

# OPINION

Find other viewpoints and a daily collection of cartoons at [tampabay.com/opinion](http://tampabay.com/opinion)

## Column

# With immunity decision, court didn't give Trump what he wants

**B**e careful what you ask for and how you ask for it. Both former President Donald Trump and special counsel Jack Smith are mulling that axiom. After two weeks of silence since the issue was briefed, the U.S. Supreme Court has just issued an important order in the immunity appeal accepting the case. It is not what Trump wanted.



**MICHAEL  
MCAULIFFE**

Despite media coverage to the contrary, the Supreme Court essentially gave the special counsel what he asked of it regarding the key procedural aspect of the immunity appeal. Trump, in his specific request, had sought a delay that would almost certainly have pushed the case past the November election. How? His legal team didn't want the Supreme Court to rule on the immunity case yet. Rather, they wanted to delay proceedings by asking the entire appellate court to relitigate an issue that three of its members had already decided.

Specifically, Trump wanted the court of appeals to entertain a motion for reconsideration en banc (before the whole appellate court) and allow that process to play out over weeks or months. In effect, the whole intermediate court could revisit the immunity issue already unanimously decided by a panel of three appellate judges. Only after that time-consuming process did Trump envision that motions or petitions would be filed in the Supreme Court.

Of course, Trump's requested

sequence would have pushed the immunity issue at least into the fall term of the Supreme Court, ensuring that no trial could take place before the presidential election.

That is not at all what the Supreme Court did. In legal terms, the court treated Trump's application for a stay of the court of appeals decision rejecting immunity as a petition for a writ of certiorari. That means the court now will make a final and binding decision about presidential immunity from criminal prosecution for alleged official misconduct while in office.

The court set a briefing schedule and oral argument on an expedited calendar. The argument is scheduled for the week of April 22. This is the exact process, if not the specific timetable, that the special counsel asked the court to do in the event the court concluded it needed to decide the immunity issue before any trial.

With the court's order taking the case and scheduling it for an April oral argument, the parties and the public will know by early summer whether Trump's claimed presidential immunity shields him from the special counsel's prosecutions. Given the gravity of the issues involved, and the significance of finding broad presidential criminal law immunity (interestingly, much greater consequences exist in finding immunity than in not), the schedule outlined by the court is within its reasoned discretion as the final word on a critical constitutional issue.

Judge Tanya Chutkan, the trial judge in the election sub-



ANNA MONEYMAKER | Chicago Tribune

**Republican presidential candidate and former U.S. President Donald Trump speaks at the Conservative Political Action Conference on Feb. 24 in National Harbor, Md.**

version criminal matter, may still be able to set the trial for early fall if the Supreme Court rules against immunity. That depends on the necessary trial preparation occurring after the high court decision. It's a tight proposition, one that is unwelcome to some because it's too tight — and to others because it's possible.

Trump, in his immunity-related court filings, characterizes the special counsel's attempts to try the case in a timely manner as an example of political interference and the weaponization of the justice system. It's as if up were down. The defendant's explicit strategy has been, and continues to be, to delay. While the defense team shouldn't be chastised for doing their jobs, the courts must not allow Trump to play the justice sys-

tem in such a way to run out the clock. Protecting a defendant's rights doesn't equate to the freedom to game the system.

A public figure has been formally accused of serious criminal wrongdoing. The system has to account for the prospective ability and intention of the defendant to stop the criminal justice process in the event he once again is the president. Because the federal cases can be ended by the defendant with an order to dismiss them, an obvious compelling objective exists — enable the allegations to be adjudicated on the merits.

While the allegations in the Trump case are unique, the judicial process to resolve those allegations is not so inflexible it cannot ensure a

trial starts in late summer or early fall.

Here's the most troubling scenario: Because of delays, voters don't have the jury's verdict in hand in the District of Columbia case when deciding who should be their next chief executive. But the president-elect could nonetheless be tried and convicted of the most serious felony offenses after being elected but before taking office in late January. How destructive would that be?

*Michael McAuliffe is a former federal prosecutor. He also served as the elected state attorney for Palm Beach County. Currently, he is a practicing lawyer, an adjunct professor at the College of William & Mary's Law School and a senior lecturing fellow at Duke University's School of Law.*