No. 24A831

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF STATE, ET AL.,

Applicants,

v.

AIDS VACCINE ADVOCACY COALITION, ET AL.,

Respondents.

DNONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

Applicants,

v.

GLOBAL HEALTH COUNCIL, ET AL.,

Respondents.

On Application To Vacate the Order Issued by the United States District Court For the District of Columbia and Request for an Immediate Administrative Stay

Brief of *Amicus Curiae* Jeremy Bates

In Opposition to Application "To Vacate"

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Amicus Curiae *in Opposition to Application "To Vacate"*

February 28, 2025

Interests of *Amicus Curiae*[1]

Amicus Jeremy Bates, a lawyer, has an interest in courts not abetting any misconduct by federal officers. Also, *Amicus* served as a Senate legislative assistant for budget, defense, foreign-affairs, and governmental-affairs matters.

Summary of Argument

Equity declines to aid iniquity. Equity will not aid parties who come to court with unclean hands. This maxim counsels courts to ration equitable remedies and to grant them only to good-faith applicants. Otherwise, courts risk abetting wrongs.

Here, President Donald J. Trump seeks a stay—a remedy in equity. On such requests, equity asks whether one who seeks relief has acted unjustly, fraudulently, or deceitfully as to the matter in suit: on this Application, the separation of powers.

Applicants argue that a stay would protect prerogatives of the presidency. But in that high Office of Trust, Trump failed to observe the separation of powers. Rather than preserve the Article III courts, Trump has interfered in proceedings. Rather than protect the Article I branch, Trump incited an insurrection against it.

President Trump asks the Court to defend what he breached. His breaches cost the United States unity, reputation, treasure, and blood. Rarely has equity ever seen a party whose hands are so unclean. The Court should deny the stay.

Application "To Vacate"

Even this Application's title should raise red flags for the Court.

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[1] No counsel for a party authored any part of this brief. No counsel, no party, and no person other than *amicus* made any monetary contribution intended to fund the preparation or submission of this brief.

Applicants label their filing as an "Application To Vacate" (Appl. cover), but Applicants quickly concede that what they really want is a stay (Appl. 10 & n.2.) They breezily tell the Court, "Regardless of the label, the practical effect of the relief is the same, and the traditional stay standard should govern." (Appl. 10 n.2.)

If governed by traditional principles, this Application should be denied.

Argument

As an eighteenth-century barrister put it, "He that hath committed Iniquity, shall not have Equity." Richard Francis, *Maxims of Equity* 5 (3d ed. 1791). This maxim is the unclean-hands rule—a fundamental principle of equity jurisprudence. *Keystone Driller Co.* v. *Gen'l Excav. Co.*, 290 U.S. 240, 244 (1933). If an applicant has unclean hands, then a court of equity will hold that party "remediless." *Id*.

Equitable remedies include stays of lower-court decisions. *Danco Labs., LLC* v. *Alliance for Hippocratic Med.*, No. 22A901, 143 S. Ct. 1075, 1076 (2023) (Alito, J., dissenting) ("[A] stay of a lower-court decision is an equitable remedy. It should not be given if the moving party has not acted equitably."); *Nken* v. *Holder*, 556 U.S. 418, 428 (2009) (describing "functional overlap" between stays pending appeal and injunctions); *In re McKenzie*, 180 U.S. 536, 551 (1901) (viewing power to effectuate appellate jurisdiction as "unquestionable" in chancery); former Equity Rule 74.

Even under the All Writs Act, the Application seeks relief that is essentially equitable. *Clinton* v. *Goldsmith*, 526 U.S. 529, 537 (1999). So as Applicants admit, the Court should consider "the equities" or "[p]rinciples of equity." (Appl. 10, 15.)

I. The unclean-hands rule bars relief in equity for one who acted inequitably as to the matter in litigation.

"It is a principle in chancery that he who asks relief must have acted in good faith. The equitable powers of this Court can never be exerted in behalf of one who has acted fraudulently or who by deceit or [ ] unfair means [ ] gained an advantage." *Bein* v. *Heath*, 47 U.S. 228, 247 (1848).[2] Thus, as Learned Hand, in dissent, wrote,

> The [unclean-hands rule] is confessedly derived from the unwillingness of a court, originally and still nominally one of conscience, to give its peculiar relief to a suitor who in the very controversy has so conducted himself as to shock the moral sensibilities of the judge. It has nothing to do with the rights or liabilities of the parties; indeed... the court may even raise it *sua sponte*.

Art Metal Works, Inc. v. *Abraham & Straus, Inc.*, 70 F.2d 641, 646 (2d Cir. 1934) (Hand, J., dissenting).

The unclean-hands principle prevents a party from using a court of equity to compound his own misconduct or "to derive an advantage from [his] own wrong." *Kitchen* v. *Rayburn*, 86 U.S. 254, 263 (1873). To be used in that way would make a court the "abetter of iniquity." *Bein*, 47 U.S. at 247. So the maxim operates to "protect the court from becoming a party to the transgressor's misconduct." *In re Napster, Inc. Copyright Litig.*, 191 F. Supp. 2d 1087, 1111 (N.D. Cal. 2002).

That said, the transgressor's misconduct must relate to the matter in suit:

> [C]ourts of equity... apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation. They do not close their doors because of plaintiff's misconduct... that has no relation to anything involved in the suit, but only for such violations

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[2] Equity is "the law of reason, exercised by the chancellor or judge, giving remedy in cases to which the courts of law are not competent." Webster's Dictionary (1828).

> of conscience as... affect the equitable relations between the parties in respect of something brought before the court for adjudication.

Keystone, 290 U.S. at 245.

What do Applicants, including President Trump, bring before the Court? The separation of powers. They see "Article II harms," a "serious intrusion on Article II prerogatives," or an "extraordinary usurpation of the President's authority." (Appl. 5, 17, 20.) Advancing notions rooted in theories of a unitary executive, Applicants contend that the district court overreached.

II. As to the separation of powers, Trump acted inequitably.

The unclean-hands maxim, however, bars relief for one who has engaged in conduct that is "unconscionable or inequitable." *Manufacturers' Fin. Co.* v. *McKey*, 294 U.S. 442, 451 (1935). "Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards… is sufficient cause for the invocation of the maxim by the chancellor." *Precision Instr. Mfg. Co.* v. *Automotive Maint. Mach. Co.*, 324 U.S. 806, 815 (1945).

And if a case concerns the public interest, then the maxim has greater force. In such cases, the unclean-hands principle "not only prevents a wrongdoer from enjoying the fruits of his transgression, but averts an injury to the public." *Id*.

Here, President Trump has often transgressed the separation of powers. Even the present record suggests not only that President Trump violated the Appropriations, Take Care, and Oath Clauses, but also that he and other Applicants have defied court orders. No wonder that Applicants want those orders vacated.

Years ago, President Trump selfishly used appointment and pardon powers to block judicial proceedings. *See*, *e.g.*, *In re App't of Audrey Strauss as U.S. Attorney*, No. M10-458 (S.D.N.Y. Dec. 22, 2020); Peter Baker, *In Commuting Stone's Sentence, Trump Goes Where Nixon Would Not*, N.Y. TIMES (July 11, 2020).

Last month, President Trump undid the work of faithful Article III judges when he mass-pardoned nearly 1,500 persons, many of them convicted criminals.

It is "more likely than not" that President Trump obstructed an electoral certification and conspired to defraud the United States. *Eastman* v. *Thompson*, 2022 WL 894256, *22, *24 (C.D. Cal. Mar. 28, 2022). (Elsewhere, President Trump was adjudicated to be a fraudster—which would make Applicants' vague assertions about fraud (Appl. 21–23) laughable here, if those assertions were not so brazen.)

One cannot imagine a deeper "intrusion" on another branch of government (Appl. 17) than the act of inciting a mob to attack Congress in its Capitol home.

Conclusion

For all these reasons, the Executive comes to court with unclean hands.

The Court should deny any stay.

Respectfully submitted,

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