

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

STATE OF GEORGIA,

v.

JEFFREY BOSSERT CLARK,

DEFENDANT.

Case No. 1:23-cv-3721

(Related to:

Case Nos. 1:23-cv-03621-SCJ
1:23-cv-03720-SCJ
1:23-cv-03792-SCJ
1:23-cv-03803-SCJ

Judge Steve C. Jones

On Removal from the Fulton
County Superior Court

DECLARATION OF JEFFREY BOSSERT CLARK

1. My name is Jeffrey Bossert Clark. I am of sound mind and have personal knowledge of the following:

2. During the George W. Bush Administration, I was appointed by Attorney General John Ashcroft, in conjunction with the Presidential Personnel Office, as a Deputy Assistant Attorney General in 2001 and served until 2005. I am thus well-acquainted with the regulations of, policies of, and day-to-day operations of the U.S. Justice Department and have had that level of familiarity for decades. I served for those four years at “Main Justice” in Washington, D.C., and a cadre of career lawyers and Senior Executive Service lawyer managers reported to me over

that span of time. While there I won two awards—one from the Pentagon for defending U.S. military readiness in the courts and one from the Department of Commerce.

3. Before and after my service in the Bush Administration, I was employed by Kirkland & Ellis LLC, one of the most prestigious law firms in the country. Upon returning from the Justice Department in 2005, I was named a partner and served in that capacity until I departed to take my Commission in the Trump Administration.

4. Based in part on my prior service at the Department, I was nominated by the President in June 2017 to serve as an Assistant Attorney General at the U.S. Department of Justice. I was confirmed by the Senate with bipartisan support on October 11, 2018. I took the oath of office and assumed my duties as an Assistant Attorney General at the U.S. Justice Department on November 1, 2018. Starting on November 1, 2018, I began directing the activities of the Environment & Natural Resources Division.

5. A true and correct copy of my Commission to that office (in the form of a photograph) is attached hereto as Exhibit 1. The text of the commission reads as follows:

Donald J Trump, President of the United States of America, to all who shall see these presents, greeting: Know Ye: that reposing special trust and confidence in the Wisdom, Uprightness and Learning of Jeffrey Bossert Clark, of Virginia, I have nominated and by and with the

advice and consent of the Senate do appoint him an Assistant Attorney General and do authorize and empower him to execute and fulfill the duties of that Office according to the Constitution and Laws of the said United States, and to Have and to Hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining unto Him, the said Jeffrey Bossert Clark during the pleasure of the President.

In testimony hereof, I have caused these Letters to be made patent and the seal of the Department of Justice to be here onto affixed. (Seal)

Done at the City of Washington this 12th day of October, in the year of our Lord 2018 and of the Independence of the United States of America the 243rd. By the President: /s/ Donald J. Trump. Attorney General /s/ Jeffrey B. Sessions.

6. Attached hereto as Exhibit 2 is a true and correct copy of a Press Release from the U.S. Department of Justice announcing my additional formal assignment to simultaneously serve as Acting Assistant Attorney General for the Civil Division on September 1, 2020 by Attorney General William P. Barr, who praised me for my service running the Environment and Natural Resources Division. Indeed, I was the only Assistant Attorney General who ran two litigating Divisions at the same time during the Trump Administration.

7. I did not begin directing the work of the Civil Division until circa September 8, 2020, so as not to begin undertaking that portfolio of work when many career lawyers were out of the office on vacation on and around Labor Day 2020.

8. My duties in the Trump Administration as a Senate-confirmed officer of the United States from 2018-2021 were fluid and included duties at the White House. One of the parts of the Executive Office of the President is the Council on Environmental Quality (“CEQ”). CEQ’s website is <https://www.whitehouse.gov/ceq/> (last visited Sept. 14, 2023). I wrote significant portions of the regulations and explanatory preamble issued by CEQ in 2020 that embodied the first significant reform in many decades of CEQ’s directives under the National Environmental Policy Act. I also personally defended those regulations and was successful in convincing two federal Judges to refuse to grant preliminary injunctions that were sought against the regulations.

9. At the time of the allegations regarding my conduct in the underlying Indictment in *State of Georgia v. Trump, et al.*, Fulton Superior Court Case No. 23SC188947, I was both the Assistant Attorney General for the Environment and Natural Resources Division and the Acting Assistant Attorney General for the Civil Division. The Justice Department has seven litigating Divisions in all and I was running two of them from September 8, 2020 until January 14, 2021, when I voluntarily resigned my position in anticipation of the inauguration of President Biden on January 20, 2021, clearing the way for President Biden to name my successors.

10. Attached hereto as Exhibit 3 is a true and correct copy of my letter of resignation from the Department of Justice dated January 14, 2021.

11. Attached hereto as Exhibit 4 is a news article by Amanda Carpenter, *Mike Pence's Day-By-Day Account of Trump's Pressure Campaign Against Him*, published in THE BULWARK on November 22, 2022, available at <https://www.thebulwark.com/mike-pences-day-by-day-account-of-trumps-pressure-campaign-against-him/> (last visited Sep. 14, 2023), which states as follows, and includes a verbatim quotation from former Vice President Pence, taken from his memoir (*So Help Me God*) of his years as Vice President:

Rep. Louie Gohmert and other Republicans file a lawsuit asking a Trump-appointed federal judge in Texas “to declare that I had ‘exclusive authority and sole discretion’ to decide which electoral votes should be counted.” Pence directs his staff to request that Department of Justice lawyers represent him in the case, “which the department lawyers did without hesitation—to the consternation of the president, I would later learn.”

12. Attached hereto as Exhibit 5 is a true and correct copy of the docket sheet for the case of *Gohmert v. Pence*, filed in the U.S. District Court in the Eastern District of Texas, which is the 2020 presidential election litigation Vice President Pence referred to in the preceding paragraph. Also attached hereto is Exhibit 6, the response the Civil Division that I was leading at the time prepared under my framing instructions to oppose the Plaintiff's Emergency Motion for Expedited Declaratory Judgment and Emergency

Injunctive Relief as filed on December 31, 2020. During this same period in late December 2020 and prior to filing the brief, I also spoke personally with the then-General Counsel of the U.S. House of Representatives, Douglas Letter, to hear out his recommendations to the Executive Branch concerning what that brief should say. Mr. Letter had been a longtime career official in the Civil Division. The Court dismissed the *Gohmert* case on January 1, 2021. I was in charge of the defense of this 2020 presidential election case and my name is the first one on the filings defending the Vice President. This litigation is illustrative of 2020 election-related litigation that I handled during my tenure in office.

13. Attached hereto as Exhibit 7 is a true and correct copy of a letter I received from Doug Collins as attorney for former President Trump, dated August 2, 2021, asserting and instructing me to assert executive privilege with respect to the House Oversight and Senate Judiciary Committee investigations, respectively.

14. Based on my own study, analysis, research, and decades of legal experience both inside and outside the Justice Department, I do not believe that President Biden's purported waiver of President Trump's executive privilege is lawful. As many courts and commentators have observed, if a current President could at will and without regard to the passage of time waive

a former President's executive privilege, the privilege would be shredded, and the essential purposes that it serves in the functioning of the presidency and Executive Branch would be defeated. Officials serving in Administrations of either political party would begin their periods of service knowing that any advice they provided would automatically become subject to release whenever the political party of the President changed. This would chill the giving of candid advice. As a result, the presidency as a whole would be weakened and the country harmed. This is especially true where, as here, President Biden and President Trump are the chief rivals in the 2024 presidential election (as was foreseeable even back in 2021), and where President Biden is a seemingly implacable foe of President Trump and *vice versa*.

15. Attached hereto as Exhibit 8 is a true and correct copy of the U.S. Supreme Court's decision on application for a stay of mandate and injunction pending review in *Trump v. Thompson*, No. 21A272, along with the Statement of Justice Kavanaugh respecting denial of application. I adhere to Justice Kavanaugh's views that the D.C. Circuit's *dicta* in that case that President Biden could waive President Trump's executive privilege was erroneous. Note as well that Justice Thomas would have granted the application. The decision and Statement of Justice Kavanaugh were released to the public on

January 19, 2022 as the Supreme Court's docketing website notes.

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-932.html> (last visited Sept. 14, 2023).

16. Attached hereto as Exhibit 9 is a true and correct copy of a news story containing a statement by U.S. Congressman (and retired U.S. Army National Guard Brigadier General) Scott Perry. The article is written by Susan Shapiro of WGAL News 8 and is entitled *US Rep. Scott Perry responds to New York Times report he played role in President Trump contesting election* (Jan. 25, 2021). Representative Perry is the current Chair of the House Freedom Caucus. In the article, he is quoted as follows:

Throughout the past four years, I worked with Assistant Attorney General Clark on various legislative matters. When President Trump asked if I would make an introduction, I obliged.

My conversations with the President or the Assistant Attorney General, as they have been with all whom I've engaged following the election, were a reiteration of the many concerns about the integrity of our elections, and that those allegations should at least be investigated to ease the minds of the voters that they had, indeed, participated in a free and fair election.

17. As is implicit in his statement, I had met Representative Perry before I took office at the Justice Department in the Trump Administration and thus long before any controversies about the 2020 election first arose. After the introduction to President Trump that Representative Perry referred to, and as Representative Perry indicated, discussions with former President Trump

ensued between the three of us and between President Trump and myself. The content of those conversations is privileged in multiple respects. Despite being placed under enormous pressure to do so by the House Select Committee to Investigate the January 6th Attack on the United States Capitol, I did not disclose to the Committee's Members or its staff the content of those conversations, in order to protect the separation of powers, which was my duty as a high-ranking officer in the Executive Branch, and in order to satisfy my duties of confidentiality as an attorney giving advice to the President in his capacity as the head of the Article II Branch of the federal government. At no point did that Committee go to court to attempt to overcome my assertion of executive privilege in accord with the Collins letter I received, as referred to above. *See also* Exhibit 6 attached.

18. At no time did I participate in any campaign events related to President Trump's reelection.

19. At all times from late 2020 into mid-January 2021, my involvement with any 2020 election-related litigation occurred in my official capacity as an officer of the United States. I was not acting in this regard in my personal capacity.

20. At no time (whether in my period of service in 2001-2005 or from 2018-2021) did I ever take knowingly false positions while at the Justice

Department (or, to my knowledge, take false positions unknowingly, either).

As I told the *New York Times* after anonymous leakers attacked me (but while maintaining confidentiality as to the details of the relevant discussions):

My practice is to rely on sworn testimony to assess disputed factual claims,” Mr. Clark said. “There was a candid discussion of options and pros and cons with the president. It is unfortunate that those who were part of a privileged legal conversation would comment in public about such internal deliberations, while also distorting any discussions.”

Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, NEW YORK TIMES (Jan. 22, 2021).

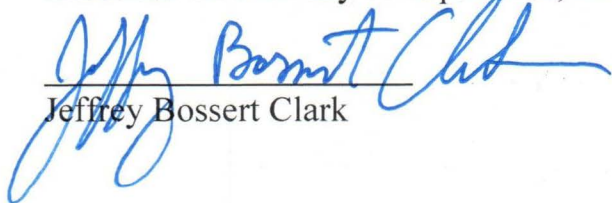
21. My references to the Carpenter, Shapiro, and Benner news articles above are not intended to endorse the interlaced opinion commentary of those authors in those three articles.

22. Beyond minor parking and speeding tickets, I have never been accused of a crime before.

* * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on 14th day of September, 2023.


Jeffrey Bossert Clark

CERTIFICATE OF COMPLIANCE WITH L.R. 5.1

The undersigned hereby certifies that this filing was prepared in the Times

New Roman size 14 font in compliance with L.R. 5.1.

This this 14 day of September 2023.

/s/ Harry W. MacDougald

Georgia Bar No. 463076

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaration of Jeffrey Bossert Clark was hereby filed on this 14th day of September 2023 with the Court's electronic filing system which causes service to be made upon all counsel of record.

This 14th day of September 2023.

/s/ Harry W. MacDougald
Georgia Bar No. 463076
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