The Phyllis Schlafly Report

SCOTUS Should End Favoritism to Anti-Trump Prosecutors

By John and Andy Schlafly

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The politically motivated federal prosecutors of Trump, as led by Jack Smith in D.C., have been ordered by the Supreme Court to respond in a week, by February 20, to Trump's attorneys on an appeal that may decide the upcoming election. Democrat-appointed federal judges have allowed Smith and his political hacks to bypass ordinary procedure in seeking a pre-election criminal trial of Trump using the biased jury pool of D.C.

Ordinary procedure would afford Trump's attorneys many months to appeal the one-sided decisions against him, but the Democrat-controlled D.C. Circuit has violated its own court rules to try to hurry a trial before the election. A verdict by jurors who voted 95% against Trump in the last election could then have an undue influence on voters nationwide.

This is the same case that prosecutor Jack Smith demanded the Supreme Court take up on an emergency basis last December, which the Court unanimously declined. Smith argued then that the issue of legal immunity for Trump's actions as president could only be decided by the Supreme Court in an expedited procedure, such that his criminal trial of Trump in D.C. could begin.

But now Smith is expected to argue the opposite, and try to persuade the Supreme Court to allow the trial to proceed without a full appeal before the High Court. Smith's goal is to time this criminal trial for prior to the election, which is not a proper motivation for prosecutors who are supposed to be focused on enforcing the law.

Last week the D.C. Circuit denied Trump's assertion of legal immunity for his official actions while president on January 6, 2021. The Democrat-majority judges on the D.C. Circuit, which is the intermediate federal appellate court there, gave Trump's attorneys less than a week to seek a stay in the High Court to prevent a restarting of this criminal trial.

Trump's attorneys did so on Monday with their reasonable request for the Supreme Court to restore ordinary procedures, so that Trump can object to this unprecedented prosecution of actions he took while president. Absolute immunity has protected the official acts of every president until Donald Trump; otherwise politically motivated prosecutions could occur whenever the Deep State disagrees with a president.

Last week, at the oral argument in the appeal of Colorado's exclusion of Trump from the ballot, the battle lines were drawn such that 4 Republican-appointed Justices are on the side of Trump, while 3 Democrat-appointed Justices oppose him. An Obama appointee, Justice Elena Kagan, was artful in not offending Chief Justice John Roberts or Justice Amy Coney Barrett, whose votes liberals need to prevail 5-4 in the more important criminal case.

Justice Kagan was able to pull Roberts and Barrett over to Biden's side on the issue of dismantling the border fence in Texas, to conservatives' dismay. No opinions were issued with that 5-4 decision last month, and perhaps no explanation will accompany the upcoming decision on whether to grant Trump's request for a stay of the federal D.C. prosecution.

Unlike Chief Justice Roberts, Justice Barrett's questioning in the Colorado ballot case last week contained some hopeful signs for the pending appeal of the criminal case. She repeatedly referred to "President Trump," rather than demeaning him as the "former president" as other justices did.

Justice Barrett also pointedly questioned whether President Trump received due process while being excluded from the ballot in Colorado, which he did not. Trump's due process was violated when the Colorado court admitted hearsay evidence from Nancy Pelosi's one-sided J6 Committee and allowed a sociologist to criticize Trump supporters.

Early during oral argument the questioning by Chief Justice John Roberts made it apparent that he would be voting against Colorado's exclusion of Trump from its ballot, and the liberal bloc of the Court cannot prevail without Roberts' vote on their side. The liberal media then expressed dismay at how the Left side of the Court did not lash out at Trump, but such comments would have been futile and only alienated Barrett, whom the Left needs.

Chief Justice Roberts has spent his entire career in D.C. ingrained into the Deep State, and he fretted that Republican states would retaliate against a Democrat presidential candidate if Colorado were to prevail in excluding Trump from its ballot. Roberts framed this in terms of federal versus state power, declaring that the 14th Amendment was enacted to restrict state power rather than allow states to exclude candidates from ballots as Colorado attempts.

The good news is that Roberts' pandering to liberals in other cases has cost him credibility with the four right-of-center Justices: Thomas, Alito, Gorsuch, and Kavanaugh. Hopefully Justice Barrett realizes that Roberts is a creature of D.C., and will not be led astray by him again.

John and Andy Schlafly are sons of Phyllis Schlafly (1924-2016) and lead the continuing Phyllis Schlafly Eagles organizations with writing and policy work.