

No. 23A745

**In the Supreme Court
of the United States**

DONALD J. TRUMP, APPLICANT

v.

UNITED STATES OF AMERICA, RESPONDENT

**On Application for Stay of the Mandate to Be Issued by the United
States Court of Appeals for the District of Columbia Circuit**

**BRIEF OF *AMICUS CURIAE* DAVID BOYLE IN SUPPORT
OF NEITHER PARTY RE THE APPLICATION FOR A STAY
OF THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT'S MANDATE PENDING
THE FILING OF A PETITION FOR WRIT OF CERTIORARI**

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AMICUS CURIAE STATEMENT OF INTEREST

The present *amicus curiae*, David Boyle (hereinafter, “Amicus”),¹ notes that the well-known Yogi Bear quote, “I’m smarter than the average bear!”, *see, e.g.*, Wikiquote, *Yogi Bear* (film), [https://en.wikiquote.org/wiki/Yogi_Bear_\(film\)](https://en.wikiquote.org/wiki/Yogi_Bear_(film)) (as of Dec. 25, 2023, 10:08 GMT) (last checked Feb. 15, 2024, as with all links here), may be more apposite than the Yogi Berra quote that Applicant (“Trump”) uses, Appl. at 1. That is, Trump may be asking the public, and the Court, to be *less intelligent* than the “average bear”, e.g., naively fail to notice the great ills that the Court’s granting a stay could mean, ills that Trump may be actively seeking. *Cf.* T.S. Eliot, *Ash Wednesday* (1930), *id.*, “Suffer us not to mock ourselves with falsehood”.

Put simply, if Trump receives a stay, this may put his trial after the November 2024 elections, and thus help him get into the White House again to pardon himself. This may be Trump’s prime purpose, to prevent justice, even if it costs the Nation, including Amicus, explaining Amicus’ interest in this matter. But whether it’s Trump’s *motive* or not: that miscarriage of justice, Trump’s pardoning himself after re-election because he didn’t stand trial beforehand, would be the likely *effect* of granting a stay, or at least an excessively long stay. And effects matter.

SUMMARY OF ARGUMENT

Trump should not profit from his own wrongdoing, by manipulating the Court into giving him a stay moving the trial until after the election. If there is a stay, it should be short. Trump’s defamation of E. Jean Carroll raises suspicions about his

¹ No party or its counsel wrote or helped write this brief, or gave money for the brief, *see* S. Ct. R. 37.

credibility here. And given the free-speech and other problems Trump caused Mike Pence on January 6, 2021, Trump has no real First Amendment claim in this case.

ARGUMENT

I. TRUMP SHOULD NOT PROFIT FROM HIS OWN WRONG, IN THIS CASE OR OTHER FEDERAL CASES AGAINST HIM

“Nullus commodum capere potest de injuria sua propria” is Latin, *see id.*, for “No man can take advantage of his own wrong”. This venerable principle has been followed by the Court on various occasions, *see, e.g., Root v. Ry. Co.*, 105 U.S. 189, 207 (1882) (saying of a “wrongdoer” that “it would be inequitable that he should make a profit out of his own wrong”). While Trump brings up alleged complexities in presidential-immunity law to ask for a stay, and even ask for *en banc* review, *see* Appl. at 1-4, Amicus has doubts that there’s anything, or much, to be resolved, that would require a stay. Trump has had many months to prepare.

Thus, Amicus sees it as Trump profiting from his own wrong, if the Applicant needlessly leverages the alleged need to slow down litigation, in order to delay the trial until after the election. (Or even to a short time before the election, since, e.g., Trump at that time might then falsely claim that some “illness”, say, “campaign fatigue”, mandates that the trial be moved to after the election.) And if Trump is elected, he can then pardon himself for federal crimes; or, if not formal pardon, he can at least order the cessation of, or at the very least, greatly hinder, all federal prosecution of himself. (Indeed, Trump could profit from wrongdoing in this case, to self-pardon in any other cases as well. Monstrously self-serving, one may say.)

Finally, for comparison, Amicus notes that the oral argument in another

election-related case, *Trump v. Anderson, et al.*, 23-719, offered a “parade of horrors” from the Justices, e.g., Justice Kagan asking “why a single state should decide who gets to be president of the United States”, Tr. at 75: which was quite conjectural, in that, e.g., other States might not adopt Colorado’s banning of Trump from the ballot, so that Colorado might not actually be very influential. But given Trump’s previous behavior in office, it is far easier to believe he would behave horribly if re-elected, than that Colorado banning Trump would have some hideous, hypnotic effect on the whole Nation. *A fortiori*, then, if the Court worried in 23-719 about some “Colorado effect”, a “Trump back in office because his stay request delayed his trial until after the election” effect should be far more worrying.

II. ANY STAY SHOULD BE KEPT AS SHORT AS POSSIBLE, EVEN TO A SINGLE-DIGIT NUMBER OF DAYS, SINCE NO STAY IS NEEDED

While it would be best to grant no stay: the Court may do what it may do. And if the Court feels compelled to grant some kind of stay, it should be the shortest stay reasonably possible: say, a week. This might have symbolic value, e.g., showing that the Court is trying to be fair (maybe more than is warranted) to Trump, and also non-symbolic value, since seven days of stay is better than no days of stay.

One reason Amicus files this brief for neither party, is not to appear extreme, since he neither demands a stay, nor demands that there be not even one minute of stay. Amicus hopes the Court will find the most just solution to the issues at hand.

III. TRUMP’S BEING A SEXUAL BATTERER AND DEFAMER DOES NOT HELP HIS CASE

If this case has any gray areas, consideration of who Applicant is and what he has done, could be of use. Is his application 100% sincere, or is it manipulative, an

attempt to pull the wool over the Court's eyes? —Trump was found liable, in May 2023 and January 2024 verdicts, for sexually abusing and defaming E. Jean Carroll, and was ordered to pay her \$88.3 million in damages. *See, e.g.*, Wikipedia, *E. Jean Carroll v. Donald J. Trump*, https://en.wikipedia.org/wiki/E._Jean_Carroll_v._Donald_J._Trump (as of Feb. 9, 2024, 3:05 GMT). Amicus submits that Trump may be far less credible because of the Carroll verdicts, *supra*.

To clarify, if needed: it is bad enough that Trump has been found to be a dangerous, violent sexual pervert, predator, and batterer; but if he is a defamer, he has also been untruthful. This could affect the Court's judgment of his sincerity of his alleged reasons for wanting a stay and *en banc* review.

IV. MIKE PENCE'S FIRST-AMENDMENT PROBLEMS MAY HAVE BEEN WORSE THAN TRUMP'S, RE JANUARY 6

Too, Applicant claims that a trial might hurt his First Amendment rights to campaign, Appl. at 33-35. However: given Trump's "showman" proclivities, he can always campaign from the courtroom, maybe falsely claiming "persecution"; and the public's right to know if his alleged misdeeds make him worthy of criminal conviction, means the results of the trial would likely produce far more important information for voters, than any campaign material Trump might put out.

If Trump really had a sincere interest in the First Amendment re voting, he might've made more effort to ensure former Vice President Mike Pence wasn't hanged, or otherwise abused, in his efforts to count votes and communicate that result, back on January 6, 2021. It's hard to talk with a noose around your neck. (The only "hanging" Pence deserves is to have President Joe Biden hang the Medal

of Freedom around his neck, for standing up for America on January 6.)

* * *

Mayor R. Brown in *Yogi Bear* (Warner Bros. Pictures 2010): “You think I care about what the law says? ... I care about power, you pinheads!” *Id.*; *Yogi Bear* Wikiquote, *supra* at 1. While the evil Mayor Brown was trying to open Jellystone Park to logging, *see Yogi Bear, supra*, Trump, who Amicus believes resembles Brown in brutally placing power above the law, may do far worse than Brown, if Trump returns to power. That will be the real “déjà vu all over again”, re the Yogi Berra quote Trump cites, Appl. 1; i.e., after Trump did all that he did in the past, whether to E. Jean Carroll, Mike Pence, whomever, Trump will be in position to do even worse, for four (or more?) years, as President. Evil, all over again.

If he is voted in fairly, “it is what it is”: even Hitler won elections. But it is unfair not to let the People know, before the election, whether Trump is a convicted criminal or not. So, the stay, and *en banc* review, Trump seeks, may be subterfuge, to avoid trial before election, and thus to avoid fairness. This Court of justice should not allow Trump to commit, or benefit from, unfairness.

CONCLUSION

If the Court grants Applicant a stay—Amicus does not recommend one—, the stay should be short. If certiorari is granted, briefing and argument should be expedited. The Court should not be blind to the evils likely to occur if Applicant’s trial is delayed. Amicus humbly thanks the Court for its time and consideration.

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Respectfully submitted,

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