

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES W. McCORD, JR.
7 Winder Court
Rockville, Maryland,

Plaintiff

v.

HON. GERALD FORD
The White House
Washington, D.C.

and

HON. PHILIP BUCHEN
The White House
Washington, D.C.

and

HON. WILLIAM SIMON,
Department of the Treasury
Washington, D.C.

and

HON. ARTHUR SAMPSON
General Services Administration
Washington, D.C.,

Defendants

CIVIL ACTION

NO. _____

COMPLAINT

(For Injunctive Relief on Count 1;
For Declaratory Judgment on Count 2)

1. This action for Declaratory and Injunctive Relief is brought under Article I, Section 3, Clause 7 and Article II, Clause 1 of the Constitution of the United States and Amendments Five, Nine and Fourteen to the Constitution of the United States; the Declaratory Judgment Act, 28 U.S.C. 2201, et seq.

2. Plaintiff is a citizen of Rockville, Maryland; in 1972, he was Security Chief for the Republican National Committee and the Committee to Re-Elect the President (CRP); on June 17, 1972, he was arrested in the offices of the Democratic National Committee in the Watergate Office Building; subsequently, he was indicted, entered

a plea of not guilty, and was convicted of several felonies arising out of this incident; on November 8, 1973, he was sentenced to serve a term of one to five years; and his case is currently on appeal to the United States Court of Appeals for the District of Columbia.

3. Defendant Ford, under the terms of the Twenty-Fifth to the United States Constitution was sworn in as President of the United States on August 8, 1974, upon the resignation of Mr. Richard M. Nixon.

4. Defendant William Simon is Secretary of the Treasury and, as such, is in charge of the Secret Service.

5. Defendant Philip Buchen is Counsel to the President of the United States.

6. Defendant Arthur Sampson is Administrator of the General Services Administration, an Agency of the United States Government.

COUNT 1

7. Sometime shortly before September 6, 1974, defendant Ford authorized his agent, defendant Buchen, to negotiate an agreement with former President Nixon concerning the disposition not only of former President Nixon's "presidential papers" but also the various tape recordings made in the White House by the Secret Service from sometime in 1971 until sometime in June or July, 1973.

8. With respect to these tape recordings, the agreement provided that the tapes are the sole legal property of Richard M. Nixon; that they will be stored in California under the joint custody of Mr. Nixon and defendant Sampson; that no reproductions of tapes shall be made without mutual agreement between Mr. Nixon and the Government; that no person may listen to the tapes without the written approval of Mr. Nixon; that Mr. Nixon will donate the tapes to the Government on September 1, 1979; and that the tapes shall be destroyed by September 1, 1984, or upon Mr. Nixon's death if that should occur first. [Emphasis added]

9. On or about September 6, 1974, Richard M. Nixon signed this agreement on his own behalf.

10. On or about September 7, 1974, defendant Sampson signed this agreement on behalf of the United States Government.

11. The White House recording system was installed by personnel of the Secret Service with equipment supplied by the Secret Service and owned by the United States.

12. The reels of tape used in the recordings were purchased and supplied by the Secret Service, at Government expense, and personnel of the Secret Service changed the reels of tape as needed.

13. The reels of tape containing recorded conversations were stored and preserved by the Secret Service and said reels of tape are currently within the custody of the Secret Service and are physically located within the jurisdiction of this Court.

14. The reels of tape are the property of the United States Government.

15. Defendant Sampson had no authority under law nor is there any precedent which governs or legitimizes the making of a gift of the tapes to ex-President Nixon.

16. Defendant Sampson had no authority under law or custom to agree to store said tapes for ex-President Nixon as his private property, as they remain the property of the United States.

17. Inasmuch as defendant Sampson is not authorized by law to enter such an agreement, the agreement executed by him on behalf of the United States is null and void.

18. Plaintiff further alleges that the physical transfer of the tapes outside of the District of Columbia pursuant to the said agreement will cause him to suffer immediate and irreparable harm insofar as it will hinder his legitimate defense and appeal in U.S. v. McCord, et al (Crim. No. 1827-72) U.S. District Court for the District of Columbia); will prejudice his pursuit of a cross-claim in the case of The Democratic National Committee v. James W. McCord, et al, (Civil No. 1233-72, U.S. District Court for the District of Columbia); and further, it will deprive him of his

rights to the equal protection of the laws as guaranteed by the United States Constitution.

WHEREFORE, plaintiff prays that this Court declare that the aforesaid agreement is null and void and not binding on the United States and further, that defendant Sampson and his servants and agents be enjoined, preliminarily and permanently, from carrying out the terms of such agreement on behalf of the United States.

COUNT 2

18. On February 6, 1974, the House of Representatives, by a vote of 410 to 4, adopted H. Res. 803, which authorized and directed the Committee on the Judiciary to investigate whether sufficient grounds existed for the impeachment of President Nixon, and to report Articles of Impeachment as it deemed proper.

19. In July, 1974, the Committee voted in favor of three Articles of Impeachment and recommended that Richard M. Nixon be impeached by the House for trial by the Senate.

20. On August 8, 1974, President Richard M. Nixon resigned.

21. On August 20, 1974, the Report of the House Judiciary Committee was referred to the House Calendar and ordered to be printed.

22. On August 20, 1974, the House voted to accept said Report of the Committee on the Judiciary, but has of yet neither voted for or against impeachment, and said issue is still pending before the House of Representatives.

23. Despite the resignation of Mr. Richard M. Nixon, the House is still empowered to impeach him and the Senate is still empowered to convict him.

24. On or about September 7, 1974, and simultaneous with the agreement for the disposition of the tape recordings, defendant Ford granted Mr. Richard M. Nixon a "full, free and unconditional pardon" for any and all unspecified crimes against the United States which Mr. Richard M. Nixon "has committed or may have committed" during the entire period of his incumbency as President of the United States.

25. Plaintiff alleges that the pardon is illegal and unconstitutional because it conflicts with the language of Article II, Section 2, of the Constitution, which specifically prohibits pardons "in cases of impeachment."

26. Plaintiff further alleges that said pardon is illegal and unconstitutional because it conflicts with Article I, Section 3, of the Constitution, which specifies that, even after impeachment by the House and conviction of the Senate, an official shall be liable and subject to the normal criminal processes of the law.

27. Plaintiff further alleges that the pardon is illegal inasmuch as it conflicts with the Presidential Regulations establishing the Office of the Special Prosecutor on November 9, 1973 (38 Fed. Reg. 30739, as amended 38 Fed. Reg. 32805); those Regulations which were agreed to by Congressional leaders, specify that the President shall not "exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence he is hereby given..."; the President assured the Congressional leaders that he would abide by the Regulations; said Regulations are still in effect.

28. Plaintiff further alleges that the pardon is truly not a pardon but an amnesty, as it forgives before formal accusation or trial; as such it is illegal and contrary to established custom because amnesties are given to specified groups and not to individuals.

29. Plaintiff further alleges that the pardon is illegal and unconstitutional since it is arbitrary and capricious, the grantor of said pardon not having known or specified the crimes to be forgiven.

30. Plaintiff further alleges that the granting of a pardon to Mr. Richard M. Nixon by President Ford deprives plaintiff of his rights to due process of law and to the equal protection of the law as guaranteed him by the United States Constitution in the following manner:

a. Plaintiff now has pending before the United States Court of Appeals for the District of Columbia Circuit an appeal of his conviction on Watergate-related felonies. Plaintiff has urged the Court of Appeals to either reverse his conviction or grant him a new trial.

b. The acceptance of a pardon by Mr. Richard M. Nixon implies the admission of guilt on his part to the commission of unspecified crimes involving Watergate.

c. In the event that the Court of Appeals awards plaintiff either one of his alternative prayers for relief, he will be tainted with a presumption that he, too, is guilty of Watergate-related crimes because the alleged chief-co-conspirator has already been pardoned for his commission of Watergate-related crimes.

31. Plaintiff further alleges that the granting of a pardon to Mr. Richard M. Nixon by President Ford is a violation of the latter's Constitutional duty to faithfully execute and enforce the laws, including the criminal laws, of the Nation.

32. Plaintiff further alleges that the granting of a pardon to Mr. Richard M. Nixon by President Ford deprives plaintiff and all other citizens of the United States rights guaranteed to him by the Ninth Amendment to the Constitution, in the following manner:

a. Said Amendment states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

b. The right of the people to be dealt with fairly by their elected or appointed officials and the people's right to expect that wrongdoing by persons in public positions of trust will be exposed and that justice will be done, are rights so fundamental that they ought not be denied protection or disparaged simply because they were not specifically listed in the first eight amendments to the Constitution or because no remedy has been fashioned by Congressional enactment.

c. If there is no explicit remedy, it is the responsibility of this Court to fashion a remedy for the violation of the aforementioned fundamental rights.

d. In the instant case, the remedy to be fashioned is for the Court to declare the aforesaid pardon null and void.

WHEREFORE, plaintiff prays this Court for a declaration that the pardon of Mr. Richard M. Nixon is contrary to the fundamental right guaranteed by the Ninth Amendment to the Constitution and, hence, void.

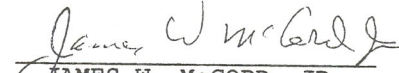
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Tel: 223-1667
Attorney for Plaintiff

Dated: _____

8.

VERIFICATION

I have read the foregoing allegations and, to the best of my information and belief, said allegations are true and correct.


JAMES W. McCORD, JR.

Dated: September 18, 1974