TEXAS A&M UNIVERSITY
School of Law

# TAMU Law Answers Ethics Webinar

## LAWYERS ON ATTACK AND UNDER ATTACK: THE ROLE AND RESPONSIBILITIES OF LAWYERS IN ELECTORAL DISPUTES

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*Disclaimer: While some of the panelists are attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.*

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TRANSCRIPT of webinar video at https://youtu.be/sPuDKUtUpAI:

- Howdy. Thank you for joining us for this webinar entitled "Lawyers on Attack and Under Attack -- the Role and Responsibilities of Lawyers in Electoral Disputes." I'm your moderator, Milan Markovic. I'm a Professor of Law and Presidential Impact Fellow at Texas A&M University School of Law. It is my honor to introduce you to four eminent experts in the areas of election law and legal ethics: Josh Douglas, from University of Kentucky College of Law; Wendy Muchman, from Northwestern University School of Law; James Moliterno, from

Washington and Lee University School of Law; and Rebecca Roiphe, from New York Law School. Links to their very impressive biographies will be found in the chat.

And a very special thank you to my remarkable colleague, Professor Susan Fortney, for helping to organize this important program. After the initial presentations, we are going to have a Q&A session. You can type your questions in the Zoom Q&A feature at any time. We will seek to answer those questions as time allows.

Lastly, a very important reminder that while our many of our experts are attorneys, they will be discussing the law generally. And nothing in this symposium should be construed as legal advice. As always, always rely on your own attorneys for legal advice. So without further ado, I'm very happy to start off this program with Professor Douglas, who will introduce the 2020 electoral disputes. Professor Douglas.

- Thanks so much. It's wonderful to be virtually back in the state of Texas. I had the pleasure of living in San Antonio for three years before I joined the faculty at the University of Kentucky. So a big howdy to all of you as well. And it's great to be deep in the heart of Texas.

So I study election law and voting rights. And so one might say it was a banner year for someone in my field. Sometimes, as I joke, what's good for me professionally in terms of giving me more stuff to do is bad for the country. And I think that was certainly the case, in many ways, regarding the 2020 election litigation.

There was so much that it was really even hard to keep up with everything that was going on. I thought I'd spend a couple of minutes just highlighting some of the election lawsuits that we saw. Mostly I'll talk about the post-election litigation because I understand that's sort of the ethics question that my fellow co-panelists will be discussing. But just to throw out a little bit of information about the pre-election litigation, there were over 400 cases around the country, in almost every single state, that discussed aspects of how to run the 2020 election, both from the primaries and the general election, of course, complicated by COVID and running an election during the pandemic.

Some of you might remember images of Wisconsin voters waiting in line just about a year ago, essentially, when the pandemic hit. And the state legislature refused to extend the deadline for absentee ballots to arrive. And the courts refused the relief requested to extend those ballot deadlines, although there was some back and forth on that. And so you had people in almost hazmat suits waiting to vote in line because they only essentially had the option to vote in person, for fear that their absentee ballot would not arrive in time.

Another interesting thing we saw from the pre-election day litigation was that plaintiffs received the relief they requested, in many cases, at the district court level, at the federal district court level, things like the extension of absentee ballot deadlines, the easing of absentee balloting

rules, who is eligible to vote via absentee ballot, the number and location of drop boxes. And yet, then, the Courts of Appeals and ultimately, the US Supreme Court, in a few of these cases, reversed a lot of those lower court decisions. I have an essay out that I call "Undue Deference to States in the Election Litigation" that looks at how the appellate courts really were giving what I call undue deference to states and the way that states wanted to run their elections before the election. And I argue for why that is perhaps not consistent with a proper understanding of the constitutional right to vote.

In the post-election litigation, after election day, there are at least 63 cases filed in about 8 states by the Trump campaign or its supporters, seeking various kinds of relief. They lost all but one of those cases. And yet that one that they initially were victorious was later reversed by the Pennsylvania Supreme Court. That case involved an extended deadline that the Pennsylvania Secretary of State had set for voters to cure their mail-in ballots that are missing a proof of identification. It actually impacted very few voters, nowhere near the margin of victory in Pennsylvania. And the Pennsylvania Supreme Court ended up reversing that.

So the Trump litigants were wildly unsuccessful in every single case that they filed. But what's interesting, if you look at the allegations and legal arguments in those cases, is that they did not go as far as a lot of the public rhetoric in those cases. Many of you will remember the press conference in front of the Total Landscaping facility in Philadelphia, where Rudy Giuliani and several other of the Trump lawyers made various claims with respect to problems in the vote counting or casting process. And yet what they actually alleged in a lot of the lawsuits was different, although still somewhat concerning perhaps, given that they had very little evidence and not very many good legal arguments.

And I do think it's impossible to ignore the partisan intent in filing these cases. Cases were filed mostly in Georgia, Arizona, Wyoming-- excuse me, Wisconsin, Michigan, and Pennsylvania. And these were all states that Trump had won in 2016 but lost in 2020. And so it's not surprising that he went after-- he and his supporters went after big losses for him in states that were close states still, but ones that he lost.

And as I said, it was really hard to keep track of everything that was going on. What I thought I'd do is tell you about two of the most-- what I would think of as the-- most brazen lawsuits that were filed and then highlight a couple of common features of the other post-election lawsuits. To me, the most brazen lawsuit was one filed by the very state of Texas directly in the US Supreme Court against four other states.

Texas filed a direct action in the US Supreme Court against Georgia, Pennsylvania, Wisconsin, and Michigan. And the claim was that there was some kind of fraud in those states' electoral college processes, such that the problems in those states diluted the effect and power of Texas' electoral college votes going for Trump. It was filed as a direct action in the US Supreme Court

because the Trump campaign and his supporters thought that he may have a friendly court to hear these claims.

And the process of getting them through the lower courts, where they had lost all the cases in lower courts, weren't working. As expected, the Supreme Court rejected the claims for lack of standing. There's no argument that Texas could have to challenge the processes in these other states.

The second most brazen lawsuit, I think, was a challenge against Vice President Pence and each House of Congress from certifying the results on January 6. And that case is actually one my fellow panelists may discuss, as the case is one where the court is considering sanctions. And then the common features of some of the other lawsuits include a request to stop counting ballots. Remember election day was November 3. So by November 4, there were lawsuits in a few places to stop the count, including in Michigan.

There were lawsuits to stop the certification of the votes in certain places, such as Wayne County, Michigan, where Detroit is. There were challenges in Pennsylvania that sought to re-litigate lawsuits that had been brought before the election. For example, the Trump campaign and his supporters asked the US Supreme Court to review a Pennsylvania Supreme Court decision about later-arriving ballots, ballots that arrived after the absentee ballot deadline, although the US Supreme Court had refused emergency relief before the election.

So the appeal was taken right before the election. The court denied it as an emergency motion, was presented with it again after the election. The court ultimately refused to intervene in the case after Joe Biden was inaugurated.

There are challenges to the rules on observing the vote-counting process. And actually there's one mild success, I guess, for the Trump campaign in terms of a court said, essentially, yes, you need to let them watch the process, but social distancing is OK. There are challenges to rules on later-arriving ballots. The important fact about that is that none of those lawsuits involved a number of ballots that would actually change the outcome. And that was really a key feature, is that these lawsuits challenge things that wouldn't change the outcome of who won those states if you look at certain pools or buckets of ballots.

Election lawyers always talk about the margin of litigation, how much is the victory for a candidate as compared to the number of potentially disputed ballots. And they never had enough ballots to dispute that would overcome that margin of litigation in any of states. In many states-- and this, I think, is a really interesting point for this seminar-- lawsuits were filed and then voluntarily dismissed and sometimes a few days or just a week later. This happened, for example, in Georgia, a lawsuit filed on December 31, 2020 against the secretary of state there and then voluntarily dismissed a week later.

Republican Secretary of State Brad Raffensperger said, quote, "rather than presenting their evidence and witnesses to a court and a cross-examination under oath, the Trump campaign wisely decided that the smartest course was to dismiss their frivolous cases." And so again, a lot of this was really about the public rhetoric as opposed to what they're actually trying to bring in court. They didn't want their allegations to be up to the scrutiny of the courts. Sometimes they didn't sue the right state defendants or have the right kind of plaintiff, like Trump lawyer Lin Wood filing a case as a plaintiff in Georgia, in which he lacked standing.

And then there were a bunch of cases. There's this myth out there that courts only rejected the claims on procedural grounds. That's just not factually true either. For example, the Third Circuit in a Pennsylvania case, a decision written by Judge Bibas, who was a law professor and now on the Third Circuit, appointed by President Trump, in which he wholly rejected all of the claims. As he wrote, "charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here."

So in sum, the litigation, I think, was dizzying to keep track of. But in many ways, it was more of a public relations strategy than an actual litigation strategy to try to win these lawsuits because they didn't have the facts. They didn't have the evidence. And they didn't have a proper remedy. And of course, as you know, you need all three. You need the right facts to say that there's some sort of wrongdoing. They didn't have any evidence.

Then you need the law on your side to say there's some legal harm. And with the exception of maybe one case that was reversed, they didn't have that. And they didn't have a proper remedy because they couldn't point to any state in which the number of even potentially disputed ballots would be more than the Biden victory in that state.

So I think the real goal was to sow doubt in the election result just by the sheer volume of litigation. In some ways, I guess that succeeded given the number of people who think that there were some problem with the result of the 2020 presidential election. But of course it failed in the court of law.

- Thank you, Professor Douglas, very much appreciate your insight. We're going to turn next to Professor Muchman from Northwestern University School of Law. And Professor Muchman is going to discuss some of the prevailing ethics rules that govern the conduct of the lawyers in some of these cases.

- So just give me one moment while I share my screen. So my role on this panel is to bring the perspective of a former regulator to the conversation. And so let me start by adding another disclaimer. I am not a regulator anymore. I have no opinion about the validity of any particular state's cause of action against the lawyers at issue here. I have no opinion on if formal proceedings are warranted.

But what I'm going to do, as we sit here, is just examine some of the rules and possible concerns. So Josh spoke far better than I could about the election litigation. But I would like to start with some of the particular language from some judges' orders that would catch the eye of most state regulators.

So here is some language from some of those orders that I think would cause regulators to take some attention. "The court finds no misconduct, no fraud, and no effect on the outcome of the election," a Nevada judge point-by-point rejecting every claim, emphasizing that the facts were sparse and unpersuasive, that the case would not have succeeded "under any standard of proof." And that "There was no credible or reliable evidence that the 2020 election in Nevada was affected by fraud." "The relief sought by the petitioners is the most dramatic invocation of judicial power I have ever seen." "Judicial acquiescence to such entreaties would do indelible damage to every future election." That was a justice in Wisconsin.

And then finally, "this lawsuit seems to be less about achieving the relief that the plaintiffs seek, as much of that relief is beyond the power of this court, and more about the impact of their allegations on the people's faith in the democratic process and the trust in our government." And I did forget to say howdy to all of you in Texas and forget to tell you that my middle name is Jo, J-O, which is a funny name for a Chicago lawyer. But my name is Wendy Jo Muchman, so it works in Texas. So I should add that here for you now.

So it is my position that lawyers, all lawyers, whether acting as politicians or representing politicians, are subject to the rules of professional conduct. And if their conduct warrants sanctions, sanctions should be imposed. So let's take a step back and look for a moment at how lawyers are regulated. Now, a lot of this, but lawyers are subject to regulation by the states in which they are licensed. Yes, that is still the system in this country.

Discipline is imposed by the Supreme Court of the highest-- or the highest court in the state where they're licensed, except for New York, Becky, where there are four intermediate appellate courts that have authority to impose discipline. I think I got that right. And you're nodding. OK, good. Regulators have broad discretion to docket investigations based on the lawyer's conduct, whether it's through a complaint, whether it's through something they read in the newspaper, whether it's through reading the language in a judge's order in their state, as some of the language that we just read.

And remember that the authority-- or the threshold to docket investigations is low. The question is typically, could there be a violation of the rules of professional conduct? In most jurisdictions, the investigation remains confidential until there's a probable cause finding, at which point then, the lawyer becomes the subject of a public disciplinary proceeding. Remember that courts have power to sanction lawyers. And the court's power to sanction is quite broad.

Courts can remove lawyers from the role for conduct unbecoming of a member of the bar or for failure to comply with any rule. And there are many cases where, in the absence of even a court sanction, the executive committee of the court just removed the lawyer from the rolls because they engaged in conduct the court thought was incompetent or unbecoming. And then, as you know, other agencies, such as OPR, Office of Professional Responsibility, or, as I said, the executive committees of the courts have authority to sanction lawyers.

So to consider the role of lawyers in election disputes and their responsibilities, let's go back for a minute to the purpose of lawyer discipline. And where better to start than the preambles to the Model Rules. I will use the Model Rules since lawyers involved here are from so many different jurisdictions. And the preamble, of course, sets out the objectives and purposes of the rules.

So in particular, given that these are election disputes, it is important to remember that lawyers are considered public citizens with a special responsibility for the quality of justice. This is a critical consideration, I think, in these cases, given that elections are the foundation of a democracy and a free society. In addition, lawyers can be disciplined for both personal and professional conduct. They cannot use the justice system for purposes of harassment. And they are obligated, at all times, to uphold the integrity of the legal process.

And then, last, never forget the important role that lawyers play in the preservation of society. So to look a little further at some purposes of lawyer discipline, I used some broad principles from the ABA annotated standards on imposing lawyer discipline, which really sort of give you broad statements that you can find in many innumerable, I should say, disciplinary opinions. So what are the purposes of lawyer discipline? Again, to protect the public, to uphold the integrity of the legal system, to assure the fair administration of justice, as well as to deter other lawyers from similar conduct.

Remember, the idea that protection of the public squares with the notion that a license to practice law is not an entitlement but a privilege that a lawyer holds primarily for the benefit of the public. And that privilege does carry with it the grave responsibility that lawyers have to remain worthy of the public's trust and confidence. So let's now take a look at some of the rules that might be implicated by the conduct that we've seen in these election matters.

And again, I use the Model Rules since the lawyers are all over the country. And remember that the Model Rules, unlike a lot of states' rules, they're divided into articles. And the articles are quite helpful for us because they tell us where you can find the rule, sort of what the series is about.

So for example, the client-lawyer relationship is article 1. And rule 1.1 requires lawyers to provide competent representation, which is the knowledge, skill, and thoroughness, and preparation necessary for representation. It is often said that competent representation, because it is such a foundational element of lawyer-client relationship, is number one, right?

And then if we go on to the advocate series, which is series 3, lawyers have particular obligations as an advocate. Rule 3.1 is sort of the professional responsibility equivalent of rule 11, or state sanctions. But it does not require court sanctions for a regulator to charge a 3.1 violation. And the rule tells you that you cannot bring a claim without a basis in law and fact, that is not frivolous, and that includes a good faith argument for extension, modification of existing law, a reversal of existing law.

And while a case does not have to be fully substantiated upon filing, and lawyers can develop the case, they have to be prepared to dismiss any claims that are not supported by fact or law. Thus, perhaps, some of the voluntary dismissals were, as Josh said earlier, a good idea. So examples of 3.1 cases that regulators took in a variety of states without previous court sanctions included cases that had no merit, cases where there was irreparable harm, cases where there was no credible evidence, and cases where a court had just dismissed the claim, finding that there was no evidence to sustain the claims under any burden of proof.

Concerns related to the election cases are that you have the same allegations in 63 lawsuits being dismissed. On one day, there were six lawsuits dismissed based on the same allegations, the judges commentary about the lack of merit, the judge's commentary about the lack of credible evidence, and multiple judges' commentary that there was no evidence to sustain the claims under any burden of proof. A particular example is the response that was filed on a motion to dismiss, the Dominion defamation lawsuit that said, "no reasonable person would believe these allegations. It was just my opinion. The public can reach their own opinion. It is my thought that an opinion is not a basis in law and fact on which an allegation should be based in a lawsuit."

And then we have the advocate rules relating to pander to a tribunal. Remember that a lawyer can't make any false statement of fact or law to a tribunal and has an affirmative obligation to correct a material false statement of fact or law previously made to the tribunal. These types of cases, where lawyers have violated these candor to the tribunal and fairness to opposing party and council rules, typically result in substantial suspensions, depending on the gravity of the lie, the number of lies, whether the evidence of knowledge is direct or circumstantial.

Some examples that could cause concern in the election lawsuits include the affidavit in the Michigan suit that a witness claimed to see something in Edison County, when there is no Edison County in Michigan; a lawyer claiming not to have signed a complaint when her e-signature was right on the front page of the complaint; and a claim that the city of Detroit does not operate local elections, which is completely false because in Michigan, the cities carry out election administration. Another rule potentially implicated is trial publicity, which balances lawyers' constitutional rights with the idea of maintaining the integrity of judicial processes. This role is of particular concern in cases where there will be a jury trial, but lawyers have to be careful not to unduly impact the judicial process by pretrial statements.

Transactions with persons other than clients, which, again, gives you obligations to those other than your clients so that you shall not, in the course of representing a client, make a material false statement of fact or law to a third person. So you can't tell a court that a case is not based on fraud and then later the same day tell the press the case is based on fraud. One of those statements is false. And then finally, maintaining the integrity of the legal profession-- a lawyer shall not make a statement that the lawyer knows to be false with reckless disregard for its truth or falsity.

The justification for this rule is that lawyers give up certain rights when they become members of a regulated profession. This rule has withstood constitutional challenge. It is typically charged in the regulation realm, where lawyers say outrageous things, like the judge is taking bribes, the judge is corrupt, or the judge is crazy. A concerning example from the election case is posts on social media that Justice Roberts was involved in a sex trafficking ring and was involved in the death of the late Antonin Scalia.

And then I said finally I made a misstatement. My final rule slide is these last rules, maintaining the integrity of the legal profession; lawyers shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, this rule is broadly interpreted and applies to both professional and personal conduct and conduct prejudicial to the administration of justice, which typically includes proceedings that delay resolution or prejudice resolution of a court proceeding. We, again, have those strange statements about Justice Roberts. We have allegations made that Vice President Pence was a traitor.

And then straight out of one of the complaints from Michigan we have an allegation that read, "In Michigan, Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot stuffing and voter manipulation to whatever level was needed to make certain the Venezuelan dictator Hugo Chavez never lost another election." So it is a well-accepted conclusion that lawyers can be disciplined for conduct outside the practice of law. Elections are the foundation and the heart of our democracy. Public confidence in the electoral system cannot be lightly toyed with.

Lawyers are subject to the rules of professional conduct. And if their conduct violates the rules, then they should be sanctioned. It is not political to sanction lawyers in these cases. It would be political not to sanction them if their conduct violates the rules. Thank you.

- Thank you, Professor Muchman. Extremely helpful overview of the potentially applicable rules. Let me now turn to Professor Moliterno, who will offer some thoughts on the disciplinary process and dangers of politicization of that process.

- Thanks, Milan. And thanks, Josh, for the really great summary of the litigation and Wendy for the background about what rules might be implicated and so forth and the very important reminder that Wendy gave us, too, that there are lots of systems for regulating the conduct of lawyers. And the bar discipline system is one of those. We can have courts regulating. We could have markets regulating what lawyers do. There are all sorts of ways that we accomplish that. And as well, Wendy, for the great examples of particular statements from particular litigation and outside the litigation that you pointed us to. So that's terrific.

I've actually been following Rudy Giuliani for two reasons that are not our topic today. I'm not going to talk about those two reasons. But I've been interested in him because I have been working on a paper that relates to what lawyer ethics law should apply to his conduct when he leaves the place where he has an active license in New York, or even an inactive license in DC when he's working in Ukraine, when he's working in Michigan, when he's working in Georgia, when he's working in Michigan and other places. And so that has been on my mind.

And I've also been writing about the damage that I think has been done to judicial independence by Rudy Giuliani and his client, Donald Trump. So those are things that I've been paying attention to. But for our purposes today, I'm going to focus on two particular points. They're not going to involve particular rules. They're not going to involve particular pieces of election litigation.

Two points-- the first one has to do with political motivation in bar discipline processes. I wrote an article in 2005 that was published in the WashULaw quarterly called "Politically Motivated Bar Discipline." And as a result, during this period of the election litigation, and also, in particular, the interest of some bar associations in the conduct of the lawyers, I've been asked a few times, and I've heard people say, oh, this is just politics. These are politically motivated activities by certain bar associations to go after a particular politically connected lawyer. And therefore it is this thing called politically motivated bar discipline.

So I want to suggest that this has nothing to do with politically motivated bar discipline, at least in the way that I wrote about it 15 years ago. Historically, bar discipline that is motivated by political reasons is actually meant to further the political or business interests of bar authorities and sometimes even their clients. And in fact, historically, it has always been directed at, in effect, the other end of the political spectrum. It's been directed at civil rights lawyers in the 1950s and '60s, when many state bars went after them for violating various activities that related to soliciting clients. When NAACP lawyers, for example, would go into communities, churches, and volunteer their services to represent individuals if they chose to challenge the segregation of schools-- and this being 10 years, 12 years, 15 years after Brown versus Board of Education, of course-- they were chased down, essentially, by bar authorities and charged with various acts of misconduct and so forth.

It also applied to lawyers that had communist leanings in the early 1920s and the Red Scare, and as well during the 1950s. It involved immigrant lawyers in the early 20th century that the bar authorities themselves and the organized bar, in effect, had actually tried to keep out of the profession entirely, to keep these new immigrants from being lawyers, and if they became lawyers to do things that would cripple their practices, which were largely personal injury plaintiffs practices at the time. And indeed, if you look at the research, you look at the history of it closely enough, what you find is that the bar authority lawyers were the lawyers representing the railroad, the light company, the bank. And in fact, they were furthering their clients' interests because their clients were defendants in a lot of those lawsuits that were being brought by these new immigrant lawyers.

So politically motivated bar discipline really stretches all the way, I will say, to at least the early 2000s, when a Department of Justice lawyer was pursued on bar charges when she gave advice within the Department of Justice Office of Professional Responsibility that was not well received by political actors during that time period and so forth. So this is the opposite, in a way, right? These are lawyers who are not being pursued because of the political motivation of bar authorities. These are lawyers who, if they are pursued-- if they are pursued in various bar discipline processes-- are being pursued because of the conduct that Wendy was just describing in terms of how it violates a variety of different norms and rules in the Model Rules and the ones adopted by the various states.

So there are times-- and I to say that there are times when lawyers who represent clients at the conservative end of the spectrum, the political spectrum, do get punished by some of these other mechanisms that Wendy reminded us of. And in particular, it's usually the market that punishes right-wing lawyers who are representing right-wing clients at particular times. And we saw this in the election cases, right?

There were important clients that were saying to law firms, we don't want you furthering these bogus fraud claims in court. We don't like that your lawyers are doing this. And there were a number of lawyers and law firms that backed away from the litigation.

There were a couple that stayed in and caught a fair amount of public flak for it. But it wasn't the bar authorities going after them for this activity, not at all. It was the market that was essentially saying, hey, we've got a bit of a problem with what you're doing. And as powerful market players, we are expressing our misgivings with the activities that you're involved. It's a very different sort of regulation of lawyers, right?

The second point I want to make today has to do with pushing back against the idea that lawyers are so protected-- yes, they are protected, to some extent, by the First Amendment, but so protected-- by the First Amendment that, in essence, they can't make a statement false enough to have any sort of bar discipline that shouldn't be stopped by First Amendment protection. And I want to suggest that even the lawyer who's on TV, and even the lawyer who represents a

politician, is not really a politician. If under their image on the television show it says, politician, it says Senator, it says member House of Representatives, so be it. But when it says lawyer for, lawyer for member of the House of Representatives, lawyer for, they are speaking as lawyers now. They are not speaking as politicians and gaining the kind of widest protection of First Amendment for their statements, even when they are false.

So yes, we know-- I mean, this applies in and out of the political realm. We know that there is a kind of space around truth that we fully expect lawyers to use and even manipulate on behalf of their clients. I say, for example, my client collided with the other car. And the other side, my opponent, says, my client smashed into the other car. Collided, smashed into? Yeah, there's room around whatever happens to be the truth of the amount of impact that took place in this context. And we wouldn't want to police that at all. We shouldn't police that at all. That's advocacy, right? And we're not going to try to pin down truth to this narrow place in the context of advocacy, and we shouldn't, right?

That's clear to me. And historically that's certainly been the way that the rules have been interpreted. But there are material false statements. They exist, right? The mere fact that we get lots of space around truth doesn't mean that there isn't an edge to that space. And Wendy reminded us the one I was actually going to mention was the idea that dead Venezuelan dictators were in on the conspiracy to hurt Donald Trump.

There are things that are false, that simply are not-- have zero basis in fact, that are not a stretched version of the truth, that are not really even somebody's opinion about the truth, that is worthy of the slightest bit of respect. And so, yes, when this line is crossed, it seems to me that there is not First Amendment protection, even for the lawyer who represents the politician. The politician may get to say things that we all know are false, and we expect that in their role.

But the lawyer's role is still different. And the lawyer, even for a politician, is not acting as a politician. Yes, the lawyer is speaking on behalf of that politician, but speaking as a lawyer who represents that individual. So those were the two points really that I wanted to touch on, Milan. And I hope we'll get to engage on some more in the Q&A. Thanks.

- Thank you so much, Professor Moliterno. And I would encourage the participants to continue submitting their questions in the Q&A. And we'll do our best we can to address your questions. We probably can't get to every question. I'll next turn to Professor Roiphe. Professor Roiphe is going to speak about some of the tensions inherent between attorney discipline process and First Amendment and political speech doctrine. So Professor Roiphe.

- Thank you so much. And thank you, Milan and Texas A&M and Susan for inviting me. I'm so thrilled to be here and have learned already so much from all of the panelists. Josh mentioned when he introduced the litigation surrounding the election that the litigation didn't actually go as far as the public rhetoric about the election. And it was more of a public relations campaign than

an effort to get judicial relief. And I agree with that. I'm going to focus my comments on the lawyers' public rhetoric itself and the wisdom of disciplining lawyers for public statements, especially public statements on behalf of clients.

So I do agree with Jim that if state bars were to discipline these lawyers, it might not be politically motivated discipline. I disagree with something he said, which is that if they did that, it would have nothing to do with politically motivated discipline. And I'm going to try to explain this point as best I can.

So state disciplinary authorities and courts may be able to discipline lawyers for some of the statements made to the public in the election disputes. And I think my co-panelists have pointed out some of the more egregious statements that were made. But my point is that the rules should be interpreted narrowly in this context to preserve First Amendment values.

The rules concerning statements in the public should be interpreted to constrain enforcement discretion and reduce the chances that bar counsels and courts are acting or will act in a politically motivated or biased way. So a couple of points about the First Amendment-- lawyers are often subject to greater restrictions on speech than normal people. This is justified because as officers of the court, their speech can impact judicial proceedings. And this justification, I think, is particularly high when lawyers are appearing before courts.

So Wendy mentioned the rules 3.3, 3.4. Those are all rules about statements to courts. And I think that the interest is high there. And restrictions on speech can be enforced. It is, however, least relevant, that justification, when lawyers are speaking to the public on issues of public concern. This is core political speech.

And arguably, in this context, lawyers actually play an even greater role than the general public in challenging the government and that most people in this regard, their speech deserves full First Amendment protection. If anything, we should be more vigilant here than we are in other contexts. So of course, false speech is not considered valuable speech, and that's an important thing to say. I do believe in truth and falsehood. As Jim suggested, I think there are things that are clearly false, and there are sort of wiggle room somewhere in between.

However, the Supreme Court has said that false speech does indeed deserve First Amendment protection. And that's because it has to be tolerated. Some degree of lies have to be tolerated to ensure that the marketplace of ideas is working properly. And that's why you see there are some restrictions on falsehoods, let's say, in the criminal law, but not many. And some have been, in fact, struck down as unconstitutional.

So lawyers, in my mind, should only be disciplined for false statements outside the courtroom if they are demonstrably false, the lawyers knowingly lied, and they intentionally caused material harm to a specific interest related to the legal system. Some of the lawyers' statements in the

election cases may indeed meet this standard. Arguably, the lawyers are no more guilty than politicians and others who promoted those lies about the election. And the consequences for them, for the lawyers, ought to track that of other actors.

While there are currently no consequences for statements by politicians, many scholars have suggested altering the law to allow regulation of this sort of speech from non-lawyers as well. And that would be-- those arguments are made within First Amendment law, the law that the Supreme Court has established. I think it's important to separate out two things, when lawyers behave badly and when they should be disciplined for their bad behavior.

We tend to think that where there is a transgression, there should be discipline. And I want to argue that that's not necessarily true. There are other forms of control over the profession, as Jim suggested, that work well. And they don't have the negative consequences that come with regulating speech.

So what are these negative side effects about regulating speech in this context? I'm going to borrow from scholars, again, of the First Amendment and noting four such concerns, first of all, potential government overreach. The government can be clumsy, biased, dangerous, especially if tasked with regulating lies about itself. So as Jim mentioned, he and other scholars have cataloged past abuses of the bar, and there's no reason to assume that there won't be abuses in the future if we set the precedent that lawyer speech in public can be regulated easily. This sort of discipline can also chill valuable lawyer speech by punishing speech with little value. In other words, a lawyer may walk very far away from the line out of fear that that lawyer would be punished or disciplined because some bar somewhere would have thought that he-- would have determined that he had lied instead of just stretched the truth.

We also have to fear selective enforcement, another thing that Jim and others have cataloged in the bar's past. And finally, there's the backfire effect. I actually call this a prohibition effect, that if you banish speech, you can actually give it greater cachet. It moves to a darker place. It's less easy to address and regulate than in the public. And it becomes more toxic as a result. I think we can certainly see that in context of the election and where some of these conversations have moved.

As a result, I want to say that there-- I want to highlight that there are really two questions. What do the rules say, which Wendy informed us so well? And when should we discipline lawyers for violating them? Put another way, what is the line below which we will not let any lawyer go before facing professional consequences? And separately, what are the norms of the profession we want to promote?

Obviously these two things are related because norms are partially created in the shadow of professional discipline. But they are still conceptually distinct. Because of First Amendment

concerns, I prefer to err on the side of minimal use of discipline when lawyer speech is at issue, especially if other forms of policing work just as well.

So I want to pose the following hypothetical. Let's suppose that a lawyer is representing a poor man wrongly accused of murder. Let's say that the community is out for blood because a very popular local celebrity was brutally raped and murdered and the community is demanding retribution. There was a video posted on social media that showed the accused man fighting with the victim, and everyone in the community assumed he was the murderer.

And this man's lawyer tries to marshal all the facts, but no one's willing to listen. He takes to local television station to turn the tides. He's hoping that he will lead the DA's office to continue its investigation and find the real culprit. The lawyer falsely explains that the fight as a misunderstanding between friends and suggests that the DA's office might be acting unethically. He does so to get the mob to focus less on his client and maybe pressure the DA to find other suspects.

Does it look any different now? I'm not in favor of lies, at all. I think all lawyers should be honest. But should the lawyer in my example be disciplined? He's speaking out on behalf of a marginalized client who has little power. He's fighting against a system that seems terribly rigged. This is beginning to look like classic political speech.

Even classic political speech has its limits. But I think it's worth staying away from criminalizing it or punishing it by removing bar licenses or other professional repercussions. So I think there's wisdom in 8.4c's broad language that lawyers must be honest and to it's very infrequent application. It stands there to remind lawyers about their duty of honesty. But it also does not chill legitimate speech too much because it is under enforced.

Norms, like honesty in public statements, can be reinforced through reputational means. I think Jim referred to this as the market. Look at the election lawsuits. Who was willing to work for Trump here? All legitimate firms pulled out. Why? Because they wanted to maintain a reputation in the community of professionals.

When Trump was left with Powell, Giuliani, and Wood, that sent a message. He couldn't get a reputable attorney or firm to represent him. I don't think we should be concerned about deterrence either. I don't think other lawyers will be chomping at the bit to lie in the public for their clients, if, in the end, they'll just end up getting lumped in with Trump's lawyers here.

So we're turning to the lawyers involved in Trump's lawsuits. It seems none of them lied in court. In fact, actually Wendy may have suggested that this was not true. I think maybe they said statements that they didn't know were false. But I don't think any of them made knowing false statements.

In fact, when the judge asked Giuliani directly if he was alleging fraud, Giuliani said no. It's true that fear of professional consequences works well to alter professional behavior. On the other hand, lawyers lie repeatedly in public. Wouldn't we deter this sort of lying if state disciplinary agencies were to sanction the lawyers involved? I think we would. And I think, as others have argued, this might be the appropriate time to invoke the rules and discipline the lawyers because they seem to be acting deliberately, and their lies had such devastating consequences. But part of me still worries about the precedent that this would set. And as a result, I would require the bar to show more than just the fact that these were lies to take those lawyers' licenses away.

- Thank you so much, Professor Roiphe. So we have one question in the Q&A that I'll kind of address with the panelists. And then I have a couple of specific questions for Jim and Becky. So let me go to Professor Muchman first. Professor Muchman, there's a question in the Q&A here which I think goes to kind of the larger point of-- setting aside the very important points that Professor Roiphe made about chilling political speech and chilling attorneys' ability to effectively represent their clients. From the perspective of a state bar, is there some danger when a very prominent lawyer on behalf of the Trump campaign is seen to have committed a lot of unethical conduct and discipline does not result? In other words, is that something that does concern state bar leadership or does concern regulators when there's high-profile incidents, like those involving the Trump lawyers, and then nothing happens? And I get to that to be kind of the tenor of one of the questions in the Q&A.

- So I would say yes, there is. And coming from the state of Illinois, where we have multiple lawyer politicians that have been disciplined for a lot of years. I always say to my students it doesn't matter what political party you're in. It matters what your conduct was. But I don't think-- I think it's too early for us to say that no discipline will result.

So I'm not sure that I-- so remember that all these processes, including processes before the executive committees of the courts, take time. And they are confidential at the beginning. So it is quite possible that in many of the states there are ongoing confidential investigations, and we just don't know about it yet.

- Thank you, Professor Muchman. So let me go first to Professor Moliterno. Then I'll go to Professor Roiphe. So Professor Moliterno, obviously you and Professor Roiphe have a slight difference of opinion on kind of the political speech issue and the relevance to disciplinary proceedings. But I want to push back on one of your examples. I'm not so sure we can entirely separate our view of the rightness of the cause with our view of the attorney's underlying conduct.

So you mentioned that NAACP lawyers. And of course, today, soliciting representation when you don't have a pecuniary motive is entirely acceptable, does not lead to a violation of ethics rules. And that's because of Supreme Court case law. However, that was not the rule at the time. At the time, my understanding is that there were strong anti-solicitation rules that did not have an

exception for pro bono lawyers. So couldn't the disciplinary authorities at the time be viewed as being kind of apolitical? And it seems to me that we can't so neatly draw a line between the disciplinary conduct then versus now.

- Yeah, that would work reasonably well as a line of argument, Milan, except that the disciplinary authorities, coupled with the state legislatures in Virginia and several other states, actually amended the rules so that they would outlaw what the NAACP lawyers were doing. The existing rules didn't outlaw what the NAACP lawyers were doing in the town hall meetings and things like that. But they wanted to get rid of them so desperately that they actually did amendments that were themselves motivated toward making bar discipline complaints look legitimate on their face.

So I agree with you that if at the time of a particular disciplinary conduct and motivation and so forth or a process, yes, there were rules against particular activities. You might say they were being politically neutral. This is a bad example for that argument because, as I say, they actually amended the rules to make it illegal what they did, amended the rules to make it criminal what they were doing, when there was no crime-- criminal statute, before.

And the other thing I would say to the argument you made is that there are also many, many times when, yes, there is a bar discipline rule that can legitimately be called up in a particular context. But the surrounding circumstances-- I'm thinking now, in particular, of a lawyer in North Carolina who was a civil rights lawyer at the time, had a beautiful, perfect, many years record of no misconduct, no disciplinary troubles, no things at all. And in effect, the bar authorities decided to charge him with misconduct. I'm sorry I forget the particular rule at the moment, but a rule that, mm, you could arguably charge every lawyer with this particular misconduct. But it was chosen kind of selectively, again, for the political reason of shutting this guy up, which is, in effect, what bar authorities were trying to accomplish with the bar discipline.

So in those kind of cases, I think they're not legitimately applying the bar rules. They're not legitimately applying the motivating policies that Wendy told us about, reminded us of. They want to shut someone up. They want to kick them out of the profession for political reasons. And they use what even on the surface at times looks like a legitimate bar discipline reason. So--

- Thank you so much, Professor Moliterno. And honestly, I had actually thought that there was long-standing common law rules against solicitation. And so that's very helpful context to know that some of these states--

- There were long standing against solicitation, but the wrinkles of the rules at the time, and in existence in Virginia, in particular, wouldn't reach the out-of-state lawyers who were coming in as NAACP volunteers. And so they actually rewrote them to cover their conduct.

- No, thank you. No, that's very helpful. That's very helpful. And I'm actually going to use that with my students going forward. So thank you for that. So Professor Roiphe, just to kind of continue what I did with Professor Moliterno, to push back a little bit here, to play a little bit of devil's advocate, your point, of course, about the tension between the ethics rules and First Amendment is something that scholars have spent volumes of law review articles examining. But I'm a little bit concerned about the breadth of your argument because we do have a Model Rule 4.1A on the books, which prevents lawyers from engaging misconduct in the course of representing a client.

We do have Rule 3.6 that essentially prohibits attorneys from making statements that would prejudice adjudicative proceedings. I fear a little bit that too expansive a view of the First Amendment vis-a-vis lawyers would essentially eliminate those rules from the regulator's toolkit. Do you have that concern? Or do you believe that concern can be addressed through discretion or otherwise?

- So, in addressing your point and in addressing Jim's point, I think that the breadth of these rules is troubling. I think the kind of "trust us, we will apply these rules in a way that is not politically motivated," I don't buy it. And I am concerned. I'm concerned for the future. And I'm concerned about the bar acting in the way that it has in the past again because we don't have set procedures constraining discretion.

And so that's why I suggest, especially when the First Amendment is at issue, that we develop a kind of common law notion. We could rewrite rules if we wanted to, but I'm not really-- that's not the direction I'm suggesting. I'm just saying we should apply a kind of common law rules of reason about how we apply these. And I actually think that regulators-- I defer to Wendy. But I actually think regulators do this as a matter of course.

And so that what we see when something really high profile like this comes up, we should be able to look back and say, look, these are cases where this wasn't high profile, and we did exactly the same thing. Because otherwise it's a completely reasonable for somebody to scream, this is exactly the same. And I can look at I heard Jim, and I agree with him. I think it's different.

But how do we reassure people other than just saying, hey, trust us, we're not going to use this in that way? The rules are so broad, as Wendy suggested. We have rules that say court can discipline somebody for conduct that's just not in keeping with the-- I forget the language but in keeping with-- that of a lawyer. It's like, I mean, yeah. And this is exactly what the bar did in the McCarthy era, as Jim has so well cataloged. This is disturbing.

And how do we assure not just-- we can't just say, oh, we know. We know it when we see it, right? That's not enough. That doesn't reassure me, and that shouldn't reassure the public. And it shouldn't reassure people with politics different from mine that I'm not going to use my power to hurt them. So I'm very concerned here. And that's why I'm making the argument that I'm making.

- Let me turn to Professor Muchman to weigh in on this, particularly give us the former regulator's perspective.

- I find the arguments really interesting. And Jim, I thought your piece on political motivation and bar discipline, including the admissions pieces that you included, was fascinating and concerning and true, right? But I think that what we have here is about what were the lawyers talking about? Who are the lawyers talking about, right?

So I agree completely with the understanding that the First Amendment really is there to protect the marketplace of ideas. And when there are other rules that can be utilized, regulators should use the other rules. So look at 3.1. Look at actual false statements in the pleadings filed in court, right? Look at false statements in the affidavits attached to the pleadings. So all of those things can be a legitimate non-political basis for discipline on which any lawyer would be disciplined.

But I think that I'm just going to push back on the First Amendment a little bit and look in particular at 8.2. And Becky, I actually am in agreement with you. We should use those rules the same, no matter who the lawyer is, right? So there are multiple cases-- I can think of three without even trying, two from Illinois and one from Louisiana-- where lawyers were disbarred for making outrageous statements about judges and what was called sometimes "social media blitzing," saying the judges were corrupt; the judges were taking bribes; the judges were part of conspiracies.

And I think that the importance of 8.2 and lawyers' speech about the courts, the integrity of the judicial process and judges, that rule, I think, if that is a rule that regulators look to in these cases, that alleviates some of the First Amendment concerns because I think that everyone understands why, as an officer of the court, if you speak falsely about the court process or a judge or a public official, you are undermining the public confidence in the judicial system. And so why should Jane Doe lawyer or John Doe lawyer be disbarred? And just because you're representing the president you can say whatever you want about a Supreme Court justice or the vice president? I just don't think that's a fair utilization of the rules or the lawyers' restricted First Amendment privileges in those instances. That--

- I know Professor Moliterno wanted to jump in. Let's hear from Professor Moliterno. Then, Josh, I'd love to get you to weigh in here, and particularly maybe to address the marketplace-of-ideas notion. Is the market actually doing a good job of correcting for misstatements and some of the excesses of the attorneys here? So Professor Moliterno.

- So thanks. I think Becky and I actually agree on most of this stuff. We maybe are going to get pitted against each other in some way because that makes it more fun, and I'm happy with that. It makes it more fun. But we agree on most of this. We agree that the First Amendment protects a lot of lawyer speech. We agree that the excessively vague bar discipline rules, like the 8 series

can run into trouble, right? This idea of conduct unbecoming, almost, a lawyer is a dangerously vague notion that has been abused repeatedly over time.

And for sure, I agree with Wendy and Becky that all lawyers ought to be treated the same under these rules, no question about it, right? We shouldn't have disparate cases and things like that. I'm not worried about the example of Rudy Giuliani, if he is disciplined by a bar, setting a precedent for the criminal defense lawyer that Becky was talking about. I think the culture of the criminal defense bar is well understood. It is a little guy against the powerful state. And there's a lot of room given, and there should be given to a criminal defense lawyer public statements, and things like that.

So yes, all lawyers should be treated the same. But lawyers in different practice settings are treated differently, and they should be. They have a different role to play in the justice system. The criminal defense lawyer has an us-against-the-world kind of thing. Mr. Giuliani and the others in this context, they were representing the most powerful person on Earth, who was about to become not-the-most-powerful person on Earth if he lost the election. And so the comparison between representing a criminal defendant and comparing that to the President of the United States who was, more than most presidents of the United States, intent on clinging to that most-powerful-person-on-Earth status, I think those are kind of such huge worlds apart that I'm not worried about setting a bad precedent in the case of the criminal defense lawyer. Thanks.

- So Professor Douglas, if you want to weigh in-- and I'll just say in the chat, there's many kind of views here on concerns about the various types of dishonesty about the various lawyers. And I want to emphasize I don't think any of the participants have really been focusing on one or two attorneys. I think there's been an effort to really kind of capture the lawyers' conduct in general. And there's been many variations, some more outlandish than others. The Hugo Chavez-type statements, I think, are probably among the more outlandish that Professor Muchman referenced earlier.

But Professor Douglas, if you could talk a little bit about this concern that we're losing the truth about the elections. There seems to be a notion that kind of bar discipline will help that. But you've been following the litigation in courts very closely. And that seems not to have really affected people's judgments. So do you think that discipline maybe could do what the actual litigation records have failed to do?

- Well, yeah, I think I agree with what Jim just said. But I want to push back on the last statement you just made, which is that the litigation didn't change people's perceptions. I think it did on a number of ways. One is just sort of the notion that there's so much litigation there must be something wrong, right? The general public doesn't really-- I mean, of course, the general public is smart enough. But I don't know that it can make the fine distinctions by well, there's all these lawsuits. There must be something that they're complaining about that's legitimate. And then this rhetoric that came about that well, all the courts just dismissed the cases on procedural grounds

and never reached the merits, which is true for a handful of the cases, for good reasons. But for other cases, the courts did reach the merits.

But what I want to highlight is I think there's something different about elections and rhetoric with respect to our democracy. So here's an example. What if the president's lawyer on the weekend before election day said, the polls are going to be swamped. So Republicans, you come on Tuesday and Democrats, you come on Wednesday, right? That's just a blatant lie. There's no such thing as the polls being open for Democrats on Wednesday. But we've seen that sort of rhetoric occur.

I think that the marketplace of ideas-- although enough people could use their own megaphones to say, no, that's not true, I'm not sure the marketplace of ideas works well enough to protect the democratic institutions that our entire foundation, our entire constitutional republic is founded upon. And I think a lot of the statements made after the election when thought of in conjunction with the litigation that was trying to press these, I think it was an integrated strategy. You can't separate the two.

And so that's why I'm a little more comfortable saying there should be sanctions both on the frivolous litigation, which is, I think, potentially happening. But I think you can consider it in the context, or at least you can consider the public statements in the context of the litigation. If they're outright lies that are intended to undermine our democratic process, then I'm less concerned, like Jim also is less concerned, about sanctioning that because I also think we would want to sanction an official government actor or someone speaking on behalf of an official government actor telling voters that if you're Republican, you vote on Tuesday, and if you're Democrat, you vote on Wednesday.

- Can I just jump in and say that there is a parallel conversation going on among First Amendment scholars about whether we should be able to sanction the political actors for saying what they're saying. And so there's a lot of case law, the Alvarez case being the main one, suggesting that this is problematic but not impossible. And so there are lots of people trying to draft a statute that could actually address the lies.

But what I'm saying is that I don't think that the-- I am skeptical of the claim that the lawyers, specially, are subject to less First Amendment protection than the political actors would be. And I think to the extent-- I agree. Jim and I are mostly in agreement-- and Wendy. But in that point, I think maybe we are not, in that I don't actually see the bar as a whole's interest, except for maybe narrowly because the lie's concerned the legal system I could see it.

But otherwise I don't actually think when lawyers are speaking out in the public that I don't see what the bar's particular interest is here. And I see the First Amendment concern as especially high because lawyers really-- not just criminal defense lawyers. Many kinds of lawyers are involved in challenging government conduct in an important way. And I don't love that 8.2 rule,

personally, either for these same reasons. I think we should really allow lawyers to criticize government actors because sometimes government actors can be really, really awful. So--

- Well, it's not criticizing government actors, right, Becky? It's false criticism of government actors. And my other question-- I think the other question we raise here is the idea of knowledge, right? So what if a lawyer said, well, Justice Roberts is part of a sex ring, but I didn't know that was false? Sometimes that happens.

- Right. My point is only that in terms of falsity, this is a First Amendment point. If you allow the person who is criticized to be determining what is true and false, you have played right into a situation in which you are allowing somebody who will be very biased to make that determination. And so from a First Amendment perspective, you just have to be wary.

So I'm not-- it's like, yeah, OK, if you take the example of they've said something so outlandish that we can all agree that this is a lie, fine. But if it's borderline, like, look at the judges who sanctioned the Chicago Seven lawyers. It's like, yeah, of course, that they thought because they were the ones who were being insulted. So I don't-- I'm concerned about all of this in a way that makes me want to back off. And backing off doesn't mean you don't leave some room. It just means we have to be very constraining about what that room is that we are leaving.

- As the election law expert in the room, I don't necessarily want to just say I'm in favor of election law exceptionalism. But I am. I think that there's something different when it comes to the very foundations of our democracy that is very different from the criminal law example or the Chicago Seven example, although maybe that one's a little bit closer. The other point I wanted to raise, though, is that we're talking about sanctioning. But I also found it really disturbing-- and I don't know what Becky would think about this.

But I found it disturbing that you only started to see official statements from the ABA or other organizations after the riot. You had sort of this silence among a lot of the legal educated, the legal bar, during November and December when the seeds of the insurrection were being planted by this continued lie, facilitated in part by the litigation and in part by just the public rhetoric surrounding it. And I recognize why people then wanted to speak out after insurrectionists stormed the Capitol and caused violence and killed people. But I think there's a role for lawyers to play as a general matter, including the official lawyer organizations in the bar, to call out this kind of why, even if they're not sanctioning the Giulianis of the world formally, but to take a stand to try to correct that information, to try to get the marketplace of ideas to work, even though, I think, for something like this, the marketplace is largely broke.

- Yes. So we are running out of time here. I know that Professor Moliterno wanted to weigh in here. So Professor, let me give you that opportunity.

- Thanks a lot. So just a really small point. We fall into the trap, and some of us even fall into the trap of asking ourselves, what is the bar's interest? If the bar doesn't have an interest, if the bar shouldn't have an interest-- we need to remind ourselves that the bar associations are exercising authority that they've been delegated by, for the most part, state supreme courts, sometimes state legislatures. And they're supposed to be disciplining lawyers in the public interest.

It shouldn't be that we think about why does the bar care about this, right? The bar should be, when it acts in the right way, thinking about the public interest in this. And there I jump to Josh's point about what better set of circumstances of lawyer conduct are having an impact on the public interest and so forth and concerns that election law experts like Josh have about this sort of thing? So it's not the bar's interest. It shouldn't be, at least. It's the public interest that they have received this delegated authority to help protect.

- Well, so if I could summarize what's been an excellent lively discussion-- and I hope it was informative to the audience. Clearly, however you might feel about the conduct of the election lawyers, I think perhaps one thing that we can all agree on, that there needs to be more communication on both how the lawyers generally feel about some of this conduct, but also in the cases explaining sometimes why there can be this tension between the First Amendment and attorney discipline. So I think there's a lot more, as Jim just noted, that attorneys can do besides relying on the bar to formally initiate discipline. And private mechanisms and the market are certainly one way to do that.

Well, there will be future webinars related to ethics, perhaps not necessarily electoral lawyers. But there will certainly be future events related to ethics. We want to thank you all for your attention. And thank you, again, to our remarkable participants. Good day, everyone.