



The Supreme Court has already given Trump a huge win in his fight against investigators

Cody Fenwick

December 15, 2019

We don't know how the Supreme Court will finally rule in three cases it recently agreed to hear, which all center on President Donald Trump's efforts to prevent oversight and investigation of him personally from both Congress and prosecutors in New York state.

But there's a key way in which — just by taking the case, and however they end up ruling — the court has already given Trump a win.

In all three cases, Trump's lawyers have said that his status as president should protect him from subpoenas of his taxes and financial records that any other citizens would be expected to have no immunity from. And yet, as legal scholar Lawrence Tribe pointed out, none of the cases seem to implicate presidential powers themselves because none “involves any official conduct or demands that any Executive Branch official DO anything.”

Legal analyst and former federal prosecutor Joyce Vance noted: “Every lower court to consider these issues ruled against Trump. The law is clear.”

So if the law is clear, and there's no disagreement among the lower courts, why is the Supreme Court even taking up the case?

Julian Sanchez, a senior fellow for the Cato Institute, pointed out that just by taking the case, the Supreme Court is giving Trump a win. The cases will be heard in March. A ruling is then likely to be announced in June. That means any revelations that might arise from the materials Congress and prosecutors are seeking won't emerge until long after impeachment is likely wrapped up. And if the evidence reflected any more impeachable activity, it would almost certainly be too late by summer for Democrats to effectively push another impeachment effort before the election.

“If they're going to drag this out after every lower court has rejected the administration's frivolous objections, I wish they'd schedule a special session & get it done fast,” Sanchez said on Twitter. “The delay is itself giving one side a win.”

The court's actions would be more reasonable if there were legitimately tough constitutional issues that needed to be resolved. But the court already has ruling precedents from decisions made about President Richard Nixon and Bill Clinton that undermine Trump's arguments in

these cases. Though there are some differences from the previous cases, there's little reason to believe the differences should lead the court to a ruling that overturns what the lower courts have unanimously concluded: the subpoenas should stand.

Since there seems to be no plausible legal rationale for the court to take the case, many observers are assuming that the conservative justices are preparing to provide Trump unwarranted cover on a partisan basis. But there may be other explanations. It's possible the justices simply want to be involved in some of the highest-profile cases in the federal system. Or they may feel that, though Trump's cases are similar to the failed arguments of Nixon and Clinton, it's worth establishing clear precedent knocking down his new claims.

Their intentions won't be clear until the ruling comes down. But it seems they're giving Trump what he wants, at least for now: more time, and more delay.