



Robert Mueller ready if Trump pardon power increases

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WASHINGTON — Supreme Court Justice Brett Kavanaugh takes the bench this morning, joining the court in time to consider a number of consequential cases this term — including one that could strengthen President Trump’s pardon power.

But Robert Mueller has already acted to nullify the impact of such a ruling on the ongoing probe of potential Russian coordination with Trump’s campaign.

“Mueller has already confronted this issue and strategized around it,” said Jed Shugerman, Fordham law professor.

The case, *Gamble v. U.S.*, gives the court the opportunity this term to overturn past court precedent that being prosecuted in federal court and again separately in state court for the same actions does not violate the Constitution’s ban on double jeopardy.

The case received increased attention after Sen. Orrin Hatch (R-Utah), a key member of the Senate Judiciary Committee that helped usher Kavanaugh to the bench despite sexual misconduct allegations made against him, filed a friend-of-the-court brief urging the justices to nix that rule.

Such a ruling would mean presidential pardons, which only apply to federal crimes, would have the effect of insulating those receiving pardons from state law prosecution as well. That could have been a key issue in the Mueller probe, in which former Trump campaign chairman Paul Manafort, former White House national security adviser Michael Flynn and former Trump attorney Michael Cohen faced a multitude of state and federal offenses. A pardon of any of them would not have saved them from state convictions without a high court ruling reversing the double jeopardy exception.

But prosecutors on Mueller’s team, likely anticipating the potential change in the law, have been careful to avoid charging for crimes with state law overlap.

For example, Mueller chose not to charge Flynn with federal kidnapping charges for an alleged plot to kidnap Turkish cleric Fethullah Gulen from his Pennsylvania home and return him to

Turkey. Now any pardon of Flynn would leave Pennsylvania state prosecutors free to pursue that case, rendering Trump's pardon useless regardless of how the court rules.

Even in future cases where presidents may leverage pardons, federal prosecutors are likely to follow Mueller's playbook.

“There are so many state crimes that even if the president pardons someone for federal crimes, there is going to be some way for state prosecutors to go after them,” said Ilya Shapiro, senior fellow at the Cato Institute, which filed an amicus brief in the case urging the court to overturn the double jeopardy exception.