 mass pardons. So we can talk about that. But is it too naive for me to try to say let's separate those where the system doesn't work from purely political ones? Is that too neat and easy?

Mike Nelson: The ordinary process is in the Justice Department. There's an Office of the Pardon Attorney that is supposed to consider appeals for pardons that come up through the kind of process you're describing and evaluate those and make recommendations to the president. And for years, that was the typical pardon. This office has not functioned at high speed.

And again, say what you will about Ford's pardon of Nixon, and I agree with you, I think it was probably the least bad thing to do under the circumstances, but it sort of opened up the pardon power for political purposes. So the presidents after Ford are the ones who have used the pardon power to forgive people who either had committed or were subject to prosecution for—

Bill Haslam: Can I stop you? Would both of you say that was kind of the watermark of things becoming more political or not?

Steve Vladeck: The problem is that I think probably in modern times that's true, but of course, at least until this year, I would say the most controversial uses of the pardon power in American history were Andrew Johnson's pardons of hundreds and thousands of Confederates. The real spark that ignited the war between Andrew Johnson and the Radical Republicans were

his pardons. I think certainly, we've seen an upsurge in the episodes that are so politically divisive when it comes to the pardon power in recent decades. But when I think of January 6th, to me, the closest example to January 6th is Andrew Johnson, which, of course, is not so modern.

Mike Nelson: That's a great point. And I just say, those pardons made Johnson very politically unpopular in Congress. But when he was impeached by the House, his use of the pardon power was not one of the articles of impeachment. So it might've been what caused Congress to be ready to impeach him, but even they didn't feel like his pardons constituted an abuse of the pardon power in a way that would make him impeachable. And Congress can impeach a president if it thinks the president has abused the pardon power. That check is there.

Bill Haslam: While we're there, let me put you both on the spot with current events versus history. Is pardoning the January 6th folks the same as Andrew Johnson pardoning Confederates?

Steve Vladeck: I will dive on this grenade and say it's worse because in the context of Andrew Johnson and the Confederates, the federal government was not actively prosecuting the folks who received the pardons from Andrew Johnson. The reason why the pardons were important was because the pardoned Confederates needed the pardon in order to reclaim abandoned and captured property under a statute called, shockingly enough, the Abandoned and Captured Property Act of 1863.

Bill Haslam: A rare case of government calling what it is.

Phil Bredezen: I was going to say, "That's unusual."

Steve Vladeck: Congress wasn't quite as creative in 1863 when it came to naming statutes. But, Governor, I think the point is, what I find so controversial about the January 6th pardons and commutations, or at least as a step above what Andrew Johnson did, is here you have the president getting in the middle of cases while they're happening and sort of thwarting what in real time are active cases being tested with all of the procedural protections the criminal justice system has to offer versus Andrew Johnson's use, which was really for personal property reasons, not for criminal prosecution purposes.

Mike Nelson: I agree with Steve, but I could imagine an argument to the contrary, which is that candidate Trump said that he was going to do this. So in a sense, he can say the voters had a chance to disapprove of this and they didn't. But, all that said, Steve is exactly right. This was an active effort to overthrow a constitutional process that was detached from any sort of even pretense of legality.

Steve Vladeck: Can I just throw one more thing on there? The promises that candidate Trump made on the campaign trail were about nonviolent offenders, right? The promises were about pardoning the folks who were charged only with property crimes on January 6th, only with

wrongfully being in the Capitol.

And had he actually split the difference between those folks and Stuart Rhodes and Enrique Tarrio, the folks who actually were convicted of serious violent felonies, maybe that wouldn't have been quite as controversial. To me, I don't know that the popular mandate argument works at least for the more serious crimes that Trump pardoned or commuted.

Phil Bredesen: I want to go to the experience that both of us have, of course, is with the pardon power in the hands of governors at the state level, which varies state by state. Certainly, here in Tennessee, it's basically absolute. Is that still necessary today? Is that just an imitation of the federal system that got into state constitutions or does it have a role to play?

Mike Nelson: Well, a lot more people are convicted of state crimes than federal crimes. So if the idea behind the pardon is to correct injustices or maybe just to say a person who served a long sentence is going to die in prison unless we let them out. I think governors need this power, have a more legitimate claim to this power than presidents do. Were there no restraints on you as governor in terms of who you pardoned?

Phil Bredesen: No.

Bill Haslam: Unless you're getting paid for it, which we had somebody in Tennessee do once—

Mike Nelson: Well, that's right.

Bill Haslam: —there's really not.

Phil Bredesen: There's not even a process you have to go through. I think we both had one, but you can just sit in your office and decide to pardon X and go do it.

Steve Vladeck: My understanding, Governors, is that there's about 19 states that are in that category with Tennessee where there is a board that the governors can consult with, but that they're not bound by. But actually, the majority approach, although it's not a large majority, is actually a more shared pardon power at the state level than at the federal level. I think it's 22 states where governors share their power affirmatively with the board. There are six states that actually have an independent board that is the principal holder of the power. To quote Chief Judge Jeff Sutton of the Sixth Circuit, the state constitutions are imperfect models, but they're models nonetheless for different ways of doing this.

The other thing I'll say, Governors, and this may not be that surprising, there's a real variance in how frequent pardons are state by state. About a third of the states, so 16 or 17, have a high number of pardons on an annual basis, but the other 33 jurisdictions really don't do it very often, even though Mike's exactly right, there are far more state crimes than federal crimes. So I guess that might testify to there being less outrage, not none, but just less of the sort of political stew surrounding gubernatorial pardon and clemency powers than presidential powers. And maybe

that makes sense because of the volume point.

Bill Haslam: Yeah, I think it's the volume and then also the question of just national focus. When we make pardons, there's a little bit of local attention for a while. But let me ask you, I tried to make the separation between those that where the process broke down versus the political, there's two other types of pardons, particularly of recent, I'd call those the personal and the preemptive.

So take Biden with pardoning his son famously after saying he wouldn't do that, and then preemptively pardoning other family members, Fauci, Milley, et cetera. Give us some comment on that. The personal and the preemptive feel like another turn from where we've historically been.

Mike Nelson: Oh, no doubt. And again, this is one of the characteristics that made Ford's pardon of Nixon so controversial was that he pardoned Nixon before Nixon had been indicted, and complicating things, didn't really ask for a statement of contrition that seemed to express genuine contrition. One of the things about pardons is that 1915, correct me, Steve, the Supreme Court decision basically said, "To accept a pardon is an admission of guilt." But people don't know that and Nixon never really did put that into words. But the idea of pardoning somebody before they've been prosecuted, again, you can see how this can be abused by presidents saying, "If you get into trouble on this, don't worry, it'll never come to trial." And presidents who are making pardons on the way out the door, in a sense, they won't be around if they wait for somebody to be indicted. So that's become the default setting.

Steve Vladeck: I think there's a larger disease that President Biden's pardons are a symptom of. And it's not just what Mike says, although I agree with it, it's also fear of the weaponization of federal prosecutions that I think historically we have largely been immune from where in a world in which you weren't genuinely concerned about a politically motivated prosecution of someone like Anthony Fauci or Chairman Milley, you would never even think about pardoning them because it sends the worst possible message. But my suspicion is that the folks in the Biden administration thought that as between two evils, the less terrible evil was to pardon as opposed to leave these folks to fend for themselves. Governors, that, to me, is more an indictment of breakdowns in our understanding of what federal prosecutors should and shouldn't be doing, where the pardon power is the reaction as opposed to the original sin.

Mike Nelson: And the Biden pardons sort of opened a window for Trump to issue those pardons at the outset of his administration. It sort of seemed more politically like, "Well, they did it, so now I'm doing it." So it lost some of its sting when Trump issued those pardons because Biden's pardons, just a month or two earlier, had been so controversial.

Phil Bre desen: Do constitutional scholars agree that a preemptive pardon is a thing that the president can do?

Steve Vladeck: I think we should differentiate, Governor, between two kinds of preemptive

pardons. So there's the preemptive pardon of the ilk that President Ford gave to President Nixon, which was, "The crime was in the past, but you haven't been indicted yet." And that's often referred to as a preemptive pardon. And I think the Supreme Court has said that's okay, albeit in dicta. And I think the general consensus among constitutional law scholars is that's right.

And then there's the sort of pardoning for future conduct, and I think that's where most constitutional scholars, I think, get off the bus for the reasons Mike alludes to. The notion that you can sort of write a forward-looking get out of jail free card is a terrifying idea to constitutional democracy. So I think preemptive in the sense that the crime already happened, but you haven't been indicted, yes. Preemptive in the sense that you haven't even committed a crime yet, probably not.

Bill Haslam: We're going to ask two final questions for both of you. First is, if you got to rewrite the Constitution regarding pardons yourself, okay, somebody gave you that power, what would you do differently?

Mike Nelson: I think Steve and I have come up with the idea, give both houses of Congress by a two-thirds vote, the right to override a president's pardon within a specified period of time. That would provide a very difficult check to achieve two-thirds in the House and the Senate. It's not easy to do, but it would provide a check and it would cause presidents to at least anticipate that there might be a very embarrassing blowback to actions they might otherwise think they can just do.

Steve Vladeck: And I would just add one other thing, which is, I'd have to think about the wording a bit, but I would also be supportive of a safe harbor period where pardons are not allowed. So in the last X number of days of any presidential term, you couldn't, I think, tie it to whether the person's a candidate for office or not, but just every four years have the window between election day and the next inauguration be a pardon-free zone. And I think then you solve some of the lame duck problems we've been talking about as well.

Phil Bredesen: One of the things that we've tried to do in this podcast, we have all these guests with these rich backgrounds, is to take a line from Senator Baker's famous quote about listening and keeping an open mind because sometimes the other person might be right. It's how we got the name of our podcast. I kind of wanted to close here by asking the two of you, are there instances in your own intellectual development and so on where something you believe to be true because you listened to others, you changed your mind on in a substantive way?

Mike Nelson: About 20 years ago or so, I started getting interested in doing research on public policy toward gambling. And I think I started out with the idea that state lotteries are an innocent activity. And listening to others, I changed my mind dramatically about that, that most of the money that states derive from lotteries come from poor and working class people, and most of the benefits go to middle class and upper class people whose kids would probably go to college

without those scholarships anyway, so that's something where I dramatically changed my mind.

Phil Bredesen: Was there something that happened that was an epiphany on that subject or was that just something you came to over a period of time?

Mike Nelson: Reading the research about where does the money come from and where does the money go and who suffers and who benefits. The evidence, to me, was surprising, but it was convincing.

Steve Vladeck: This is probably not that surprising. I started my career as a bit more of a formalist when it came to separation of powers that I thought, just to go back to what we were talking about earlier, Chief Justice Taft's vision of Congress and politics as a meaningful check on abuses of the pardon power that impeachment would be the check struck me as obviously right. And the longer that we see what happens to our politics when Congress, whether it's controlled by Democrats or Republicans, tends to act in partisan interests more than institutional interests.

The more I become wary of those structural relationships, the more I think it's wrong to actually have all this faith in the legislature because the legislature should have all this power, but we should also be thinking carefully about what happens in a world which we increasingly live in where legislature is controlled by the same party as the executive are going to be very ill inclined to actually assert institutional accountability over the executive. That seems to be something we should have a better solution for than wait until the next election.

Bill Haslam: Well, thank you. This has been really helpful and thank you for enlightening us. Like I said, this is one of those topics where it's obviously at the top of the current events chart, but that we've had some experience in. We really appreciate the perspective you've brought in helping us and our listeners.

Mike Nelson: Well, it's been a pleasure to be here.

Steve Vladeck: Thanks, Governor.

Phil Bredesen: That was interesting.

Bill Haslam: It is. And like I said, I think the executive should have that ability, for the reasons we said. I'm really concerned about the increasing political use. Like I said, I think President Biden made a mistake when he pardoned his son after he said he wouldn't, I think that for a lot of reasons. And then I think President Trump, given this blanket, pardon to 1,500 people, many of whom had already been adjudicated or the process is in place and there's pretty solid evidence of violent crime there. I think that was a mistake as well.

Phil Bredesen: But the question is how do you prevent that mistake without undermining the basic purpose of the pardons? There has to be, certainly with a chief executive like that, some

presumption of reasonableness of action on their part. They control the military, they control a lot of things.

Bill Haslam: No, I think you're right. There's consequences in any form of government we choose, right? There's a downside and just as I said, I think historically, for the good of the country, Ford did the right thing in pardoning Nixon. So I don't want to take that control away, I'm just increasingly concerned. I'm a little bit attracted to their idea of, "Well, what if the legislature could override it with a two-third veto?" In today's world where everything's divided into red jerseys and blue jerseys, it's hard to see the legislature— We're not going to have a two-thirds majority.

Phil Bredeesen: You can't even get five people to change their mind about outrageous appointments to things.

Bill Haslam: To get the sense that two-thirds of the people would vote against it is a little hard to see. I like the additional check. I do believe in checks and balances. I'm wondering if that would have that much consequence.

Phil Bredeesen: How did you approach it?

Bill Haslam: Ironically, when I went into office, you and I sat down and I asked your opinion on a lot of things, one of them being that. I made a big mistake in that I waited until the last six months of my eight-year term to deal with them because another predecessor of ours had given me that advice, like, "You don't want to be dealing with this the whole time, deal with it at the end." So I had this flood come upon me and you gave me some really good advice of, "Listen, you're not the 13th juror trying to decide if this happened or didn't happen. You're trying to figure out did the system break down or, given the time that's elapsed, do we know something now that we didn't then?" And I did that. I'll say this, the process was a lot harder than I thought it was. I thought they'd bring me a stack and I'd say, "Let's give them mercy. No, let's don't on this person. And I need to think about it longer." That pile grew. The yes and no pile didn't grow very fast.

Phil Bredeesen: Did you have an outside body advising you on this?

Bill Haslam: We did, but at the end of the day, to be honest with you, it was our legal counsel team, the three of them and me sitting down and wrestling through individually each one of them. Tell me about your process.

Phil Bredeesen: We had the same thing. It was the governor's general counsel who headed up the effort and requests for pardons and commutations came through there and they came with a recommendation. I took the opposite advice from what you said in that I specifically did not want to do pardons at the end of my term as governor because I felt that made it look like I didn't have enough guts to do it while I was sitting in office, so I'll do it on the way out the door. And I used it pretty sparingly. There was one death sentence that was commuted while I was there,

but again, on the basis that I thought the system had really not worked in the case of this person and it was commuted to life in prison as that would've meant at the time this woman was sentenced. And she eventually got out on parole with that and has now passed away, but led a perfectly successful 10-year life out in the outside world.

Bill Haslam: Yeah, the same approach, very limited. And to my knowledge, everyone that we've given a pardon to has lived a great life. We had one very notable situation of a woman named Cyntoia Brown, she's now Cyntoia Brown Long, who my wife and I've actually got to be good friends with her and her husband, but she was in prison convicted as a minor and given a life sentence in a very controversial case. And there was a Netflix documentary on her, and because of that, she became a cause celeb.

And we were literally getting everybody from Snoop Dogg to LeBron James to Kim Kardashian tweeted like, "Free Cyntoia." So we were flooded with requests. And it became a very public case that right when we had weeks to go, and again, we wrestled with it, there was a lot of people like, "Decide right now." I had protesters show up at speeches, "We're not putting our bullhorns down until you tell us what you're going to do." But we stuck to the process. In the end, I think we made the right call.

Phil Bredeesen: Well, it's an awesome power and responsibility. And so far, aside from what happened with Blanton, which has just becoming a criminal, my sense is that most governors have used that power in Tennessee very judiciously. I don't think of any outrageous kinds of circumstances.

Bill Haslam: I think the same, and it's why I still think that power should be left there. I'm hoping that there'll be, on the federal level, like I said, some sort of check put in place, but also that popular opinion won't just divide into, "Well, he's wearing my color jersey," or, "She's wearing my color jersey, I'll be for the decision," but we'll have a response when people think, "That didn't happen right."

Phil Bredeesen: Right. So do you buy into this notion of maybe prohibiting pardons at the presidential level in the last year of the term or something?

Bill Haslam: I actually do like that idea. That, obviously, won't prevent some of the egregious examples, we've seen it happen with people with the first of terms, not just with President Trump, but historically, you can see that. But I do think that helps. Vladeck's point of nothing between the last election and the inauguration because that does prevent the person, even if you're not being reelected, others in your party are, and that's a little bit of a restraint.

Phil Bredeesen: Yeah. I actually have a little different view on that in that I think it's really important that whoever's president be president until the 20th of January noon. And this notion you have that during that lame duck period between election and the January inauguration that you're not supposed to do stuff, it seems to me to weaken the ability of the country to deal with issues during that period. But you could come down on either side of that one.

Bill Haslam: Yeah. Thanks. We had interesting guests and appreciate your insight and, like I said, even going back, I having to do my math now for whenever I was sworn in, so 14 years ago when you gave me some good advice on pardons that I actually still remember, I did listen to you, see?

Phil Bredesen: That's good. I'll have to write that down somewhere and maybe frame it and put it on the wall, "I actually did listen to you -Bill Haslam."

Bill Haslam: Thanks.

Phil Bredesen: Talk soon.

Marianne Wanamaker: Thanks for listening to "You Might Be Right." Be sure to follow on Apple Podcasts, Spotify, or wherever you listen to your favorite shows. And please help spread the word by sharing, rating and reviewing the show.

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