

Putting Trump trials off is a grievous mistake

The air is thick with tension and anticipation. Two indictments against Donald Trump are public and at least two investigations are like volcanoes releasing signs of intensifying activity. The public waits while the lawyers work the system from all angles to produce developments or to prevent them.

The Trump legal defense team in Georgia is on repeat. They filed a second battery of accusations against Fulton County District Attorney Fani Willis and the judge presiding over the investigative and charging grand juries. The charging grand jury was empaneled last week. Willis' office, based her previous statements about security and her representations to the court, may be presenting an indictment that addresses attempts by Trump and others to upset the 2020 presidential election vote totals in Georgia.

One issue largely ignored is the reality that a federal indictment covering the Capitol insurrection will overlap with the conduct addressed in the Georgia elections case. One could argue that any Georgia state case is inherently superfluous to a federal indictment covering the attempts to overturn the 2020 presidential results. That view has some merit. The evidence to prove the Georgia component will largely be the same, and both prosecutors will be vying for a time frame for trials and the availability of witnesses. However, Willis has the ability and prerogative to bring separate charges.

Willis faces another worrisome challenge, apart from scheduling conflicts. The Georgia Legislature passed a law creating a commission to review the conduct of elected Georgia prosecutors. The appointment process for membership and the vague standards of the body's review and removal powers provides ample fodder to think the panel could make mischief regarding a Trump indictment brought in state court.

If four indictments — two federal and two state — are all on a trial track as of this coming fall, case scheduling becomes exponentially more difficult. That is especially true if one (or more) of the presiding judges is overly accommodating of Trump's status as a presidential candidate. The defense in the Mar-a-Lago documents cases has a pending motion seeking to put any trial off until after the presidential election in November 2024.

That would be a grievous mistake. The nation's right to have multiple public charges resolved, by plea or trial, is paramount and takes precedence over a defendant's voluntary status as a political candidate. Candidacy must not be a shield, especially once felony charges are brought



By
**Michael
McAuliffe**

by grand juries and made public.

The defendant has the fundamental right to adequately prepare defenses and test the prosecutors' cases against him. That right, however, doesn't involve engaging in voluntary conduct that creates barriers to the case proceeding with efficiency and timeliness. Even the Mar-a-Lago documents case, with national security and classified documents as part of the evidence,

can be adjudicated within the next year and a half if the court commits the parties to its scheduling order and enforces deadlines.

The special counsel's overarching investigation into the Jan. 6 Capitol siege and the related attempts to derail the presidential election results presents both the most significant potential criminal case of the four matters and the most challenging in terms of timing. Even assuming an indictment is secured in early fall, the breadth and nature of the possible charges (seditious conspiracy, interference with governmental functions, aiding and abetting acts of violence against law enforcement officer, RICO, etc.) will test competing (and wholly legitimate) interests of resolving the most serious of criminal allegations and the rights of criminal defendants to adequately prepare for trial and even a sentencing hearing, if convicted.

The truly untrodden ground is what happens if the criminal cases against Trump remain ongoing, and Trump is elected president. Nothing in the Constitution prevents Trump from taking office again (unless the 14th Amendment's prohibition in the case of insurrection somehow is applied), but nothing explicit in the Constitution prevents the prosecutions from proceeding against him despite his designation of president-elect or president.

Trump might attempt to dismiss the federal charges against himself if he takes office and he might well invoke his status as president to try to stop the state prosecutions from moving forward. Both actions would trigger basic constitutional crises from which the nation might not recover. As such, the judges need to recognize the unique peril of multiple cases moving forward at the same time and secure timely adjudications of any and all charges, whether state or federal and whether narrow or comprehensive. The rule of law itself depends on it.

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.

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