



THE SUPREME COURT WILL DECIDE WHETHER TRUMP IS IMMUNE FROM FEDERAL PROSECUTION. HERE'S WHAT'S NEXT - ASSOCIATED PRESS

Posted on February 29, 2024 by ERIC TUCKER, ALANNA DURKIN RICHER and MARK

SHERMAN | Associated Press



Photo: This exhibit from video released by the House Select Committee, shows President Donald Trump recording a video statement on the afternoon of Jan. 6, from the Rose Garden

The Supreme Court's decision to consider whether former President Donald Trump should be immune from prosecution in his federal 2020 election interference case could push a trial close to Election Day — or even beyond this year.

The announcement Wednesday was a victory for Trump's efforts to delay the criminal case charging him with plotting to overturn the results of the 2020 election, setting arguments for late April. The Supreme Court will decide a legally untested question: whether former presidents are immune from prosecution for official acts they take in office.

The action injects immediate uncertainty into the legal and political calendar over the next several months. It could mean that the election this fall might happen without a jury ever being asked to decide whether Trump is criminally responsible for efforts to undo an election he lost in the weeks leading up to the violent Jan. 6, 2021, riot at the U.S. Capitol.

Of the four criminal cases Trump faces, the only one with a trial date that seems poised to hold is a New York state prosecution charging him with falsifying business records in connection with hush-money payments to a porn star, slated to begin in late March.

A look at what's ahead:

CAN THE TRIAL HAPPEN BEFORE THE ELECTION?

That's unclear.

If the court rejects Trump's immunity claim, the timing of the justices' decision will be crucial in determining whether it's possible for the case to go to jurors before November.

The justices' decision to fast-track the case means a trial could potentially start by late summer or early fall if the high court quickly rules Trump can face prosecution. But if the court waits weeks to issue its ruling, it's unclear whether the case could be scheduled or completed before the election.



The case has been on hold while Trump pursues his immunity appeals, meaning no pre-trial preparations have been taking place since mid-December. U.S. District Judge Tanya Chutkan is expected to give prosecutors and defense attorneys at least three months to get ready for trial if the case returns to her court. And more pre-trial legal battles are certain even after the case resumes in her court.

The trial is likely to take months, meaning it would likely threaten to run up against the election if it doesn't begin by August. Special counsel Jack Smith's team has said the government's case should take no longer than four to six weeks, but that doesn't include any defense Trump could put on. And jury selection alone could take weeks.

The Supreme Court has acted fast in other consequential cases. In the Watergate tapes case in 1974, the court issued a decision just 16 days after hearing arguments. The decision in *Bush v. Gore* came the day after arguments in December 2000.

WHAT IS THE LEGAL ISSUE AT STAKE?

The Supreme Court has agreed to decide a legally untested question: whether former presidents are immune from prosecution for official acts they take in office.

The question is novel since no ex-president, until Trump, had ever been charged with a crime. The Supreme Court has previously held that presidents are immune from civil liability for official acts.

Chutkan squarely rejected Trump's claim's of absolute immunity, saying in December that the office of the presidency does not confer a "lifelong 'get-out-of-jail-free' pass."

An appeals court earlier this month held the same, with a three-judge panel saying that for the purposes of this case, "former President Trump has become citizen Trump, with all of the defenses of any other criminal defendant."

That's in line with special counsel Smith's position. His office has said that not only is there no basis in the law for presidential immunity, the acts Trump is charged with — including participating in a scheme to enlist fake electors in battleground states won by President Joe Biden — aren't in any way part of a president's official duties.

Trump's attorneys have repeatedly warned of a potential floodgate of prosecutions against former presidents if they're not entitled to immunity, but that argument has been unpersuasive to date with judges. Trump's team has also asked a federal judge in Florida overseeing a separate case charging him with hoarding classified documents to dismiss the case on the same immunity grounds.

WHAT OPTIONS DOES THE SUPREME COURT HAVE?

The justices will hear arguments the week of April 22 and then probably meet in private a short time later to take a preliminary vote on the outcome. Chief Justice John Roberts would be a prime candidate to take on the opinion for the court, assuming he is in the majority.

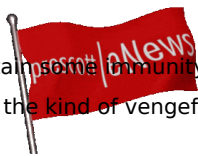
How quickly the court moves from that point could depend on how much agreement there is among the justices. Unanimous opinions almost always take less time to write than those that sharply divide the court.

The justices said Wednesday that they will consider "whether and if so to what extent does a former President enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office."

If the court upholds the appeals court's ruling and confirms that Trump is not immune from prosecution, the clock would restart on trial

preparations.

But the justices also might say that former presidents retain some immunity for their official actions. Such an outcome would establish boundaries that limit future prosecutions and discourage the kind of vengeful pursuit of political opponents that Trump's lawyers have said a ruling against him portends.



If the justices reverse the lower court, they would declare for the first time that former presidents may not be prosecuted for conduct related to official acts during their time in office. Such a decision would stop the prosecution in its tracks.

WHAT HAPPENS AFTER THE SUPREME COURT RULES?

If the justices rule against Trump and in favor of the government, the case would be returned to Chutkan, the trial judge, who would then be empowered to resume the proceedings and set a trial date.

But any trial would still be months away, in part because of Chutkan's decision last December to effectively freeze the case pending the outcome of Trump's appeal.

That means that outstanding legal disputes that have been unresolved for months will again take center stage, not to mention new arguments and court fights that have yet to even surface but will also take up time on the calendar.

One such pending motion from Smith, for instance, seeks to have Trump barred from injecting politics into the trial.

WHY DOES TRUMP WANT TO DELAY THE TRIAL?

The timing of the trial — and whether Trump will be forced to sit in a Washington courtroom in the weeks leading up to the election — carries enormous political ramifications.

If Trump secures the GOP nomination and defeats Biden in November, he could potentially try to order a new attorney general to dismiss the federal cases against him or he could even seek a pardon for himself — though that is a legally untested proposition.

Smith's team didn't mention the election in its filing urging the Supreme Court to reject Trump's effort to further delay the case. But prosecutors noted that the case has "unique national importance," adding that "delay in the resolution of these charges threatens to frustrate the public interest in a speedy and fair verdict."

Trump, meanwhile, has accused Smith of trying to rush the case to trial for political reasons. Trump's lawyers told the Supreme Court in their filing that holding the trial "at the height of election season will radically disrupt President Trump's ability to campaign against President Biden — which appears to be the whole point of the Special Counsel's persistent demands for expedition."

Richer reported from Boston.