

21-1533

Bates v. Trump

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

**At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of February, two thousand twenty-two.**

**PRESENT:**

**MICHAEL H. PARK,  
WILLIAM J. NARDINI,  
MYRNA PEREZ,  
*Circuit Judges.***

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**JEREMY BATES, derivatively  
on behalf of the UNITED  
STATES OF AMERICA,**

*Plaintiff-Appellant,*

v.

**21-1533**

**DONALD J. TRUMP, in his  
personal capacity, UNITED  
STATES OF AMERICA,**

*Defendants-Appellees.*

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FOR PLAINTIFF-APPELLANT:

Jeremy Bates, pro se, New York, NY.

FOR DEFENDANTS-APPELLEES:

Brandon H. Cowart, Benjamin H.  
Torrance, Assistant United States  
Attorneys, for Audrey Strauss,  
United States Attorney for the  
Southern District of New York,  
New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Kaplan, *J.*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**.

Jeremy Bates, an attorney proceeding pro se, filed a lawsuit in January 2021 against then-President Donald J. Trump in New York state court, naming Trump in his personal capacity and the United States as the

“nominal defendant.” Styling the action as one akin to a derivative lawsuit in corporate law—and claiming that being a citizen and taxpayer was akin to being a shareholder—Bates asserted that President Trump had breached a fiduciary duty to the country and requested money damages and equitable relief on behalf of the United States. The government removed the action to the United States District Court for the Southern District of New York under 28 U.S.C. §§ 1441(a), 1442(a). It then moved to dismiss the complaint for lack of standing and failure to state a claim, arguing that Bates could not show that he suffered a concrete and particularized injury to himself and that he could not sue on behalf of the United States. The district court granted the motion to dismiss, endorsing the government’s memorandum of law accompanying its motion. Bates appealed. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

When a challenge to standing under Federal Rule of Civil Procedure 12(b)(1) is based solely on the pleadings, we accept as true all factual allegations in the complaint. *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 56–57 (2d Cir. 2016). Our review is *de novo*. *Id.*

To establish standing, a plaintiff must at a minimum allege that he has suffered an “injury in fact that is concrete, particularized, and actual or imminent.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). For an injury to be particularized, the

challenged conduct “must affect the plaintiff in a personal and individual way,” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992), rather than merely implicating “a general interest common to all members of the public,” *Lance v. Coffman*, 549 U.S. 437, 440 (2007) (citation omitted). This requirement “avoid[s] having the federal courts serve as merely publicly funded forums for the ventilation of public grievances.” *Baur v. Veneman*, 352 F.3d 625, 632 (2d Cir. 2003) (cleaned up).

Bates has failed to establish a concrete, particularized injury sufficient for Article III standing. Bates seeks relief for alleged injuries caused by President Trump to the United States. To the extent that Bates has suffered any such injuries, it is only in his capacity as one of the nation’s millions of “Citizen-Taxpayers.” Appellant’s Br. at 46. Bates thus asks us to contravene the Supreme Court’s instruction in *Lujan*:

[A] plaintiff raising only a generally available grievance about government – claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large does not state an Article III case or controversy.

504 U.S. at 573–74. Indeed, Bates concedes on appeal that he lacks a “direct, particularized injury-in-fact to himself, as an individual.” Appellant’s Br. at 5.

Moreover, Bates cannot assert standing to sue on behalf of the United States. Federal law generally grants the authority to bring litigation on behalf of the United States only to the Department of Justice under the direction of the Attorney General. *See* 28 U.S.C. § 516 (“Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to officers of the Department of Justice, under the direction of the Attorney General.”); *United States v. San Jacinto Tin Co.*, 125 U.S. 273, 279–80 (1888) (“There must . . . be an officer or officers of the government to determine when the United States shall sue, to decide for what it shall sue, and to be responsible that such suits shall be brought in appropriate cases. . . . In all this, . . . the attorney general acts as the head of one of the executive departments, representing the authority of the president in the class of subjects within the domain of that department, and under his control.”). Bates points to no statutory exception to section 516’s requirements that would apply to his case. We thus conclude that he cannot assert any standing the United States may have to sue. *See, e.g., Fed. Election Comm’n v. NRA Pol. Victory Fund*, 513 U.S. 88, 92 n.1, 92–94 (1994) (rejecting the FEC’s asserted power to pursue litigation in the Supreme Court absent statutory authorization that would except it from 28 U.S.C. § 518(a)).

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We have considered all of Bates's remaining arguments and find them to be without merit. We thus **AF-FIRM** the judgment of the district court.

FOR THE COURT:  
Catherine O'Hagan Wolfe,  
Clerk of Court

[SEAL]

/s/ Catherine O'Hagan Wolfe

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
JEREMY BATES, derivatively  
on behalf of THE UNITED  
STATES OF AMERICA,

Plaintiffs,

21CIVIL 2402 (LAK)

DONALD J. TRUMP, in  
his personal capacity,

**JUDGMENT**

[Filed May 24, 2021]

Defendant.

-and-

THE UNITED STATES  
OF AMERICA,

Nominal Defendant

----- X

It is hereby **ORDERED, ADJUDGED AND DECREED**: That for the reasons stated in the Court's Memo-Endorsed Order dated May 22, 2021, the motion is granted on the ground that plaintiff lacks standing to sue on behalf of the United States substantially for the reasons advanced by the government; accordingly, the case is closed.

**Dated:** New York, New York

May 24, 2021

RUBY J. KRAJICK

Clerk of Court

BY: /s/

David J. Thomas

Deputy Clerk

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MEMO ENDORSED

[Filed May 24, 2021]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JEREMY BATES, derivatively  
on behalf of THE UNITED  
STATES OF AMERICA,

Plaintiffs,

-against-

DONALD J. TRUMP, in  
his personal capacity,

Defendant,

-and-

THE UNITED STATES  
OF AMERICA,

Nominal Defendant.

Case No.  
21 CV 2402 (LAK)



**NOTICE OF MOTION**

PLEASE TAKE NOTICE that, upon the accompanying (1) Memorandum of Law in Support of the United States' Motion to Dismiss the Complaint; and (2) copies of all unpublished decisions cited therein, the United States will move this Court for dismissal of the above-captioned complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

[The motion is granted on the ground that plaintiff lacks standing to sue on behalf of the United States substantially for the reasons advanced by the government. The Clerk shall terminate any pending motions, enter judgment and close the case.]

**SO ORDERED**

/s/ Lewis A. Kaplan  
LEWIS A. KAPLAN, USDJ  
[5/22/21]

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**FILED: NEW YORK COUNTY  
CLERK 01/19/2021 08:51 PM**

INDEX NO.  
150631/2021

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**SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK**

-----	x
<b>JEREMY BATES, deriva-</b>	:
<b>tively on behalf of the</b>	:
<b>United States of America,</b>	:
<b>Plaintiff,</b>	:
<b>-against-</b>	:
<b>DONALD J. TRUMP,</b>	:
<b>in his personal capacity,</b>	:
<b>Defendant.</b>	:
<b>-and-</b>	:
<b>THE UNITED STATES</b>	:
<b>OF AMERICA,</b>	:
<b>Nominal Defendant :</b>	:
-----	x

**Index No. \_\_\_\_-2021**

**Complaint**

**Jury Trial  
Demanded**

Plaintiff Jeremy Bates (“Bates” or “Plaintiff”), proceeding derivatively on behalf of the United States of America (the “United States”), alleges against Defendant Donald J. Trump in his personal capacity (“Defendant Trump”) as follows:

**NATURE OF THE CASE**

1. This action is a call for change in the law.

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2. Specifically, this lawsuit tests whether courts will apply to the Chief Executive Officer of the United States the same legal standards that courts often apply to chief executives, officers, and directors of corporations, companies, trusts, estates, non-profits, and other entities.

3. Those leaders of such entities are under duties imposed by the common law. The principal duties that the law imposes are the duties of truth (or “candor”), care, and loyalty.

4. These duties of truth, care, and loyalty are called “fiduciary duties.”

5. And in the business world, the law allows a corporation to sue its CEO for breach of a fiduciary duty that the CEO owes to the corporation. So if the CEO of a corporation lies, or if the CEO fails to act diligently and carefully on behalf of the corporation, or if the CEO puts the CEO’s interests ahead of the corporation’s interests, then the corporation may sue the CEO.

6. Moreover, if a corporation has a claim for breach of fiduciary duty against a CEO, and yet the corporation does not sue the CEO on the claim, then the corporation’s stakeholders—its shareholders—have a remedy.

7. The stakeholder remedy in such cases is called a “derivative action.”

8. The derivative action allows a shareholder to sue a CEO who has violated duties to a corporation.

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The shareholder sues derivatively on behalf of the corporation and thus enables the corporation to recover the damages that the CEO caused it to suffer.

9. In the business world, these principles are firmly established. Derivative actions for breach of fiduciary duty are widely recognized in American corporate law. Indeed, the Chancery Court of Delaware specializes in adjudicating such cases.

10. This Complaint, however, tests whether these familiar principles, often applied in the business context, should also apply in the context of American government.

11. The chief executive officer of the United States is its president.

12. As the Nation's chief executive, a president owes, and should be held to owe, duties to the United States—the same common-law, fiduciary duties of truth, care, and loyalty that many thousands of Americans owe to the entities that they lead.

13. And if a president violates these fiduciary duties to the United States, then the United States ought to be able to sue its chief executive officer and recover money damages.

14. Moreover, if the United States itself will not sue a president for breach of duty, then the Nation's stakeholders—its citizen-taxpayers—ought to have the remedy of suing the president derivatively, on behalf of the United States, to recover damages for the United States.

15. As shown below, the current President—Defendant Trump—has failed to carry out his duties to the United States. Defendant Trump is a faithless and disloyal public servant.

16. As president, Defendant Trump has committed acts of deceit, incitement, and disloyalty that have cost the United States many millions of dollars in consequential damages.

17. As president, Defendant Trump has received (on information and belief) over \$100 million in benefits from the United States. As a faithless fiduciary, Defendant Trump should pay for his deceit, his lack of care, and his disloyalty by disgorging those benefits.

18. On information and belief, Defendant Trump's failures to perform his duties—especially his acts to incite an insurrection—have cost the United States at least \$1 billion in reputational damages. The United States should recover these damages from Defendant Trump.

19. Defendant Trump's breaches of duty were directed at the public and were criminal, wanton, or grossly reckless. Therefore punitive damages are also appropriate.

20. To punish Defendant Trump for his failures to perform his fiduciary duties, and to deter him from breaching again, punitive damages of at least \$1 billion should be awarded.

21. In sum, the basic concepts of fiduciary duties and derivative actions that have long applied in the

private sector should now extend to presidents of the United States.

22. And to whatever extent that a judicial decision would require any different result, any such judge-made law should now change.

### **PARTIES**

23. Bates, the derivative Plaintiff, resides in New York County.

24. Bates is a United States citizen and a United States taxpayer.

25. Years ago, Bates duly registered for the Selective Service System.

26. Bates is also an attorney and counselor-at-law admitted to practice in the Courts of the State of New York.

27. As an attorney and counselor-at-law, Bates has litigated fiduciary-duty cases. *See, e.g., EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11 (2005).

28. Defendant Trump currently resides in the District of Columbia and also resides, on information and belief, in New York County.

29. Defendant Trump recently purported to reside in Florida—likely for tax reasons—but on information and belief, he agreed in the 1990s that he would not use the Mar-a-Lago property as a residence for more than 3 weeks in any calendar year.

30. Therefore, on information and belief, Defendant Trump remains a resident and domiciliary of the State of New York.

31. In New York and elsewhere, Defendant Trump has litigated frequently.

32. In the decades before Defendant Trump assumed his high office, he was a “perennial litigant, involved in more than 3,500 lawsuits, proceedings, and investigations.” James D. Zirin, *Plaintiff in Chief A Portrait of Donald Trump in 3,500 Lawsuits*, at pg. xii (All Points Books 2019).

33. “[L]est anyone think this is fake news, the American Bar Association counts 4,000 [lawsuits, proceedings, and investigations].” *Id.*

34. “Bloomberg News reported in 2016 that Trump had racked up 1,300 suits since 2000, including 72 in federal court.” *Id.*

## **FACTS**

35. A complete description of Defendant Trump’s failures to fulfill his fiduciary duties to the United States would consume thousands of pages.

36. For the sake of brevity, and to focus this action on the necessary changes in law, this Complaint describes below only some of the most flagrant ways in which Defendant Trump has failed to carry out his fiduciary duties as the Nation’s chief executive officer. The allegations are grouped below by the fiduciary duty that they chiefly prove was violated, but many of

the facts alleged prove violations of more than one duty.

37. It is worth noting preliminarily, however, that Defendant Trump's failures as a presidential fiduciary are consistent with his previous failures as a private citizen.

38. Defendant Trump holds himself out as a businessman.

39. On information and belief, Defendant Trump knows about the fiduciary duties of truth, care, and loyalty. He should have learned about them at the Wharton School of Business and he should know about them from his litigation career.

40. That knowledge, however, did not prevent Defendant Trump from violating his fiduciary duties in private or charitable contexts.

**Defendant Trump's Admitted Failures  
To Carry Out His Fiduciary Duties as  
a Foundation President**

41. In a court filing, Defendant Trump has admitted that although he founded the Trump Foundation (the "Foundation") and was its president from 1987 to 2018, he nevertheless failed to fulfill his duties to the Foundation in the following ways:

- (a) the Foundation's Board of Directors ("Board") did not meet from 1999 through 2017;



- (b) during that time, the Board did not provide oversight of the Foundation; and
- (c) after a conflict-of-interest policy was legally required, the Board failed to adopt one.

42. In that same court filing, Defendant Trump admitted that his 2016 presidential campaign received “administrative assistance” from the Foundation in planning an Iowa fundraiser on January 28, 2016, “in lieu of participating in a televised debate” with other presidential candidates.

43. In that filing Defendant Trump also admitted that his 2016 campaign “directed the timing, amounts, and recipients of [certain of] the Foundation’s grants.”

44. In other words, Defendant Trump has admitted facts that prove that before Defendant Trump became president, he misused charitable funds for partisan, political purposes, in violation of his fiduciary duties to the Foundation and of applicable law.

### **Defendant Trump’s Alleged Breaches of His Fiduciary Duties as Executor or Trustee**

45. Nor has Defendant Trump been any more dutiful toward his own family.

46. Defendant Trump’s niece, Mary L. Trump, sued Defendant Trump last year.

47. In that lawsuit, Defendant Trump’s niece alleged that for Defendant Trump, “fraud was not just the family business -- it was a way of life.” Compl. ¶ 1 in *Mary Trump v. Donald J. Trump, et al.* (Supr. Ct. N.Y. County No. 654698-2020) (docket Doc. 2).

48. Defendant Trump’s niece also alleged that Defendant Trump has breached his fiduciary duties and has aided and abetted others in their breaches of fiduciary duties.

49. Thus, as a foundation officer, and as an executor and trustee, Defendant Trump admittedly or allegedly failed to carry out his fiduciary duties.

50. Likewise, in public life, as the President of the United States since January 2017, Defendant Trump has violated each of his fiduciary duties flagrantly and often.

### **Defendant Trump’s Role as the Nation’s Chief Executive and the Generous Benefits He Has Received While Serving in That High Office**

51. In early 2017 Defendant Trump became the 45th President of the United States.

52. As the Nation’s chief executive, Defendant Trump receives the benefit of living in the White House—a 132-room estate in downtown Washington that includes its own tennis court, bowling alley, and medical clinic

53. On information and belief, the benefit of living rent-free in the Nation's Executive Mansion is worth at least \$4 million a year. The exact value of this benefit will be determined at trial but it includes security, housekeeping, and catering.

54. Defendant Trump has also received free travel, which he uses mostly for golf trips that require Air Force One and accompanying security arrangements.

55. On information and belief, Defendant Trump's golf trips have cost the United States at least \$100 million. *See* Chuck Jones, *Trump's Golf Trips Could Cost Taxpayers Over \$340 Million*, *Forbes Magazine* (July 10, 2019) (“[T]he estimated cost[s] of Trump's visits so far come to a range of \$105 to \$108 million.”).

### **Defendant Trump's Failures To Tell the Truth**

56. The first fiduciary duty to the United States that Defendant Trump has failed to carry out is the duty to tell the truth (also known as the “duty of candor”).

57. Defendant Trump's failures to tell the truth take two principal forms. First, Defendant Trump has failed to disclose important information about himself. Second, when he does communicate, Defendant Trump has failed to speak truthfully.

*Defendant Trump's Failures  
To Disclose His Tax Returns*

58. Fundamental to Defendant Trump's breaches of duty is his persistent effort to keep his business dealings and his personal finances secret from the American people.

59. To take one example: During his presidential campaign, Defendant Trump promised that he would release his tax returns.

60. Defendant Trump failed to carry out that promise.

61. Some of his tax information, however, has emerged in other ways. And as it turns out, Defendant Trump paid only \$750.00—a suspiciously round and consistent sum—in income taxes for 2016 and 2017.

62. Trump's tax returns for 2018 and 2019 remain concealed.

*Defendant Trump's Failures To Disclose  
His Deep Indebtedness to Foreign Banks*

63. Such failures to disclose have also enabled Defendant Trump, until recently, to conceal how much he owes to foreign banks and how much he may earn from foreign governments and other foreign interests.

64. The *New York Times* has reported that Defendant Trump appears to be responsible for \$421 million in loans, most of which will come due within the next four years.

65. *Forbes* puts the total much higher. It has reported that Defendant Trump “owes more than \$1 billion.”

66. Of that staggering total, *Forbes* reports that Defendant Trump owes a German banking group, Deutsche Bank, an estimated \$295 million.

*Defendant Trump’s Failures To Disclose  
His Entanglements with Foreign Governments*

67. The more details that slowly come to light about Defendant Trump’s businesses, the more it appears that he benefits personally and financially from maintaining good relationships with foreign governments and from doing what foreign leaders ask him to do.

68. One recent example involves a Turkish bank. As *New York Magazine* described the Turkish-bank scandal, it is this:

- (a) “The [United States] Justice Department was prosecuting financial crimes by a Turkish bank.
- (b) “Turkey’s president asked President Trump to quash the investigation.
- (c) “Trump has personally received more than \$1 million in payments from business in Turkey while serving as president.
- (d) “Two attorneys general loyal to Trump, Matthew Whitaker and William Barr,

both pressured federal prosecutors to go easy on the Turkish bank.”

69. Defendant Trump’s financial vulnerabilities put many of his other official actions in a suspicious light.

70. For example, Defendant Trump has a tendency, unusual among modern presidents, to make market-moving remarks from the White House while markets are open.

71. Certain remarks by Defendant Trump have caused dramatic and unexpected swings in the prices of currencies and securities.

72. Without transparency into his finances, it is impossible to know whether Defendant Trump has benefited from such swings personally.

73. In addition to failing to disclose material information about himself, Defendant Trump has failed to fulfill his fiduciary duty of truth by actively lying to the American people, without any valid excuse, on many thousands of occasions.

74. In July 2020, *The Washington Post* reported that Defendant Trump “has made more than 20,000 false or misleading claims.”

75. In early January 2021, *The Washington Post* reported in its Fact Checker column that as of November 5, 2020, Defendant Trump had made 29,508 false or misleading claims.

76. Many of Defendant Trump’s falsehoods have extended to matters in which the American people depend on accurate official communication for their lives and livelihoods.

*Defendant Trump’s Failures*  
*To Tell the Truth—“Sharpiegate”*

77. On September 4, 2019, as Hurricane Dorian approached the mainland of the United States, Defendant Trump altered an official National Weather Service forecast map in order to make it appear, falsely, as though the hurricane was then projected to hit Alabama, as Defendant Trump had predicted several days earlier.

78. Fortunately that falsehood merely insulted the intelligence of Mississippians, Alabamians, Georgians, and Floridians, very few of whom would have been deceived. But “Sharpiegate” was a portent of worse to come in another life-and-death situation.

*Defendant Trump’s Failures*  
*To Tell the Truth—Covid-19*

79. More tragic were Defendant Trump’s failures to inform the American people about the effects of Covid-19, the pandemic coronavirus. He lied about Covid too.

80. On February 27, 2020, Defendant Trump stated, of the Covid-19 pandemic, that “It’s going to disappear. One day, it’s like a miracle—it will disappear.”

81. That statement was materially false.

82. In March 2020 Defendant Trump told author and journalist Bob Woodward that Defendant Trump was purposefully understating the threat posed by the Covid-19 pandemic.

83. “I wanted to always play it down,” Defendant Trump said to Woodward. “I still like playing it down,” Defendant Trump said, “because I don’t want to create a panic.”

84. On March 26, 2020, Defendant Trump said that this kind of pandemic “was something nobody thought could happen.”

85. That statement was a lie.

86. On July 4, 2020, Defendant Trump asserted that “99 percent” of Covid-19 cases are “totally harmless.”

87. That statement was false.

88. Defendant Trump even attacked health-care workers on the front lines of the pandemic. He falsely insinuated that “our doctors get more money if someone dies from Covid . . . so what they do is they say” that Covid-19 is the cause of death.

89. The false claim that Covid-19 mortality is somehow over-reported has been debunked by *Scientific American*, among other authoritative publications. Mortality statistics show that deaths from Covid-19 are, if anything, under-reported.



*Defendant Trump's Failures To  
Tell the Truth—His Loss in the 2020 Election*

90. In November and December 2020, when it was time to describe (and to abide by) the result of the presidential election, Defendant Trump failed to tell the American people the truth—that he had lost the election.

91. Instead, Defendant Trump pushed a false narrative of election fraud, inaccurately claiming, for example, that observers were unable to monitor ballot counting in Pennsylvania.

92. On November 29, 2020, in an interview with Fox News, Defendant Trump repeated a bogus conspiracy theory that Dominion Voting Systems (“Dominion”) had switched “thousands of votes.” Defendant Trump also asserted that “votes in Dominion, they say, are counted in foreign countries.” Both of these statements were false.

93. Dominion has sued Defendant Trump’s personal attorney for defamation arising from similar statements and has claimed damages of \$1.3 billion in that action.

94. Defendant Trump also repeated an unsubstantiated claim that “thousands” of dead people voted in the November 2020 election. There is no evidence to support that claim.

95. In a tweet to tens of millions of followers, Defendant Trump falsely asserted that Georgia’s Republican Secretary of State, Brad Raffensperger, has a

brother who is named “Ron” and who works for Huawei, a Chinese tech firm. Both of those assertions were wrong: Secretary Raffensperger’s brother is not named Ron and does not work for Huawei.

96. On January 6, 2021, before a crowd of thousands of supporters gathered in downtown Washington, Defendant Trump claimed to have won the popular vote.

97. “We won it by a landslide,” he stated.

98. That statement was false. In fact, Defendant Trump lost the popular vote by more than 7 million votes.

### **Defendant Trump’s Failures To Fulfill His Duty of Care**

99. The second fiduciary duty that Defendant Trump owes to the United States, as its the Chief Executive Officer, is the duty of care. The duty of care generally requires a decision-maker to act in good faith, with due diligence, and in a reasonably prudent manner

100. Defendant Trump has failed to perform with due care the duties of the presidency in three principal ways. First, Defendant Trump has devoted little time to the job. Second, Defendant Trump avoids or evades the work or the requirements of the presidency that he finds too difficult, too complex, or too restrictive. Third, on many occasions Defendant Trump has actively opposed the interests of the United States.

*Defendant Trump's Unusual Amount of  
"Executive Time," Which He Often Spends  
Golfing, Tweeting, or Watching TV*

101. According to the website trumpgolfcoun.com, as of today Defendant Trump has taken 298 "daytime trips to golf clubs since inauguration, with evidence of playing golf on at least 150 visits."

102. In 2019 *The Washington Post* estimated that Defendant Trump's habit of traveling to his Mar-a-Lago property had already cost American taxpayers \$64 million.

103. Nor does Defendant Trump devote much time to the job of being president while he is at the White House.

104. In February 2019 CNN reported that 51 of Defendant Trump's private daily schedules were filled with hours of so-called "executive time." From these schedules, CNN concluded that Defendant Trump "doesn't get to the office before 11 a.m."

105. On information and belief, Defendant Trump spends the scheduled "executive time" tweeting, calling friends, napping, or watching TV.

106. The vague but important-sounding phrase "executive time" carries bitter irony. As the Nation's chief executive officer, Defendant Trump seems to use this "executive time" not to execute the Nation's business, but instead to indulge his own desires.

*Defendant Trump's Failures  
To Conduct the Nation's Business*

107. Below are six ways in which Defendant Trump has failed to carry out the duties of his high office in good faith or using due diligence and reasonable prudence.

108. First, Defendant Trump accepts emoluments, such as payments to his hotels by foreign governments. Each emolument is unconstitutional and an abuse of office. Defendant Trump should be ordered to disgorge all those ill-gotten gains to the United States.

109. Second, Defendant Trump has obstructed justice. This conclusion is supported by substantial evidence in the report of Special Counsel Robert Mueller, including evidence that (i) Defendant Trump engaged in or supported efforts to fire Mueller himself or to curtail Mueller's investigation, (ii) Defendant Trump ordered others to cover up those efforts, and (iii) Defendant Trump engaged in obstructive conduct with respect to his friend Paul Manafort.

110. Third, Defendant Trump has violated the Hatch Act, including by addressing the Republican National Convention from the grounds of the White House.

111. Fourth, despite promising the American people a health-care "plan," Defendant Trump failed to develop any such plan.

112. Oddly, after correspondent Leslie Stahl asked Defendant Trump when he would present a health-care plan, Defendant Trump’s press secretary Kayleigh McEnany handed Stahl a large volume that McEnany described as Defendant Trump’s “health care plan” and that seemed to have been designed to be visually impressive on camera.

113. On inspection, however, according to *60 Minutes*, that large volume was “[f]illed with executive orders[ and] congressional initiatives, but no comprehensive health plan.”

114. Fifth, Defendant Trump is a negligent consumer of the President’s Daily Brief (“PDB”)—the daily compilation of information and analysis that the Nation’s intelligence community believes is important enough to communicate to the chief executive.

115. Even in February 2019, *Time* reported that “senior intelligence briefers” were warning that Defendant Trump “is endangering American security with what they say is a stubborn disregard for their assessments.”

116. Citing multiple in-person episodes, these intelligence officials said that [Defendant] Trump displays what one called “willful ignorance” when presented with analyses generated by America’s \$81 billion-a-year intelligence services. The officials described “futile attempts to keep [Defendant Trump’s] attention by using visual aids, confining some briefing points to two or three sentences, and repeating his name and title as frequently as possible.”

117. “What is most troubling,” *Time* wrote, “are [Defendant] Trump’s angry reactions when he is given information that contradicts positions he has taken or beliefs he holds.”

118. In January and February of 2020, on information and belief, PDBs provided for Defendant Trump likely focused on how serious the Covid-19 pandemic was becoming and described the drastic measures that other nations were taking to fight the disease. Evidently such reports made little impression on Defendant Trump, who for his own political purposes preferred to tell the American people that Covid-19 would soon disappear.

119. Sixth, according to Anthony Fauci, in recent months Defendant Trump failed even to attend meetings of his government’s Covid-19 task force.

120. This failure has come as Covid-19 has sickened more than 24 million Americans. Covid-19 has killed more than 400,000 Americans. The pandemic is killing more Americans faster than military enemies killed American service members in World War Two.

121. Thus it is difficult to imagine a greater dereliction of duty by the chief executive officer of the United States than Defendant Trump’s conduct during the Covid-19 pandemic.

122. Winston Churchill, quoting Longfellow, once described the United States as a “ship of state” and a

“Union strong and great.” Churchill urged the United States to “sail on.”

123. In Churchill’s and Longfellow’s metaphor, the captain of the ship is the president of the United States.

124. Defendant Trump, however, has simply abandoned his post.

**Defendant Trump’s Persistent Failures  
To Elevate the Interests of the United States  
Over His Own, Personal Interests**

125. The third fiduciary duty to the United States that Defendant Trump has failed to carry out is the duty of loyalty.

126. As the Nation’s chief executive officer, Defendant Trump must be loyal to the United States. This means that (i) Defendant Trump must put the interests of the United States ahead of the interests of other nations (and of their leaders) and (ii) Defendant Trump must also put the Nation’s interests ahead of his own interests.

127. Defendant Trump has failed to do either. Instead, Defendant Trump is disloyal, faithless, and corrupt.

128. In July 2016 Defendant Trump called on Russia, “if you’re listening,” to interfere in American politics by “find[ing] 30,000 emails that are missing.”

129. More recently, on information and belief, Defendant Trump has failed to counter interference in the 2020 elections from Russian, Chinese, and Iranian sources.

130. Defendant Trump also failed to keep faith with America's servicemembers. Despite the intelligence community's conclusion that Russia offered bounties for dead American soldiers, Defendant Trump has reportedly failed to lodge any objection with Vladimir Putin.

131. Defendant Trump was impeached for attempting to use military aid to Ukraine as a *quid pro quo* to extort Ukrainian assistance in Defendant Trump's re-election campaign.

132. Congress appropriated the aid—that is, Congress directed in law that it be spent—because Ukraine has been the victim of Russian military and paramilitary aggression.

133. Nevertheless, in 2019, the Trump administration withheld from Ukraine nearly \$400 million of lawfully appropriated military-assistance funds.

134. Defendant Trump's administration released the funds to Ukraine only after Defendant Trump's extortion scheme was reported in the public press.

135. Defendant Trump's failures to serve the Nation's interests are all the more striking when we consider how diligently Defendant Trump, as president, has served his own interests and the interests of his family.



136. The watchdog organization Citizens for Responsibility & Ethics in Washington estimated that as of September 24, 2020, Defendant Trump had accumulated 3,403 conflicts of interest between his executive office and his business or family interests.

137. One example of these was Defendant Trump's attempt to hold the June 2020 G-7 Summit at the Trump National Doral Miami golf resort. Days after that intention was announced, Defendant Trump reversed course. Even so, by generating headlines about his own resort, Defendant Trump succeeded in using his official position to market his resort.

138. Most infamously, after lying for two months about the result of the 2020 election, Defendant Trump then summoned his supporters to Washington; told them that January 6, 2021, would be "wild"; addressed them on that day on the Ellipse downtown; told the crowd that "this election was stolen from you," urged the crowd to "fight"; and twice instructed his supporters after his speech to "walk down" Pennsylvania Avenue to the United States Capitol.

139. At that time, as Defendant Trump well knew, the United States Senate and the United States House of Representatives would meet in joint session to receive and to count Electoral College ballots by which the Nation had chosen another person to be its next president.

140. Nevertheless, from his position of safety near the White House, Defendant Trump made statements that encouraged, and foreseeably resulted in, lawless violence at the Capitol.

141. As a result, Defendant Trump's supporters unlawfully breached and vandalized the Capitol; injured and killed law-enforcement personnel; menaced Members of the United States Congress, the Vice President of the United States, congressional staff, and journalists; and engaged in other violent, deadly, destructive, criminal, and seditious acts.

142. Photos and video showing the United States Capitol being stormed by a mob of Defendant Trump's supporters have, on information and belief, been published or broadcast thousands of times and seen by hundreds of millions of people around the world.

143. Thus the insurrection that Defendant Trump incited has badly damaged the reputation of the United States worldwide.

### **Demand Futility**

144. If there be any demand requirement that would apply here, that requirement should be excused for two reasons. First, the United States Senate has refused to remove Defendant Trump even though—uniquely among United States presidents—Defendant Trump has been impeached twice. Second, the United States Department of Justice will not proceed against Defendant Trump criminally or civilly while his is president.

145. First, the United States Constitution provides an analogue to the ability of a diligent board of directors to remove a corrupt chief executive. This analogue is the impeachment power—the power of the House of Representatives to impeach, and of the Senate to remove from office, a president who has committed high crimes and misdemeanors.

146. On this analogy, a demand to remove Defendant Trump has been made and was rejected. The United States House of Representatives has impeached Defendant Trump twice.

147. When the first articles of impeachment reached the United States Senate, the Senate in 2020 refused even to hear testimony from any witness.

148. The Senate then failed to remove Defendant Trump.

149. This year, in January 2021, the Senate thus far has not considered the new article of impeachment recently passed by the House of Representatives.

150. A second analogue to a demand in a derivative action might be the expectation that the United States Department of Justice (“DOJ”) would act in the interests of its true client and would sue Defendant Trump civilly for his dishonesty, his lack of care, and his disloyalty.

151. Any demand on the DOJ, however, would be futile, for several reasons.

152. First, the DOJ has proven itself unwilling or unable to safeguard the Nation's interests when the Nation's interests and the interests of Defendant Trump conflict.

153. So, for example, an Attorney General named by Defendant Trump intervened in the criminal-sentencing process to favor Defendant Trump's personal friend, Roger Stone. That improper intervention caused four career prosecutors to withdraw from that case.

154. Under the same Attorney General, the DOJ moved to dismiss a federal criminal case against Michael Flynn even after Flynn had pled guilty.

155. Therefore it would be futile to ask the DOJ, as controlled by persons accountable to Defendant Trump, to sue Defendant Trump for breach of fiduciary duty.

156. Further proof of demand futility lies in the DOJ's written policy of not bringing criminal charges against any sitting president.

157. This policy is set forth in a 2000 DOJ opinion titled, "A Sitting President's Amenability to Indictment and Criminal Prosecution."

158. If the DOJ will not indict or criminally prosecute a sitting president for crimes committed while in office, then *a fortiori* the DOJ will not now sue Defendant Trump civilly, for breach of fiduciary duty, based on the conduct described above.

159. For all these reasons, any demand requirement should be excused.

**FIRST CAUSE OF ACTION**  
**(Breach of Fiduciary Duty, on Behalf of  
the United States Against Defendant  
Trump in His Personal Capacity)**

160. Bates realleges paragraphs 1 through 159 as though set forth herein.

161. As President of the United States, Defendant Trump owes fiduciary duties to the United States. These fiduciary duties include the duties of truth, care, and loyalty.

162. As detailed above, Defendant Trump has failed to perform his duties of truth, care, and loyalty. He has breached, flagrantly and often, the duties that came with his chief executive office.

163. Defendant Trump's breaches of duty to the United States have proximately caused consequential damages to the United States, including immense reputational damages.

164. Moreover, Defendant Trump should be required to disgorge to the United States the valuable benefits that he has received as the Nation's chief executive.

165. The Court should also impose punitive damages in an amount sufficient to punish Defendant Trump and to deter him and anyone else from failing to discharge the fiduciary duties of the office of President of the United States.

WHEREFORE Plaintiff Bates, proceeding derivatively on behalf of the United States, respectfully demands judgment against Defendant Trump in his personal capacity—

(a) awarding the United States compensatory damages in an amount to be determined at trial, but at least \$150 million, including the benefits that Defendant Trump received from, and as a faithless fiduciary should disgorge to, the United States;

(b) awarding the United States reputational damages against Defendant Trump in an amount to be determined at trial, but at least \$1 billion;

(c) awarding the United States punitive damages against Defendant Trump in an amount to be determined at trial, but at least \$1 billion;

(d) awarding the United States such other and further relief as the Court may deem just, proper, or equitable; and

(e) awarding Bates his costs and disbursements, reasonable attorney's fees (if he retains

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counsel), and such other and further relief as the Court may deem just, proper, or equitable.

Respectfully submitted,

*s/ Jeremy Bates*

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*Plaintiff pro Se,*

*proceeding derivatively*

*on behalf of the United*

*States of America*

Dated: New York, New York  
January 19, 2021

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