

STOP TREATING RULE OF LAW LIKE A MAGICAL SPARKLE PONY AND GET BUSY

Like everyone else, I anxiously await the DC Circuit decision on Trump's immunity bid.

Unlike most people, I'm not yet convinced that the delay so far stems from Judge Karen Henderson deliberately stalling the decision.

To be sure, I identified Henderson as the key target for persuasion before the hearing. I even suggested she might happily join an opinion holding that unofficial acts may be charged criminally, without ruling regarding official acts.

Her statements at the hearing on immunity were a pleasant surprise; it seems she'll easily reach that position, adopting at least the Blasingame standard that former Presidents can be charged for unofficial acts, like starting a coup to try to stay in office.

So, as I said, I'm still not convinced she's stalling.

That's because the decision is more complicated than most commentators appreciate.

Judge	Jurisdiction	Go Big or Go Blasingame?	Posture
Henderson	Yes	Blasingame	Slow
Pan	Maybe	Big	Quick
Childs	No	Big	Quick

There are three decisions in front of these judges. First, whether or not the court has jurisdiction to rule at all. Then, whether they should just rule for unofficial acts, like launching a coup to get reelected, or whether they should rule, generally, that Presidents can even be prosecuted for their official acts, like pardoning Roger Stone to buy his silence. Finally, they need to decide how to release the

opinion, possibly in a way to give Trump fewer options to stall further.

Because the American Oversight amicus – a pretty convincing one! – raised a question about whether the DC Circuit had jurisdiction, it caused a potential split between Florence Pan and Michelle Childs, both Biden appointees, who otherwise seemed to agree on the scope of their ruling. Childs seemed very persuaded by the AO brief, and so very cautious about their basis to rule at all.

As a result, there's no natural majority, meaning whatever opinion(s) get written will be far harder to map out. It is simply a far harder opinion than most people think, and if they get this wrong, it's going to lead to far longer delays at both the en banc and SCOTUS level.

Talk to me in two weeks. If we've got no ruling then, I'm happy to start entertaining theories about deliberate delay.

What I don't understand, however, is how the visible panic of a few TV lawyers who've been wrong every step of the way on the January 6 investigation has led to an all-out panic among Democrats.

The result has been self-inflicted impotence.

No judicial outcome will ever be sufficient, by itself, to beat Trump. No realistic Democrat should be staking their electoral hopes on one or some guilty verdicts – not because they wouldn't help, but because *you can't control that*.

Every single person reading this has in their power the ability to do something – whether it's local electoral work, repeating discussions of Trump's corruption so much that it begins to drown out stories about Hunter Biden, or educating your neighbors about Trump's central role in rolling back reproductive choice – to help defeat Trump. Every second you spend worrying about Karen Henderson is time you're not doing whatever it is that will be most

useful in defeating Trump.

Stop making yourself impotent by worrying about the court cases. Stop hoping that any court case is going to be the Magical Sparkle Pony that makes this easy. Stop wallowing in provably false conspiracy theories about the January 6 investigation that ignore a bunch of public things the TV lawyers don't talk about.

This is not going to be easy, I promise you. Find some way to make yourself useful to make it, at least, easier.