



Legal experts say Trump's whopping New York fee could be 'excessive' under Constitution: 'unheard of'

## Description

**US : After scoring a major win Monday in the New York civil fraud case against him, legal experts weigh whether former president Donald Trump can appeal the \$454 million judgment as a violation of his constitutional rights.**

The 45th president and presumptive GOP nominee in the 2024 election had until Monday to pay a \$454 million bond or face seizure of his assets by Attorney General Letitia James, in accordance with an order by Judge Arthur Engoron.

But just hours before the deadline, the New York Appeals court slashed the bond by 60%, ordering Trump to pay \$175 million while the case is appealed.

Legal experts told Fox News Digital that one legal avenue Trump and his lawyers could and should pursue is trying to prove that the whopping half-billion figure violates a U.S. constitutional amendment that bans "excessive fines."

James sued Trump under a New York State Executive law that gives broad investigative authority and that was designed to protect against consumer fraud.

She accused him and his company of inflating the values of properties in order to secure better rates on loans from banks. In this unusual case, the state couldn't prove obvious victims Trump had harmed that incurred major losses.

Manhattan Supreme Court Judge Engoron in February sided against Trump, and imposed what's known as a "disgorgement" — a legal remedy that requires someone who profited illegally to give back any profits made while engaging in the illegal activity.

“It is unheard of to seek repayment of over \$464 million when there was no identifiable victim and when the entities on the other side of all of these transactions were sophisticated investors who conducted their own due diligence,” John Malcolm, a former assistant U.S. Attorney in Atlanta, told Fox News Digital in an interview.

Notably, bank executives who worked with Trump testified in court that they were happy with their business dealings with him, and even sought additional business with Trump, whom they viewed as a “whale of a client.”

Engoron calculated what the banks would have profited from the loans to the Trump company had the values not been inflated over the course of several years.

A disgorgement is not legally, technically, a fine. But legal experts say that the judgment could amount to what the Eighth Amendment of the Constitution bans.

That amendment says “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

“The issue of whether disgorgement is considered a fine is a complicated one,” Malcolm said. “However, if it is deemed to be a fine, it would certainly be an ‘excessive fine’ that would violate the Eighth Amendment.”

Jim Trusty, former legal counsel for Trump and a former federal prosecutor, said that the argument for an Eighth Amendment violation “is not absurd, because the disgorgement is thinly veiled as punitive fines.”

Punitive damages are what courts assess strictly as punishment for a crime, in addition to the losses assessed that are owed to the victim.

“In this case, nobody lost anything. In fact, banks testified in court that they were clamoring to be back in business with Trump. It’s not the only argument or the strongest argument he has, but it’s a valid reach because the judgment smells punitive,” he added.

“The issue boils down to whether the judgment reflects ill-gotten gains being retrieved by the court, or something more punitive, like a fine,” Trusty added.

Mark Brnovich, a former prosecutor and the former Attorney General of Arizona, told Fox News Digital that James’ case is “more of a political vendetta” than having met the proper standards and application of justice.

“Whether you’re suing a private company, whether it’s a criminal case, a civil case, — when you’re the government, you can take away people’s livelihoods, their life, liberty and property,” Brnovich remarked.

“So with that comes an awesome responsibility. And that means you don’t just throw crap against the wall and see what sticks. You don’t measure success in terms of the number of years in prison someone may get or how many fines you can get against a company or an

individual. You measure success at the end of the day is, has justice been done?" he said.

The Eighth Amendment has historically only applied to criminal cases, and not civil cases.

But Brnovich, who brought and settled a consumer fraud case against the infamous Elizabeth Holms and her company, Theranos, said he thinks that the Eighth Amendment "can apply in a situation where you have a fine that is essentially arbitrary and punitive."

"And I think that what Trump's lawyers are doing — they're preserving that argument on appeal," he said.

Brnovich, who has argued before the Supreme Court in three cases, noted the recent trend over the last decade in which the high court appears "definitely willing to at some point to step in and say that a civil fine essentially crosses the line" into excessive, in violation of the Eighth Amendment.

In 2019, the Supreme Court determined for the very first time that the excessive fines' clause can be used to challenge state-court judgments.

In the majority opinion, the late Justice Ruth Bader Ginsberg wrote, "For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties."

"Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies", she said.

More recently, the Supreme Court last term decided a case in favor of a 94-year-old Minnesota grandmother who claimed that the state violated her constitutional rights when they seized her condo over an unpaid tax debt, then sold the property and kept all the sale proceeds — which were far above what she actually owed.

In a concurring opinion, Justice Neil Gorsuch, along with Justice Ketanji Brown Jackson, noted how lower courts should consider Eighth Amendment challenges.

"Even without emphasizing culpability, this Court has said a statutory scheme may still be punitive where it serves another 'goal of punishment,' such as '[d]eterrence,'" he wrote.

"Economic penalties imposed to deter willful noncompliance with the law are fines by any other name. And the Constitution has something to say about them: They cannot be excessive," he said.

**By Brianna Herlihy**

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