

Lawyer Lies and Political Speech

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ABSTRACT. Lawyer lies designed to sabotage valid election results are not protected political speech under the First Amendment. Ethics rules governing candor and frivolous litigation require sanctions, if not disbarment. Moreover, the duty of candor should be extended from the courthouse to the public square when lawyer lies threaten our democracy.

“Truthfulness has never been counted among the political virtues, and lies have always been regarded as justifiable tools in political dealings.”
— Hannah Arendt, *Lying in Politics: Reflections on the Pentagon Papers*¹

INTRODUCTION

Lawyer lies pervade politics regardless of party, though to be sure, they became more noticeable in the Trump Era. In the aftermath of the 2020 election, lawyers desperate to alter the outcome of validly cast votes spewed outrageous lies. Their election fraud lies stand apart from those made by lawyers earlier in President Trump’s Administration because of the consequences at stake.² In-

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1. HANNAH ARENDT, *Lying in Politics: Reflections on the Pentagon Papers*, in *CRISES OF THE REPUBLIC: LYING IN POLITICS, CIVIL DISOBEDIENCE, ON VIOLENCE, THOUGHTS ON POLITICS AND REVOLUTION* 3, 4 (1972).
 2. See, e.g., Scott M. Karson, *With Truth on Trial, Judicial Branch Upholds Fragile Rule of Law*, N.Y.L.J. (Apr. 30, 2021, 10:00 AM), <https://www.law.com/newyorklawjournal/2021/04/30/with-truth-on-trial-judicial-branch-upholds-fragile-rule-of-law> [https://perma.cc/6XPM-XPk9] (“Perhaps no lie has had greater consequences on our nation than former President Trump’s unfounded claim that victory had been wrongfully stolen from him in the 2020 presidential election by means of widespread election fraud.”); David Landau, Hannah J. Wiseman & Samuel Wiseman, *Federalism, Democracy, and the 2020 Election*, 99 TEX. L. REV. 96, 97 (2021) (“The United States recently experienced an antidemocratic crisis, with a Pres-

deed, the harm of their lies cannot be overstated. Had their lies not been rejected by the courts, they would have undone the results of a legitimate election, compromising the very foundation of American democracy. More than sixty lawsuits were dismissed after judges appointed by both Democrats and Republicans (including President Trump) refused to entertain fraud allegations based on lies advanced by lawyers.³

And for good reason. Lawyer lies about the outcome of a valid election, whether told in chambers or in a press conference, risk causing unique, devastating harm to our democratic form of government and should not be tolerated by members of our profession. Indeed, philosopher Jeremy Waldron calls these types of lies “among the worst kinds of lie to tell. They are libels on democracy.”⁴ Perhaps most concerning, a lack of meaningful discipline for lawyers who tell election fraud lies risks a continued threat in future elections and undermines public confidence in the legal profession. Ethics rules can and should be guardrails to protect against future lawyer lies comprising valid election results.

This Essay contends that ethics rules governing candor in the courtroom and frivolous litigation require sanctions for lawyer lies designed to sabotage valid election results. Further, it makes the case for extending the duty of candor to the public square when those lies threaten extreme harm. Lies may be justifiable in political dealings and in the practice of law, but the legal profession should not tolerate them when pressed on behalf of government officials aiming to undo legitimate election results, whether in the courtroom or in the court of public opinion. While this Essay focuses on the lies told following the 2020 election, the analysis here similarly applies to past elections, and especially to future elections.

Part I of this Essay analyzes some of the more egregious lawyer lies in recent years and defines the very specific nature of the lies at the center of this Essay: election fraud lies. Part II argues that sanctions should be imposed for

ident attempting to delegitimize the general election and unilaterally declare victory in an election that all impartial observers stated he lost.”).

3. William Cummings, Joey Garrison & Jim Sergent, *By the Numbers: President Donald Trump's Failed Efforts to Overturn the Election*, USA TODAY (Jan. 6, 2021, 10:50 AM EST), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001> [<https://perma.cc/H69L-H6G5>] (“Out of the 62 lawsuits filed challenging the presidential election, 61 have failed . . .”); *Fact Check: Courts Have Dismissed Multiple Lawsuits of Alleged Electoral Fraud Presented by Trump Campaign*, REUTERS (Feb. 15, 2021, 10:41 AM), <https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1> [<https://perma.cc/HH2T-A644>] (“Independent experts, governors and state election officials from both parties say there was no evidence of widespread fraud.”).
4. Jeremy Waldron, *Damned Lies* 24 (N.Y. Univ. Sch. L., Working Paper No. 21-11, 2021), <https://ssrn.com/abstract=3797216> [<https://perma.cc/V759-QVXM>].

lawyers' election fraud lies under existing ethics and civil procedure rules. Part III makes the case for extending the duty of candor beyond the courtroom and addresses relevant speech and enforcement concerns. Part IV concludes with recommendations for expanding a broader duty of candor as an aspirational commitment for lawyers and lawyers-to-be.

I. LAWYER LIES IN MODERN POLITICS

The legal profession's relationship to truth and lies is complicated and, at times, counterintuitive. As one scholar observes, "Truth in legal proceedings not only competes with other priorities, such as fairness and efficiency, but under the American legal system, it may be sought through deception, half-truths, misleading statements, and, at times, outright falsehoods."⁵ Despite pledges and promises to seek truth, lawyers sometimes must engage in dishonesty to fulfill duties to their clients. For example, ethics rules explicitly permit lawyers to obscure the truth during negotiations.⁶ Lawyers acting in political roles, whether representing a government official or holding office themselves, frequently confront significant tensions surrounding honesty.

Lawyer lies became a hallmark of the Trump Administration from the outset. Among the most brazen, Senior Counselor to the President Kellyanne Conway's lies included the size of the inauguration crowd,⁷ the fictitious Bowling Green Massacre,⁸ and the World Health Organization's ability to prevent COVID-19.⁹ Attorney General Jeff Sessions falsely testified under oath that he did not meet with the Russian Ambassador during Trump's presidential campaign, even though he did.¹⁰ Environmental Protection Administration head Scott Pruitt lied during his Senate confirmation hearings about his use of his

5. Julia Simon-Kerr, *Credibility by Proxy*, 85 GEO. WASH. L. REV. 152, 153 (2017).

6. See MODEL RULES OF PRO. CONDUCT r. 4.1, cmt. 2 (AM. BAR ASS'N 2020).

7. See Nicholas Fandos, *White House Pushes 'Alternative Facts.' Here Are the Real Ones*, N.Y. TIMES (Jan. 22, 2017), <https://www.nytimes.com/2017/01/22/us/politics/president-trump-inauguration-crowd-white-house.html> [<https://perma.cc/HQ4G-QDGS>].

8. See Clare Foran, *Kellyanne Conway and the Bowling Green Massacre that Wasn't*, ATLANTIC (Feb. 3, 2017), <https://www.theatlantic.com/politics/archive/2017/02/kellyanne-conway-bowling-green-massacre-alternative-facts/515619> [<https://perma.cc/LS6L-AXUH>].

9. See Chris Cillizza, *Kellyanne Conway's Simply False Spin on 'COVID-19'*, CNN (Apr. 16, 2020, 12:16 AM ET), <https://www.cnn.com/2020/04/15/politics/kellyanne-conway-covid-19-coronavirus/index.html> [<https://perma.cc/3CRG-VJMM>].

10. See Susan Hennessey & Benjamin Wittes, *Don't Convict Jeff Sessions of Perjury Just Yet: Not All Lies, Even Under Oath, Are Prosecutable Crimes*, FOREIGN POL'Y (Nov. 3, 2017, 4:22 PM), <https://foreignpolicy.com/2017/11/03/dont-convict-jeff-sessions-of-perjury-just-yet> [<https://perma.cc/5XG4-8E7G>].

work email account for personal business while serving as Oklahoma Attorney General.¹¹ And this list does not even begin to touch on the dozens of lies told about the results of the 2020 election by lawyers on behalf of Trump including Rudy Giuliani, Sidney Powell, and L. Lin Wood.¹²

Calls for discipline and disbarment soon followed each of these lies. For example, in 2017, fifteen legal ethics scholars submitted a complaint about Conway's lies to the District of Columbia's Office of Disciplinary Counsel on the grounds that her statements constituted "dishonesty, fraud, deceit, or misrepresentation" prohibited by professional conduct rules.¹³ They did so because they

thought it necessary for the members of the Bar to speak publicly about the nature of fact and of truth, and for state disciplinary committees to sanction those lawyers who intentionally present false facts, particularly because lawyers are sworn to uphold the Constitution and laws of the United States and pursue the fair administration of justice.¹⁴

As another example, nearly two thousand lawyers signed onto a request that the Alabama State Disciplinary Committee disbar Sessions for testifying falsely under oath.¹⁵ The Americans Civil Liberties Union filed a separate complaint seeking discipline.¹⁶ As for Pruitt, an environmental organization and a law

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11. See Steven Mufson, *New EPA Head Told Congress He Never Used Personal Email for Government Business. But It Turns Out He Did*, WASH. POST (Mar. 2, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/03/02/new-epa-head-told-congress-he-never-used-personal-email-for-government-business-but-it-turns-out-he-did> [https://perma.cc/3QKX-HZ6F].
 12. See Alison Durkee, *With Giuliani's Law License Suspended, Here Are the Other Trump Lawyers Who May Face Discipline Next*, FORBES (June 24, 2021, 4:19 PM EDT), <https://www.forbes.com/sites/alisondurkee/2021/06/24/with-giulianis-law-license-suspended-heres-the-other-trump-lawyers-who-may-face-discipline-next> [https://perma.cc/ZCF3-DFC7].
 13. *Law Professors File Ethics Complaint Against Kellyanne Conway*, BLOOMBERG (Feb. 24, 2017, 1:36 PM), <https://news.bloomberglaw.com/business-and-practice/law-professors-file-ethics-complaint-against-kellyanne-conway> [https://perma.cc/SV63-RH83].
 14. Ellen Yaroshfsky, *Regulation of Lawyers in Government Beyond the Client Representation Role*, 33 NOTRE DAME J.L. ETHICS & PUB. POL'Y 151, 153 (2019).
 15. See Chip Brownlee, *Nearly 2,000 Lawyers Ask for Jeff Sessions to Be Disbarred*, ALA. POL. REP. (Mar. 28, 2017), <https://www.alreporter.com/2017/03/28/nearly-2000-lawyers-ask-sessions-disbarred> [https://perma.cc/WA9U-39ML].
 16. See *Sessions Ethics Complaint*, ACLU (Mar. 9, 2017), <https://www.aclu.org/legal-document/sessions-ethics-complaint> [https://perma.cc/QD5L-FYKM].

professor requested an investigation by the Oklahoma Bar Association.¹⁷ Authorities dismissed the Conway and Pruitt complaints.¹⁸ The Sessions matter has yet to result in a guilty finding.¹⁹

As the end of President Trump's term approached, the lies characteristic of lawyers in his leadership ranks only intensified. Rudy Giuliani claimed election fraud in press conferences and even in his opening statement during a court proceeding, though he conceded after questioning by Pennsylvania U.S. District Judge Matthew W. Brann that the lawsuit did not allege fraud as a matter of law.²⁰ More than 7,600 individuals, including over 3,000 attorneys, signed onto a complaint filed by Lawyers Defending American Democracy with the New York State Bar seeking the suspension of Giuliani's New York license.²¹ A New York State appellate court suspended his New York license pending investigation, ultimately finding "uncontroverted evidence" that he "communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Trump and the Trump campaign in connection with Trump's failed effort at reelection in 2020."²² The District of Columbia also suspended his D.C. license pending investigation.²³

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17. See Max Greenwood, *Oklahoma Bar Association Investigating Pruitt over Private Email Use*, HILL (Mar. 31, 2017, 8:14 AM EDT), <https://thehill.com/policy/energy-environment/326661-oklahoma-bar-association-investigating-ethics-complaint-against> [<https://perma.cc/EY5H-HA4Y>].
 18. See Yaroshefsky, *supra* note 14, at 151 n.2 (discussing Conway); Zack Colman, *Okla. Bar Dismisses Complaint Against Pruitt*, POLITICO (July 19, 2018, 1:18 PM EDT), <https://subscriber.politicopro.com/article/eenews/1060089765> [<https://perma.cc/9AKL-WQ5P>] (regarding Pruitt). The complaints against Sessions remain unresolved at the time of this Essay's publication.
 19. Telephone Interview with Ala. State Bar Disciplinary Div. (July 7, 2021). Pursuant to Alabama Rules of Disciplinary Procedure Rule 30, no information about a complaint can be disclosed unless or until there is a guilty finding. ALA. RULES OF DISCIPLINARY PROC. r. 30 (ALA. JUD. SYS. 2021).
 20. See Jon Swaine & Aaron Schaffer, *Here's What Happened When Rudolph Giuliani Made His First Appearance in Federal Court in Nearly Three Decades*, WASH. POST (Nov. 18, 2020, 11:05 AM EST), https://www.washingtonpost.com/politics/giuliani-pennsylvania-court-appearance/2020/11/18/ad7288dc-2941-11eb-92b7-6ef17b3fe3b4_story.html [<https://perma.cc/7V76-6HKL>].
 21. See *LDAD Collects 1000s of Signatures for Ethics Complaint Against Rudy Giuliani*, LAWS. DEFENDING AM. DEMOCRACY (Jan. 21, 2021), <https://ldad.org/letters-briefs/ldad-files-grievance-against-giuliani> [<https://perma.cc/SUD4-R3HY>].
 22. *In re Giuliani*, 146 N.Y.S.3d 266, 268 (App. Div. 2021).
 23. *In re Giuliani*, No. 21-BG-423 (D.C. July 7, 2021) (per curiam).

Sidney Powell’s election lies were so egregious that Dominion Voting Systems sued her for defamation.²⁴ As a defense, she argued “no reasonable person” would have believed her.²⁵ Among the absurdities, “Powell falsely stated on television and in legal briefs that Dominion machines ran on technology that could switch votes away from Trump, technology she said had been invented in Venezuela to help steal elections for the late Hugo Chávez.”²⁶ She then proceeded to layer lies upon lies, taking the opposite position in response to sanctions sought in a Detroit federal court. Judge Linda V. Parker ultimately ordered Powell, along with eight other lawyers, to pay sanctions, calling their election fraud lawsuit a “historic and profound abuse of the judicial process.”²⁷ She also ordered them to take continuing legal education courses on the topics of pleading standards and election law and referred them for discipline in the jurisdictions where they are licensed to practice.²⁸ Judge Parker concluded that the lawyers “scorned their oath, flouted the rules, and attempted to undermine the integrity of the judiciary along the way.”²⁹ Michigan Attorney General Dana Nessel also joined with Michigan’s Governor Gretchen Whitmer and Secretary of State Jocelyn Benson, themselves attorneys, to request that the State Bar of Texas disbar Powell.³⁰

L. Lin Wood repeatedly spread claims at political rallies and in court filings that the election was stolen, which eventually made him the subject of a voter fraud investigation by the Georgia Secretary of State.³¹ The Georgia State Bar

24. See Jacqueline Thomsen, *Can’t Have It Both Ways: Sidney Powell’s Defamation Defense Could Put Her in Ethical Bind, Experts Say*, NAT’L L.J. (Mar. 23, 2021, 3:01 PM), <https://www.law.com/nationallawjournal/2021/03/23/cant-have-it-both-ways-sidney-powells-defamation-defense-could-put-her-in-ethical-bind> [https://perma.cc/4QM9-RAAH].

25. Tom McCarthy, *Pro-Trump Lawyer Says ‘No Reasonable Person’ Would Believe Her Election Lies*, GUARDIAN (Mar. 23, 2021, 11:51 EDT), <https://www.theguardian.com/us-news/2021/mar/23/sidney-powell-trump-election-fraud-claims> [https://perma.cc/ZDS8-Y97H].

26. *Id.*

27. King v. Whitmer, No. 2:20-cv-13134 (E.D. Mich. Aug. 25, 2021).

28. *Id.*

29. *Id.*

30. See Letter from Gretchen Whitmer, Governor of the State of Michigan, to the State Bar of Texas (Feb. 1, 2021), https://www.michigan.gov/documents/ag/Powell_atty_complaint_-_signed_714982_7.pdf [https://perma.cc/8NP8-5W8F]; Letter from Dana Nessel, Att’y Gen. of the State of Michigan, to the State Bar of Texas (Feb. 1, 2021), https://www.michigan.gov/documents/ag/Powell_atty_complaint_-_signed_714982_7.pdf [https://perma.cc/8NP8-5W8F]; Letter from Jocelyn Benson, Michigan Sec’y of State, to the State Bar of Texas (Feb. 1, 2021), https://www.michigan.gov/documents/ag/Powell_atty_complaint_-_signed_714982_7.pdf [https://perma.cc/8NP8-5W8F].

31. Andrea Salcedo, *L. Lin Wood Spent Months Falsely Claiming Voter Fraud Cost Trump the Election. Now Georgia Is Investigating Whether He Voted Illegally*, WASH. POST (Feb. 3, 2021, 7:37

instituted proceedings against Wood to suspend him from law practice based upon mental illness and cognitive impairment because of the conspiracy theories he championed.³² He also was among the lawyers sanctioned by Judge Parker.

Disciplinary actions against Giuliani, Powell, Wood, and others remain pending at the time this Essay was published,³³ with none yet permanently disbarred.

To be fair, these Republican Party lawyers are not alone in peddling falsehoods. A nonpartisan news source, PolitiFact, deemed a promise by President Barack Obama that “if you like your health care plan, you can keep it” the “Lie of the Year” in 2013.³⁴ Secretary of State Hillary Clinton was not entirely forthcoming about the Benghazi consulate terrorist attack, among other less-than-honest statements.³⁵ And perhaps the most infamous example in recent history is the lie her husband, President Bill Clinton, told under oath during the Paula Jones litigation about his sexual indiscretions with a White House intern.³⁶

These examples of lies by high-ranking government lawyers raise important questions. First, what role, if any, should legal ethics play in addressing the lies of lawyers in politics? Second, should a heightened duty of truthfulness be placed upon lawyers who represent a public official or hold public office?

AM EST), <https://www.washingtonpost.com/nation/2021/02/03/lin-wood-georgia-voter-fraud> [<https://perma.cc/MX74-E92F>].

32. Adam Klasfeld, *Georgia State Bar Says There's a Glaring Problem with Lin Wood's Claim About How Mental Health Exam Request Went Public*, L. & CRIME (May 12, 2021, 10:48 AM), <https://lawandcrime.com/2020-election/georgia-state-bar-says-theres-a-glaring-problem-with-lin-woods-claim-about-how-mental-health-exam-request-went-public> [<https://perma.cc/R5NV-TWWN>].
33. Numerous complaints remain pending before courts and disciplinary bodies seeking sanctions and disbarment of Giuliani, Powell, Wood, and others for their election lies. *See, e.g.*, Defendant Governor Evers's Brief in Support of His Petition for Attorneys' Fees and Sanctions, *Trump v. Wis. Elections Comm'n*, No. 20-CV-1785 (E.D. Wis. Mar. 31, 2021); Dave Montgomery, *Texas Attorney General Is Being Investigated by State Bar Association*, N.Y. TIMES (June 10, 2021), <https://www.nytimes.com/2021/06/10/us/ken-paxton-texas-state-bar.html> [<https://perma.cc/FE4H-MJ66>].
34. Angie Drobnic Holan, *Lie of the Year: 'If You Like Your Health Care Plan, You Can Keep It,'* POLITIFACT (Dec. 12, 2013), <https://www.politifact.com/article/2013/dec/12/lie-year-if-you-like-your-health-care-plan-keep-it> [<https://perma.cc/F6AK-BRA5>].
35. Marc A. Thiessen, *Hillary Clinton, Who Tells Dreadful Lies*, WASH. POST (Sept. 19, 2016), https://www.washingtonpost.com/opinions/hillary-clinton-who-tells-dreadful-lies/2016/09/19/cd38412e-7e6a-11e6-9070-5c4905bf40dc_story.html [<https://perma.cc/VU87-58HQ>].
36. Robert L. Jackson, *Clinton Fined \$90,686 for Lying in Paula Jones Case*, L.A. TIMES (July 30, 1999), <https://www.latimes.com/archives/la-xpm-1999-jul-30-mn-61021-story.html> [<https://perma.cc/QKM4-LA6V>].

Third, in a world increasingly filled with alternative facts,³⁷ deep fakes,³⁸ and fake news,³⁹ does the lawyer have a special role to play in conveying fact-based evidence to separate reality from fiction? Finally, if the answer to these initial questions is “yes,” what lies fall outside the scope of First Amendment protection?

The answer to the first question is relatively straightforward. History tells us that legal ethics may serve as a bulwark against material lies before a tribunal or under oath. A larger movement by ethics professors sought to engage the disciplinary process in addressing lawyer lies developed in the wake of the Trump Administration’s flood of dishonesty.⁴⁰ Described by one scholar as “the ethics resistance,”⁴¹ it remains to be seen whether this effort will serve as a deterrent for lawyers in future administrations. Some commentators argue that lies like Conway’s are protected political speech.⁴² But there is no serious debate that a lawyer in politics can be disciplined under ethics rules for lying to a judge about material facts in a trial or for lying under oath, just as any lawyer

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37. See, e.g., Charles M. Blow, *A Lie by Any Other Name*, N.Y. TIMES (Jan. 26, 2017), <https://www.nytimes.com/2017/01/26/opinion/a-lie-by-any-other-name.html> [<https://perma.cc/CG6A-S2AE>].
38. See Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 CALIF. L. REV. 1753, 1762-63 (2019).
39. See, e.g., Nabihah Syed, *Real Talk About Fake News: Towards a Better Theory for Platform Governance*, 127 YALE L.J.F. 337, 345-53 (2017).
40. During his presidency, Trump made over 30,000 false or misleading claims as measured by the *Washington Post*. Glenn Kessler, Salvador Rizzo & Meg Kelly, *Trump’s False or Misleading Claims Total 30,573 over 4 Years*, WASH. POST (Jan. 24, 2021), <https://www.washingtonpost.com/politics/2021/01/24/trumps-false-or-misleading-claims-total-30573-over-four-years> [<https://perma.cc/L74S-5ZJF>].
41. See Brian Sheppard, *The Ethics Resistance*, 32 GEO. J. LEGAL ETHICS 235, 235, 271 (2019) (describing the legal-ethics complaints filed against Trump lawyers and concluding that while they “will face significant opposing forces” this “movement has the capacity to be legally permissible, institutionally sound, and prudent”); see also W. Bradley Wendel, *Lawyer Shaming* 6 (Cornell Legal Studies Research Paper No. 21-09, 2021), <https://ssrn.com/abstract=3778984> [<https://perma.cc/K5FA-LQBD>] (“Perhaps surprisingly, I believe many lawyer-shaming campaigns are ethically defensible, and lawyers may be subject to moral criticism for the clients they choose to represent.”).
42. See Steven Lubet, *In Defense of Kellyanne Conway*, SLATE (Feb. 27, 2017, 9:22 AM), <https://slate.com/news-and-politics/2017/02/the-misconduct-complaint-against-kellyanne-conway-is-dangerously-misguided.html> [<https://perma.cc/232U-2UAS>] (“As a liberal Democrat, I have no sympathy for Conway’s habitual disregard for truth. As a professor of legal ethics, however, I think this complaint is dangerously misguided and has the potential to set a terrible precedent. . . . Speech is most strongly protected when it is part of a robust political debate.”).

can be. Indeed, presidents from both political parties have lost their law licenses because of their lies.⁴³

The second question—whether lawyers representing or serving as public officials bear a heightened duty of truthfulness—proves more difficult to answer. Legal ethicists are conflicted over whether government lawyers, or political actors who happen to be lawyers, should have special obligations beyond private lawyers.⁴⁴ Some scholars, including myself, believe that “government lawyers have special responsibilities to serve the public good and to uphold the administration of justice.”⁴⁵ The American Bar Association Model Rules of Professional Conduct (Model Rules) seem to share this view. For example, as the comment to Model Rule 1.13 explains, “a government lawyer may have authority under applicable law to question [government officials’] conduct more extensively than that of a lawyer for a private organization in similar circumstances.”⁴⁶ Similarly, the comment to Model Rule 8.4(c) states that “[l]awyers holding public office assume legal responsibilities going beyond those of other citizens.”⁴⁷ Others find that government attorneys owe no heightened ethical duty to a broader public interest.⁴⁸ A full exploration of this debate is beyond the scope of this Essay, though it is a relevant backdrop for addressing whether

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43. See Duncan Campbell, *Lewinsky Scandal Ends as Clinton Is Disbarred*, GUARDIAN (Oct. 1, 2001), <https://www.theguardian.com/world/2001/oct/02/duncancampbell> [<https://perma.cc/6MFA-95TK>]; Tom Goldstein, *New York Court Disbars Nixon for Watergate Acts*, N.Y. TIMES (July 9, 1976), <https://www.nytimes.com/1976/07/09/archives/new-york-court-disbars-nixon-for-watergate-acts-nixon-disbarred-by.html> [<https://perma.cc/D3V3-C65Q>].
44. Compare Yaroshefsky, *supra* note 14, at 161 (“One of the most vexing problems in contemporary legal ethics is how to think about the professional responsibilities of government lawyers.”), with W. Bradley Wendel, *Government Lawyers in the Trump Administration*, 69 HASTINGS L.J. 275, 294 (2017) (“It seems instead that the mainstream position is that a government lawyer’s obligation to the public good is no stronger than a private lawyer’s.”).
45. Renee Newman Knake, *Lawyer Speech in the Regulatory State*, 84 FORDHAM L. REV. 2099, 2118 (2016) (“It is an uncontroversial proposition in mainstream American legal thought that government lawyers have greater responsibilities to pursue the common good or the public interest than their counterparts in private practice, who represent non-governmental persons and entities.” (citing Steven K. Berenson, *Public Lawyers, Private Values: Can, Should, and Will Government Lawyers Serve the Public Interest?*, 41 B.C. L. REV. 789, 789 (2000)); Allan C. Hutchinson, *‘In the Public Interest’: The Responsibilities and Rights of Government Lawyers*, 46 OSGOODE HALL L.J. 105, 114 (2008) (“The significant difference between private lawyers and government lawyers is that the latter have a much greater obligation to consider the public interest in their decisions and dealings with others than the former.”).
46. MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 1.13 cmt. 9.
47. *Id.* r. 8.4(c) cmt. 7.
48. See, e.g., Wendel, *supra* note 44, at 294; Jonathan R. Macey & Geoffrey P. Miller, *Reflections on Professional Responsibility in a Regulatory State*, 63 GEO. WASH. L. REV. 1105, 1116 (1995).

the election fraud lies told by lawyers as political actors constitute protected political speech.

As for the last two questions—whether lawyers play a special truth-telling role and which lies fall outside First Amendment protection—in a world where sources cannot be trusted and lies abound, the legal profession stands apart in an important way. All lawyers, by virtue of taking an oath to receive their law license, agree to be bound to a self-imposed duty of candor in the courtroom and the obligation not to pursue frivolous litigation.⁴⁹ This professional commitment simultaneously demands honesty and constrains speech from lawyers in ways that are not required or allowed for nonlawyers.

These ethical commitments to evidence-based facts eventually put a stop to at least some of the incessant lies of Trump lawyers once they appeared in court, as further detailed in Section II.B. But this was not a victory for legal ethics. Lawyers’ repeated, widely disseminated lies about the election results incentivized a violent attack on the U.S. Capitol building on January 6, 2021. The attack left five dead, including one police officer,⁵⁰ and hundreds injured from “concussions, rib fractures, burns and even a mild heart attack.”⁵¹ Still others continue to suffer other mental health related harms, including post-traumatic stress disorder.⁵² And four police officers who defended the Capitol committed suicide.⁵³

Apart from these physical and psychological harms, significant, nearly irreversible damage was done to our democracy as well. As Judge Moss, writing for the District Court of the District of Columbia, observed: “This was a singular and chilling event in U.S. history, raising legitimate concern about the security—not only of the Capitol building—but of our democracy itself.”⁵⁴ The integrity of our democracy in the court of public opinion was compromised by the deceit of lawyers. They “cut the legs out from under democratic processes, by

49. See discussion *infra* notes 91-96.

50. See Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. TIMES (Feb. 22, 2021), <https://www.nytimes.com/2021/01/11/us/who-died-in-capitol-building-attack.html> [<https://perma.cc/Y9PJ-NJM7>].

51. See Michael S. Schmidt & Luke Broadwater, *Officers’ Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. TIMES (July 12, 2021), <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html> [<https://perma.cc/KL8S-EDBJ>].

52. *Id.*

53. See Mike Valerio & Jordan Fischer, *Fourth Officer Who Responded to the US Capitol on January 6 Dies by Suicide*, HOUS. CHRON. (Aug. 3, 2021, 1:25 PM), <https://www.khou.com/article/news/local/dc/dc-police-officer-suicide-kyle-defreytag-defended-us-capitol-on-january-6/65-fb00a7ff-1884-46ee-819a-448e2f55a61e> [<https://perma.cc/KM5T-T3EP>].

54. *United States v. Cua*, No. 21-107, 2021 WL 918255, at *3 (D.D.C. Mar. 10, 2021).

making it difficult or impossible for citizens to know whom to trust.”⁵⁵ And this lack of trust endures. More than five months into President Joe Biden’s term, thirty-two percent of all Americans still believed his electoral victory was due to fraud, as did sixty-three percent of Republicans⁵⁶ even though Republican led investigations found no evidence of voter fraud.⁵⁷

Of course, lawyers were not the only ones fueling the January 6 insurrection and the ongoing disbelief about the election’s legitimacy. President Trump was the most vocal, to be sure, along with other Republican politicians and pundits.⁵⁸ But what if lawyers like Giuliani, instead of contributing to the false cries of election fraud and advocating at the January 6 rally for “trial by combat,”⁵⁹ told the truth? Ultimately, Giuliani would do so when pressed in open court about his fraud allegations.⁶⁰ But by then, the damage had been done. We will never know if truth-telling by lawyers when it mattered most might have altered the tragic course of events that followed from the January 6 rally, but we do know that trust in the legal system has been compromised. Admittedly, lawyers do not place highly on honesty rankings among various other professions.⁶¹ But this is all the more reason why the profession must make clear to the public that lies about valid election results by lawyers violate our ethical obligations. These lawyers undermined the delicate balance between de-

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55. Cass R. Sunstein, *On the Wrongness of Lies* 9 (Harvard Pub. L. Working Paper No. 21-05, 2020), <https://ssrn.com/abstract=3594420> [<https://perma.cc/G2RL-PV7D>].
56. See *Public Supports Both Early Voting and Requiring Photo ID to Vote: One-Third Remain Convinced of 2020 Election Fraud*, MONMOUTH UNIV. POLLING INST. (June 21, 2021), https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_062121 [<https://perma.cc/BJZ3-P9SX>].
57. See, e.g., Allan Smith, *Michigan Republicans Eviscerate Trump Voter Fraud Claims in Scathing Report*, NBC NEWS (June 23, 2021, 12:41 PM EDT), <https://www.nbcnews.com/politics/elections/michigan-republicans-eviscerate-trump-voter-fraud-claims-scathing-report-n1272116> [<https://perma.cc/7KFZ-8QMJ>].
58. Glen Kessler, *Trump Made 30,573 False or Misleading Claims as President. Nearly Half Came in His Final Year*, WASH. POST (Jan. 23, 2021, 6:35 PM), https://www.washingtonpost.com/politics/how-fact-checker-tracked-trump-claims/2021/01/23/ado4b69a-5c1d-11eb-a976-bad6431e03e2_story.html [<https://perma.cc/66ZR-RDPK>] (“After Nov. 3, he made more than 800 false or misleading claims about election fraud, including 76 times offering some variation of ‘rigged election.’ At his Jan. 6 speech at the Ellipse, in which he incited the attack on the Capitol, Trump made 107 false or misleading claims, almost all about the election.”).
59. Jenni Fink, *Rudy Giuliani Says No ‘Reasonable Person’ Would Think ‘Trial by Combat’ Called for Capitol Riot*, NEWSWEEK (May 27, 2021, 12:36 PM EDT), <https://www.newsweek.com/rudy-giuliani-says-no-reasonable-person-would-think-trial-combat-called-capitol-riot-1595515> [<https://perma.cc/WU79-LRD5>].
60. See discussion *supra* note 20.
61. See *Honesty/Ethics in Professions*, GALLUP, <https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx> [<https://perma.cc/YBT2-UPGK>].

ception, which is sometimes permitted within the justice system, and flagrant material lies unsupported by facts, which are not.

While the remainder of this Essay focuses narrowly on lawyer lies about the 2020 election, its conclusions and recommendations are broad in scope. It may be that the analysis here should apply more widely to any lies designed to undermine voting—for example, issues related to gerrymandering or voter suppression—or to lies that threaten democratic government more generally. At a minimum, however, the assessment of lawyer lies here offers important lessons to avoid creating a playbook for overturning valid election results in the future. Before turning to that assessment, the continuum of acceptable and unacceptable lies must be explored. Part II explains the ethics governing lawyer lies and applies existing rules to the election lies.

II. THE ETHICS OF LAWYER LIES

Lying occurs regularly in the practice of law, though perhaps not as often as it does in politics. The codes governing “ethics” for lawyers allow communications that many would find dishonest and unethical in other contexts. Section II.A identifies permissible lies and explains why they are allowed by the professional conduct rules. Section II.B explores the limits on lawyer lies. Section II.C then applies existing rules to the lawyer election fraud lies of 2020, revealing gaps where additional guidance may be needed.

A. Acceptable Lawyer Lies

Professional conduct rules not only permit lawyer lies, but in some instances may require less than candid speech, if not outright lies. For example, bluffing in negotiations is expected⁶² and the failure to do so may risk violating the duty of competent representation.⁶³ Lawyers are allowed to argue contrary positions in different jurisdictions at different times for different clients.⁶⁴ A District of Columbia Bar Ethics Opinion authorizes lawyers working in an intelligence or national security capacity to “act deceitfully” if required for en-

62. See MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 4.1, cmt. 2 (“Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact.”).

63. *Id.* r. 1.1.

64. See *Ethics of Positional Conflicts*, ABA NEWS (May 2017), <https://www.americanbar.org/news/abanews/publications/youraba/2017/may-2017/the-ethical-issues-surrounding-positional-conflicts> [<https://perma.cc/JW6M-REPQ>].

gagement in clandestine activities.⁶⁵ And the Colorado Supreme Court revised its rules to explicitly permit lawyers “to advise, direct, or supervise others, including clients, law enforcement or investigators” in “engaging in investigative deceit.”⁶⁶

Potentially more problematic are the gaps in required truth-telling. For example, while the Model Rules prohibit a lawyer from knowingly making a materially false statement to a third party,⁶⁷ no provision mandates an affirmative duty of candor or honesty to the client. The Preamble memorializes a lawyer’s obligations to support constitutional democracy⁶⁸ and preserve society,⁶⁹ but no provision imposes a specific obligation to refrain from lies designed to subvert our democratic form of government.

Lawyers and others, including journalists and law enforcement officials, sometimes use lies to assist in civil and criminal investigations, arguably engaging in deception to enforce democratic rights and entitlements (though there is some movement away from these sorts of tactics, at least in the case of juvenile investigations⁷⁰). Other acceptable lies include “systemic lying” (i.e., “lying under oath by law enforcement personnel [that] occurs as a matter of routine,” such as lying about the location of contraband to avoid its exclusion as the fruit of a warrantless search⁷¹) and “lies that participants in the legal system tell repeatedly, knowing that they are lies and with the complicity of all participants, for what they see as a higher purpose.”⁷² An example of the latter is when “[a] wife accuses her husband of adultery to obtain a divorce, and he goes along with it, even though they both know this is a lie.”⁷³

65. *Ethics Opinion 323: Misrepresentation by an Attorney Employed by a Government Agency as Part of Official Duties*, D.C. BAR (2004), <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-323> [<https://perma.cc/D78N-C92H>].

66. Marc Lieberman, *Social Value of Investigative Deceit: Proposed Rule Change to Resolve the Ongoing Debate Surrounding Investigative Deceit*, 32 GEO. J. LEGAL ETHICS 769, 770-71 (2019) (citation omitted).

67. See MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 4.1(a).

68. *Id.* pmbl. 6 (stating “a lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority”).

69. *Id.* pmbl. 13 (“Lawyers play a vital role in the preservation of society.”).

70. See, e.g., N’dea Yancey-Bragg, *Illinois to Become the First State to Ban Police Officers from Lying to Minors During Investigations*, USA TODAY (June 1, 2021, 3:57 PM ET), <https://www.usatoday.com/story/news/nation/2021/06/01/illinois-ban-police-lying-minors-interrogations/7489269002> [<https://perma.cc/MPF6-AVBE>].

71. See ABA NEWS, *supra* note 64.

72. Julia Simon-Kerr, *Systemic Lying*, 56 WM. & MARY L. REV. 2175, 2178 (2015).

73. *Id.*

In addition to ethics rules making certain lies acceptable and even required of lawyers, the First Amendment provides additional protection to lawyer lies. On one hand, “[i]t is beyond question that some lies—such as perjury and fraud—are simply not covered by the Constitution’s free speech clause.”⁷⁴ On the other hand, “it is equally clear that some lies, even intentionally lying about military honors, are entitled to First Amendment protection.”⁷⁵ The free speech implications of election fraud lies are taken up in more detail below in Section III.A.

B. Unacceptable Lawyer Lies

Lawyer lies are not without limits. Lawyers take oaths pledging to seek truth,⁷⁶ and the same ethics codes that allow lies also provide that dishonesty in some circumstances constitutes professional misconduct. For example, the ABA Model Rules prohibit knowingly making materially false statements in court and to third parties.⁷⁷

Even so, unacceptable lawyer lies often go unpunished in the disciplinary system. Ethics codes outline their prohibitions in vague terms and are “notoriously under-enforced.”⁷⁸ Bar authorities also struggle with politicization, agency capture, and a persistent lack of resources, further contributing to the underenforcement of ethics codes.⁷⁹ According to one study, “[o]nly about five percent of all complaints result in any sanctions against lawyers,” and “the

74. Alan K. Chen & Justin Marceau, *High Value Lies, Ugly Truths, and the First Amendment*, 68 VAND. L. REV. 1435, 1437 (2015).

75. *Id.* (citing *United States v. Alvarez*, 567 U.S. 709 (2012)).

76. See, e.g., *Lawyer’s Oath*, STATE BAR MICH., <https://www.michbar.org/generalinfo/lawyersoath> [<https://perma.cc/2K2Y-CM7B>] (“I do solemnly swear (or affirm): I will support the Constitution of the United States and the Constitution of the State of Michigan . . . I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law . . .”).

77. MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 4.1.

78. Benjamin H. Barton, *The ABA, the Rules, and Professionalism: The Mechanics of Self-Defeat and a Call for a Return to the Ethical, Moral, and Practical Approach of the Canons*, 83 N.C. L. REV. 411, 424 (2005).

79. See, e.g., Fred C. Zacharias, *What Lawyers Do When Nobody’s Watching: Legal Advertising as a Case Study of the Impact of Underenforced Professional Rules*, 87 IOWA L. REV. 971, 997 (2002) (“[R]esource constraints prevent disciplinary authorities from fully enforcing all the professional rules[, and they] must choose among violators that come to their attention on the basis of such factors as the severity of the offense, the deterrent effect . . . the likely cost of prosecution, the nature of the offender, and the effect of enforcement or lack of enforcement on the image of the bar.” (citations omitted)).

sanctions imposed on lawyers are often light and inconsistent.”⁸⁰ Indeed, “[o]ver 90 percent of complaints are dismissed, only about 2 percent result in public sanctions, and many complainants never even learn the basis of the dismissal, let alone receive an opportunity to challenge it.”⁸¹ Another study found that the most frequently unenforced rules are “those requiring lawyers to report misconduct by other lawyers.”⁸² Other rules regularly ignored “include prohibitions against unauthorized practice by lawyers advising clients in states other than their licensing jurisdiction, rules prohibiting lawyers to pay for the costs and expenses of litigation (particularly class action litigation), rules requiring lawyers to expedite litigation, and rules prohibiting statements to the press during litigation,” as well as “prohibitions against collecting unreasonable fees, misleading unrepresented third persons, and failing to provide adequate supervision for subordinates.”⁸³

Rare instances of discipline for lies typically occur not in the practice of law, but where a lawyer lies under oath. Prominent instances of legal discipline in the political sphere include President Clinton in the Paula Jones litigation⁸⁴ and President Nixon’s Attorney General John Mitchell in relation to the Watergate scandal.⁸⁵ Both lawyers ultimately lost their law licenses, and Mitchell served time in jail. Notably, President Clinton surrendered his license rather than face official disbarment,⁸⁶ perhaps because he wanted to avoid the public shaming that accompanied the disbarment of Mitchell (and President Nixon, who also was disbarred for his involvement in Watergate⁸⁷).

Sometimes lawyers are disciplined when their lies harm their clients or, more generally, the administration of justice. For example, North Carolina prosecutor Mike Nifong was disbarred over lies and other misconduct in the “Duke Lacrosse” case, which involved false rape allegations brought against

80. Leslie C. Levin, *The Emperor’s Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 AM. U. L. REV. 1, 8-9 (1998).

81. Deborah L. Rhode, *The Profession and the Public Interest*, 54 STAN. L. REV. 1501, 1512 (2002).

82. Zacharias, *supra* note 79, at 999.

83. *Id.* at 999-1001 (2002) (citations omitted).

84. See Campbell, *supra* note 43.

85. See Morris Kaplan, *Mitchell Disbarred as Lawyer in State*, N.Y. TIMES (July 4, 1975), <https://www.nytimes.com/1975/07/04/archives/mitchell-disbarred-as-lawyer-in-state-mitchell-is-disbarred-in.html> [<https://perma.cc/9HU8-FJ7F>].

86. See Stephen Braun, *AP Fact Check: Trump Says Bill Clinton Lost Law License*, ASSOCIATED PRESS (Oct. 9, 2016), <https://apnews.com/article/08c9ddda95024ee4a778628f749e9f4d> [<https://perma.cc/X6RS-PRL8>].

87. See Goldstein, *supra* note 43.

three players.⁸⁸ The statement issued by F. Lane Williamson, who chaired the Disciplinary Hearing Commission of the North Carolina State Bar, is instructive:

[W]e are in unanimous agreement that there's no discipline short of disbarment that would be appropriate in this case given the magnitude of the [lies] and the effect upon the profession and the public. . . . [D]ue to the initial strong statements, unequivocal statements, made by Mr. Nifong, there was a deception perpetrated upon the public. And many people were made to look foolish because they simply accepted that if this prosecutor said it was true, it must be true. . . . It is very difficult to find any good in this situation that brings us here. . . . I would say that this should be a reminder to everyone that it's the facts that matter.⁸⁹

These same words could be written about the 2020 election fraud lies.

We can infer that some law firms stopped representing President Trump's election challenges because of professional conduct rules.⁹⁰ Under Model Rule 3.3, lawyers cannot knowingly make a "false statement of fact or law" before a judge or knowingly introduce false evidence.⁹¹ The duty of candor owed before a tribunal played a particularly crucial role in separating fact from fiction when Giuliani, under direct questioning from the judge, relented on his claims of election fraud. Similarly, Model Rule 3.1 bars lawyers from bringing frivolous claims in court.⁹² While Rule 11 of the Federal Rules of Civil Procedure provides that withdrawing the frivolous claim within the appropriate time frame avoids sanctions,⁹³ the Model Rule contains no similar safe harbor. Moreover, Model Rule 4.1 requires that in "the course of representing a client a lawyer shall not knowingly[] make a false statement of material fact or law to a third

88. See *Comments of Disciplinary Panel's Chairman*, N.Y. TIMES (June 17, 2007), <https://www.nytimes.com/2007/06/17/us/17duke-text.html> [<https://perma.cc/97U2-Z4LC>].

89. *Id.*

90. The law firm Jones Day, for example, ceased all representation of Trump-related election fraud challenges. See Josh Gerstein, *Another Law Firm Bails Out on Trump Campaign*, POLITICO (Nov. 13, 2020, 8:50 AM), <https://www.politico.com/news/2020/11/13/law-firm-drops-trump-campaign-436418> [<https://perma.cc/4JZE-W44P>]; *Jones Day Statement Regarding Election Litigation*, JONES DAY (Nov. 2020), <https://www.jonesday.com/en/news/2020/11/jones-day-statement-regarding-election-litigation> [<https://perma.cc/7E3V-76MB>].

91. MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 3, 3.3(a)(1).

92. *Id.* r. 3.1 (prohibiting a lawyer from making an allegation in court "unless there is a basis in law and fact for doing so that is not frivolous").

93. FED. R. CIV. P. 11.

person.”⁹⁴ Finally, Model Rule 8.4(c) provides that “[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation,”⁹⁵ though this provision is typically enforced only in connection with additional ethics rule violations. Every jurisdiction has adopted a version of the Model Rules’ duty of candor, ban on frivolous litigation, and prohibition against knowingly false statements of material facts to third parties.⁹⁶ But these rules were not enough to deter some lawyers from peddling falsehoods about the 2020 presidential election.

C. *Applying Ethics Rules to the 2020 Election Fraud Lies*

Among the more than sixty election challenges brought in courts throughout the United States, not a single one succeeded in overturning the election. Across the country, judges appropriately dismissed complaints of election fraud, all of which lacked any fact-based support.⁹⁷

However, dismissal alone is not sufficient. Those lawyers should also be disciplined for their legal ethics violations. As the leaders of Michigan wrote in their complaint to the State Bar of Texas:

Although Ms. Powell’s attempt inevitably failed, it served a second, more sinister purpose—one that is not easily remedied, even by the court’s dismissal of baseless legal claims: it cast unwarranted doubt on the results of Michigan’s free and fair elections. Indeed, it undermined the faith of millions of Americans in our democracy and the legitimacy of our President. As a direct result of Ms. Powell’s efforts and the allied efforts of other unethical attorneys, the unhinged conspiracy theories and untrue statements surrounding the 2020 presidential election gained a patina of unearned respectability.

It is not unheard of for lay individuals who are disappointed by the result of the election to claim that the election is “rigged” and the winner illegitimate. Those claims might even have some limited, negative impact. But when untruths of that nature are spread in courts of law by licensed attorneys, the impact and the resultant harm are exponentially greater.

94. MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 4.1(a).

95. *Id.* r. 8.4(c).

96. See *Jurisdictional Rules Comparison Charts*, AM. BAR ASS’N, https://www.americanbar.org/groups/professional_responsibility/policy/rule_charts [<https://perma.cc/DY6Z-YDJG>].

97. See Cummings et al., *supra* note 3; REUTERS, *supra* note 3.

Here, a direct line can be drawn from the fabrications of Ms. Powell and her associates to the unprecedented insurrection at the Capitol Building in Washington D.C. on January 6 that sought to topple our national government.⁹⁸

Sanctions may be levied directly by the court or by a state lawyer discipline authority. To date, two courts have issued financial sanctions in election fraud cases. Judge N. Reid Neureiter was the first to do so. He awarded attorneys' fees to the lawyers defending against an election challenge in a Colorado federal court. Calling the complaint "one enormous conspiracy theory,"⁹⁹ he sanctioned attorneys Gary Fielder and Ernest Walker under Rule 11 and federal statute 28 U.S.C. § 1927, which provides that "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."¹⁰⁰ Michigan federal district court Judge Linda Parker was the second, sanctioning Powell, Wood, and others.¹⁰¹ But those lawyers have yet to permanently lose the privilege to practice law.

Because of the severity of the consequences of their lies, it is critical that lawyers face disciplinary consequences as well as court sanctions. Suspension from practice and permanent disbarment for the election lies sends a message to the public that most members of the legal profession can be relied upon to present factual allegations that are either true or, at a minimum, based upon a good faith belief in their veracity. It also creates a deterrent effect against efforts to undermine future elections. As the Appellate Division of the New York Supreme Court observed when suspending Giuliani's license:

The hallmark of our democracy is predicated on free and fair elections. False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of a free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information. It tarnishes the reputa-

⁹⁸. Letter from Jocelyn Benson, *supra* note 30; *see supra* note 30 and accompanying text.

⁹⁹. *O'Rourke v. Dominion Voting Sys. Inc.*, Civil Action No. 20-cv-03747, 2021 WL 3400671, at *2 (D. Colo. Aug. 3, 2021).

¹⁰⁰. 28 U.S.C. § 1927 (2018).

¹⁰¹. *See supra* note 27 and accompanying text.

tion of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice.¹⁰²

Disciplinary authorities should reject efforts by lawyers facing sanctions to voluntarily surrender their licenses. Instead, they should conduct full investigations. Allowing a confidential settlement or a voluntary surrender of one's license, without a public determination of wrongdoing, undermines the deterrent effect.¹⁰³ Indeed, for good reason, the ethical rule prohibiting frivolous litigation does not contain the safe harbor provision found in the parallel Rule 11 of the Federal Rules of Civil Procedure, which allows a lawyer to avoid sanctions if a frivolous claim is withdrawn in a timely manner.¹⁰⁴ This is because the ABA recognizes that harm occurs merely in the filing of a claim grounded in lies, and ethics rules should be applied accordingly.¹⁰⁵

Finally, in addition to imposing sanctions under existing ethics and civil procedure rules for the lawyers' in court election lies, the legal profession should contemplate extending the duty of candor beyond the courtroom when lies cause grave harm. Part III explores this proposal and evaluates First Amendment issues and other enforcement concerns.

III. EXTENDING THE DUTY OF CANDOR BEYOND THE COURTROOM

In today's post-truth era,¹⁰⁶ courts are among the rare fora where statements must still be supported by evidence-based, verifiable facts. To be sure, the courthouse is not a pristine arbiter of truth.¹⁰⁷ But it is one of the last places where rules cling to the goal of truth-telling, even if imperfectly.

^{102.} *In re Giuliani*, 146 N.Y.S.3d 266, 283 (N.Y. App. Div. 2021) (citations omitted).

^{103.} See Renee Knake Jefferson, *Judicial Ethics in the #MeToo World*, 89 *FORDHAM L. REV.* 1197, 1199-1201 (2021) (discussing similar concerns when judges retire and thus avoid discipline in sexual misconduct investigations).

^{104.} See *FED. R. CIV. P.* 11.

^{105.} See, e.g., Lonnie T. Brown, Jr., *Ending Illegitimate Advocacy: Reinvigorating Rule 11 Through Enhancement of the Ethical Duty to Report*, 62 *OHIO ST. L.J.* 1555, 1593 (2001).

^{106.} As Oxford Dictionaries defined the concept in naming it the 2016 word of the year, "post-truth" means "circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief." *Post-truth*, *OXFORD ENG. DICTIONARY*, <https://www.oed.com/view/Entry/58609044> [<https://perma.cc/QU3-CF35>]; see also Sarah C. Haan, *The Post-Truth First Amendment*, 94 *IND. L.J.* 1351, 1353 (2019) (explaining that "post-truthism" is where society accepts "lying and deception for political gain").

^{107.} One need look no further than the long list of death row exonerations to know that "truth" may not emerge. See *Sedley Alley: The Search for the Truth After Execution*, *INNOCENCE PRO-*

This raises an important question: if a lawyer’s claims of election fraud cannot be sustained in the courtroom, should they be permitted in the court of public opinion? Legal ethics rules governing lawyer statements to the media focus on balancing a defendant’s right to a fair trial with the public’s right to know about potential safety threats and judicial proceedings generally. Model Rule 3.6 prohibits lawyers from making statements to the press that are substantially likely to materially prejudice the outcome of litigation¹⁰⁸ and admonishes general dishonesty.¹⁰⁹ The Rule does not, however, contemplate the ballot box fraud assertions heralded by lawyers in the media following the 2020 election. Moreover, the Rule applies only to lawyers involved in the pending litigation they are discussing publicly.¹¹⁰ Expanding the duty of candor from the courtroom to all media commentary—regardless of lawyer involvement in the matter, even in the limited circumstances of election lies by or on behalf of lawyer-politicians—would be a significant change.

According to the Preamble to the Model Rules, lawyers must constantly balance their duties as “a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”¹¹¹ The lawyer plays a “vital role in the preservation of society.”¹¹² As a member of a professional community, the lawyer cultivates “democratic competence,” justifying some restraints on lawyer speech.¹¹³ This confluence of duties to the legal system and society in a democracy supports a narrow extension of the duty of candor beyond the confines of the courthouse, especially if a lawyer’s speech causes severe harm. To return to the New York court’s rationale for suspending Giuliani’s license, part of the justification was based on the fact that his false statements were made under his “authority of being an attorney” and the fact that they were amplified “using his large megaphone” as an attorney, which meant “the harm is magnified.”¹¹⁴ The court explained:

JECT (May 1, 2019), <https://innocenceproject.org/sedley-alley> [<https://perma.cc/YA8J-XSFS>].

108. See MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 3.6.

109. *Id.* r. 8.4(c).

110. See *id.* r. 3.6, cmt. 3.

111. *Id.* pmb1. 1.

112. *Id.* pmb1. 13.

113. ROBERT C. POST, DEMOCRACY, EXPERTISE, AND ACADEMIC FREEDOM: A FIRST AMENDMENT JURISPRUDENCE FOR THE MODERN STATE, at xiii (2012) (explaining that “democratic competence” is a “constitutional value” and that “a First Amendment principle capable of sustaining the disciplinary practices that produce expert knowledge”).

114. *In re Giuliani*, No. 2021-00506, slip op. at 31 (N.Y. App. Div. June 24, 2021).

One only has to look at the ongoing present public discord over the 2020 election, which erupted into violence, insurrection and death on January 6, 2021 at the U.S. Capitol, to understand the extent of the damage that can be done when the public is misled by false information about the elections.¹¹⁵

This Essay leaves for another day specific recommendations on language to be added to the Model Rules by the American Bar Association or other regulations by legislative bodies. One possibility, however, might come from the military, which prohibits any active duty member of the Armed Forces from using “official authority or influence to . . . affect the course or outcome of an election.”¹¹⁶ Note, however, that while the Supreme Court has upheld similar constraints on the political speech of the military,¹¹⁷ it has not confronted this particular issue in the context of lawyer speech.

Congress or state legislators could also intervene. The Supreme Court has upheld statutory limitations on lawyer speech in at least two instances: legal advice regarding the accumulation of debt in contemplation of a bankruptcy filing¹¹⁸ and “material support” for foreign terrorist organizations.¹¹⁹ A similarly narrow prohibition covering publicly disseminated lies about valid election results might withstand challenge under this precedent.

Critics will undoubtedly suggest that this proposal stifles political speech, risks First Amendment challenges, and lacks meaningful enforcement mechanisms. Section III.A further explores the relevant free speech issues, and Section III.B responds to enforcement and other concerns.

A. *First Amendment Implications*

Under the First Amendment’s mandate that “Congress shall make no law . . . abridging the freedom of speech,”¹²⁰ expression is protected from government interference, even if it is unpleasant, disruptive, vulgar, offensive, or

115. *Id.*

116. Gordon England, *Directive No. 1344.10: Political Activities by Members of the Armed Forces*, U.S. DEP’T DEF. § 4.1.2.2 (Feb. 19, 2008), <https://www.marines.mil/Portals/1/Docs/134410p%5B1%5D.pdf> [<https://perma.cc/SA2U-RGPM>]. Of course, modified language would be necessary in the context of lawyering, given that when lawyers participate in completely legitimate election law litigation, they may affect the course or outcome of an election.

117. *See, e.g.*, *Greer v. Spock*, 424 U.S. 828, 838 (1976).

118. *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 248 (2010).

119. *Holder v. Humanitarian L. Project*, 561 U.S. 1, 40 (2010).

120. U.S. CONST. amend I.

insulting.¹²¹ But First Amendment protection is not unlimited. For example, the constitutionality of reasonable time, place, and manner restrictions is well established.¹²² The government can define unprotected speech¹²³ and place limits on speech as the “regulator of professions and industries,” such as “lawyers, judges, prison administrators, radio/television stations, and the military.”¹²⁴

The application of First Amendment protections to lawyer speech is notoriously elusive.¹²⁵ Courts have upheld limitations on speech that apply directly to lawyer speech. For example, the Supreme Court has sustained lawyer speech restrictions related to advertising solicitations, statements to the press, bar admission and licensing, government whistleblowing, and fee limits.¹²⁶ Other courts have upheld similar restrictions¹²⁷ on the grounds that “a lawyer’s court-granted license requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice.”¹²⁸ And although some scholars would treat lawyer commentary about pending cases as “political” speech, with any limitations “tolerated only if strict scrutiny is

121. See, e.g., *Mahanoy Area Sch. Dist. v. B.L.*, No. 20-255, slip op. at 8 (U.S. 2021) (holding that a high-school cheerleader’s use of the F-word is protected speech under the First Amendment).

122. See, e.g., *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972) (“Our cases make equally clear, however, that reasonable time, place and manner regulations may be necessary to further significant governmental interests, and are permitted.” (internal quotation marks omitted)).

123. See, e.g., *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) (“[I]t is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.”).

124. Knake, *supra* note 45, at 2105 (citations omitted).

125. See, e.g., Claudia E. Haupt, *Professional Speech*, 125 YALE L.J. 1238, 1241 (2016) (“What is strikingly—and perhaps somewhat surprisingly—still absent from the case law and the legal literature is a comprehensive theory of professional speech.”); Daniel Halberstam, *Commercial Speech, Professional Speech, and the Constitutional Status of Social Institutions*, 147 U. PA. L. REV. 771, 772 (1999) (“Despite the century-old recognition of the regulation of professions, we still have . . . no paradigm for the First Amendment rights of attorneys . . .”).

126. See Renee Newman Knake, *Attorney Advice and the First Amendment*, 68 WASH. & LEE L. REV. 639, 660-61 (2011) (listing cases).

127. See ABA Comm. on Ethics & Pro. Resp., Formal Opinion 493, at 9-11 (2020) (describing cases wherein courts upheld limits on lawyer speech).

128. *Id.* at 9 (internal quotation marks omitted).

met,”¹²⁹ even this exacting test would permit restrictions on speech that cause serious harm.¹³⁰

The regulation of lawyer speech¹³¹ and, more generally, the regulation of lies¹³² both raise important questions as to the coverage and scope of First Amendment protection. Ideally, the speech of government lawyers provides a “checking value”¹³³ or “systematic scrutiny and exposure of the activities of public officials . . . in the form of prevention or containment of official misbehavior.”¹³⁴ Yet as much as the speech of lawyers for the government can act as a check against misconduct, so too can it cause grave injury, as seen with the 2020 election fraud lies. Thus, while heightened protection of lawyer speech is warranted when acting as a check against government overreach,¹³⁵ it is not when used to overturn a legitimate election. The integrity of the electoral process is crucial to preserving democracy. Given lawyers’ obligations as custodians of democratic institutions,¹³⁶ it is appropriate to place limitations on lawyer speech undermining these commitments.

To be clear, this Essay does not propose a wholesale ban on public facing lawyer lies in political life. Not only would such a ban violate constitutional free speech protections, but it would also run afoul of well-established ethical obligations where a lack of truthfulness is part of the lawyer’s duty to her client.¹³⁷ However, requiring the same candor to the public that ethics rules require to-

129. Erwin Chemerinsky, *Silence Is Not Golden: Protecting Lawyer Speech Under the First Amendment*, 47 EMORY L.J. 859, 861 (1998).

130. See *id.* at 862 (“I suggest that [the *New York Times v. Sullivan*] standard [for lawyer speech] is best because it is the most protective of speech, it is not vague or overbroad, it serves the goal of preventing the speech most likely to cause harm, and it has the virtue of a large body of case law defining it.”).

131. See, e.g., Knake, *supra* note 126, at 642-43.

132. See, e.g., SEANA SHIFFRIN, SPEECH MATTERS: ON LYING, MORALITY, AND THE LAW 155 (2014) (“Free speech values are not intrinsically threatened by legal regulation of lies.”); *United States v. Alvarez*, 567 U.S. 709, 709 (holding the First Amendment protects intentionally false speech claiming a military honor absent demonstrable harm).

133. Vincent Blasi, *The Checking Value in First Amendment Theory*, 2 AM. BAR FOUND. RSCH. J. 521, 538 (1977); see also ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 251 (Harvey C. Mansfield & Delba Winthrop eds. & trans., Univ. of Chi. Press 2000) (1840) (stating that lawyers’ authority is “the most powerful barrier today against the lapses of democracy” given “the authority . . . given to lawyers and the influence that they have” in American society).

134. Blasi, *supra* note 133, at 552.

135. See generally Knake, *supra* note 124 (arguing that government lawyers should not be treated as government employees for purposes of the First Amendment when their speech relates to government abuses of power).

136. See ABA NEWS, *supra* note 64; *supra* text accompanying note 64.

137. See MODEL RULES OF PRO. CONDUCT, *supra* note 6, r. 4.1, cmt. 2 and accompanying text.

ward a tribunal in the limited context of lies about election results is both constrained and justified given the harms¹³⁸ they produce. A narrow ban on lawyer lies that undermine valid elections in the court of public opinion is also in the spirit of the rationale used to justify the duty of candor toward the tribunal—that it is necessary for the public’s confidence in the administration of justice and the legal profession. Finally, and importantly, constraints on lawyer speech that compromise the will of the people as expressed at the ballot box falls within the scope of regulatory functions appropriately conducted by bar associations and lawyer disciplinary authorities, even under the recent Fifth Circuit decisions holding that bar associations cannot engage in certain legislative and political activities under the First Amendment.¹³⁹

Other First Amendment experts agree that restraints on election lies are sustainable in limited circumstances. One scholar makes a similar argument in the context of “counterfeit campaign speech”¹⁴⁰—that is, speech “in which political candidates’ identities, actions, words, and images are intentionally faked with the intent to confuse voters and distort democracy.”¹⁴¹ Like the ban on election fraud lawyer lies, the ban on counterfeit campaign speech would “address a threat to a process that is a predicate to securing all other rights and privileges guaranteed in a democratic system of government.”¹⁴² Another scholar concurs that “[n]arrow laws aimed at stopping maliciously false speech about the conduct of elections . . . likely would survive constitutional challenge.”¹⁴³ In short, “[f]alse statements are protected unless the government can

138. See, e.g., Ronald Turner, *Regulating Hate Speech and the First Amendment: The Attractions of, and Objections to, an Explicit Harms-Based Analysis*, 29 IND. L. REV. 257, 336 (1995) (arguing that “if as a general proposition, it is proper to assess harm in making determinations about the constitutionality of certain speech, it should be proper to assess harm relative to hate speech”).

139. See *McDonald v. Longley*, 4 F.4th 229, 237 (5th Cir. 2021) (holding that the bar’s engagement “in political and ideological activities that are not germane to its interests in regulating the legal profession and improving the quality of legal services” violated the First Amendment by compelling attorneys to join it); *Boudreaux v. La. State Bar Ass’n*, 3 F.4th 748, 756 (5th Cir. 2021) (holding that plaintiff attorneys plausibly pled that the bar association violated the First Amendment by engaging in “political and legislative activity” and compelling attorneys to join it). *But see Schell v. Chief Just. & Justs. Okla. Sup. Ct.*, 2 F.4th 1312, 1324 (10th Cir. 2021) (holding that mandatory bar dues do not violate the First Amendment rights of members).

140. Rebecca Green, *Counterfeit Campaign Speech*, 70 HASTINGS L.J. 1445, 1489 (2019).

141. *Id.* at 1450.

142. *Id.*

143. Richard L. Hasen, *A Constitutional Right to Lie in Campaigns and Elections?*, 74 MONT. L. REV. 53, 77 (2013).

show that allowing them will cause serious harms that cannot be avoided through a more speech-protective route.”¹⁴⁴

B. Additional Concerns

Beyond the speech interests, other concerns with an extended duty of candor involve the assessment of sanctions, unintended consequences, and the politicization of enforcement.

With respect to assessment of sanctions, any effort to regulate candor beyond the courtroom must ensure statements are punished only for their lack of fact-based evidence, rather than the speaker’s state of mind. Determining the requisite state of mind is of course difficult, but not impossible. Consider again the Nifong “Duke Lacrosse” case where a prosecutor’s lies led to the wrongful arrest of three players for rape charges. Even to the moment of disbarment, the prosecutor adhered to his false worldview.¹⁴⁵ Still, his state of mind did not prevent the North Carolina Bar from ascertaining that the appropriate consequence for his lies was disbarment.

As for unintended consequences, on one hand, an extended duty of candor could disadvantage the lawyer-politician, who might face punishment for statements that a nonlawyer running for or holding office could still say freely. On the other hand, this heightened truth-telling commitment could potentially be beneficial, especially if voters value honesty.

Finally, bar authorities and regulators should take caution to ensure that the lawyer discipline system is not weaponized against disfavored political alliances or causes. Efforts to politicize professional ethics against lawyers based on specific causes and beliefs—like those seen with Communism in the 1940s and 1950s and with Southern civil rights attorneys in the 1960s—are counter to the scope and spirit of this Essay’s proposal. Moreover, the First Amendment protects against the expanded ethical duty proposed here from being wielded in this way.

To the extent ethical rules governing lawyer speech prove ineffective as a disciplinary mechanism, bar associations and law schools still have an important role to play in developing a culture of respect among lawyers for democratic principles and the electoral process. Part IV offers suggestions.

¹⁴⁴. Cass R. Sunstein, *Falsehoods and the First Amendment*, 33 HARV. J.L. & TECH. 388, 406 (2020) (emphasis omitted).

¹⁴⁵. See N.Y. TIMES, *supra* note 88 (“But having once done that and having seen the facts as he hoped they would be, in his mind the facts remained that way in the face of developing evidence that that was not in fact the case. And even today one must say that in the face of a declaration of innocence by the attorney general of North Carolina, it appears the defendant still believes the facts to be one way and the world now knows that is not the case.”).

IV. A ROLE FOR BAR ASSOCIATIONS AND LAW SCHOOLS

That a professional conduct rule may not be enforceable through the disciplinary process—whether because it is hortatory or because of other barriers—does not mean it holds no value. Modern professionalism rules originated as a body of aspirational guides, a combination of “moral exhortation with specific statements of duty or improper behavior, and were mostly too general to act as either a guide for behavior or a basis for discipline.”¹⁴⁶ For this reason, even in the absence of an extended duty of candor as proposed by this Essay, bar associations and law schools can and should contribute to developing a culture of respect among lawyers for democratic principles and the electoral process. They can do so in several ways related to (1) curricular reform and (2) public education.

First, there is a dearth of leadership curriculum for lawyers, whether as continuing legal education or informal training.¹⁴⁷ Bar associations and law schools should fill this gap by offering opportunities for critical thinking about the role lawyers play in preserving fundamental elements of democratic society.¹⁴⁸ This is important preparation for future politicians and the lawyers who serve them. A growing number of law schools have created leadership centers and certifications, and the Association of American Law Schools chartered a new Section on Leadership in 2017.¹⁴⁹ Investments into this curriculum by law school administrators likely would increase if leadership specialties were recognized by rankings organizations such as the *U.S. News and World Reports*.

Second, bar associations and law schools can engage in public education to combat election misinformation. The United States Supreme Court in *Bates v. Arizona State Bar* recognized the special obligations of bar associations to educate the public about legal services.¹⁵⁰ Specifically, the Court stated that “it is the bar’s role to assure that the populace is sufficiently informed” about the ser-

146. Maura Strassberg, *Taking Ethics Seriously: Beyond Positivist Jurisprudence in Legal Ethics*, 80 IOWA L. REV. 901, 908 (1995).

147. See, e.g., *Embracing Leadership Development in Legal Education*, L. SCH. ADMISSIONS COUNCIL (Mar. 27, 2019), <https://www.l sac.org/blog/embracing-leadership-development-legal-education> [<https://perma.cc/4YAH-S3UY>] (“Until relatively recently, though, most law programs did not specifically include leadership development as part of their curriculum.”).

148. See, e.g., Neil S. Siegel, *After the Trump Era: A Constitutional Role Morality for Presidents and Members of Congress*, 107 GEO. L.J. 109, 161 (2018) (discussing “a variety of potentially fruitful ways for law professors to theorize and teach about the role restraints, or lack thereof, that attach to political office”).

149. See *Section on Leadership*, ASS’N AM. L. SCHS., <https://www.aals.org/sections/list/leadership> [<https://perma.cc/Q3LT-SFYC>].

150. *Bates v. Ariz. State Bar*, 433 U.S. 350 (1977).

vices of lawyers and, relatedly, our system of government.¹⁵¹ The civics education efforts of retired Justice O'Connor's iCivics program¹⁵² and the Texas Young Lawyers Association's Iconic Women in Legal History website¹⁵³ are two examples that bar organizations can emulate.¹⁵⁴ Similarly, some law schools engage in law-related education to help high school students better understand their constitutional rights.¹⁵⁵ Efforts like these could be expanded to educate the public against election misinformation.

The network effect of this sort of educational effort is impactful because the reach of bar associations and law schools “spans across the nation from small university towns to large metropolitan cities.”¹⁵⁶ These entities “hold significant intrinsic reputational value that goes wasted when they fail to bridge this public education gap.”¹⁵⁷ They have an obligation to educate the public about the legal system, both to further access to justice and to preserve our democratic government.

CONCLUSION

When lawyers misuse their law licenses by lying about the established results of a fair election before a judge or jury, they violate their oath and the very ethics rules affording them the right to practice law. The aftermath of the 2020 election and the Capitol riot reveals the devastating consequences that follow such lies. Ethics rules require discipline. Given what we now know about the unique and consequential damage caused by these lies, the lawyer's duty of candor should be extended to the court of public opinion, prohibiting publicly disseminated lies about election results that would not withstand scrutiny in the courthouse.

151. *Id.* at 375.

152. See iCIVICS, <https://www.icivics.org> [<https://perma.cc/8XG2-33M8>].

153. See *Iconic Women in Legal History*, TEX. YOUNG LAWS. ASS'N., <https://tyla.org/resource/iconic-women-in-legal-history> [<https://perma.cc/7FWK-D7Y9>].

154. See also Siegel, *supra* note 148, at 173 (advocating for “newer forms of civic education and law teaching” to combat “the aggressive ideological agendas that politicians pursue”).

155. See, e.g., Jamie B. Raskin, *Bringing the High Court to High School*, ASS'N SUPERVISION & CURRICULUM DEV. (Dec. 1, 2001), <https://www.ascd.org/el/articles/bringing-the-high-court-to-high-school> [<https://perma.cc/3CCJ-JJPV>] (“[L]aw schools have an obligation to help all students understand their constitutional rights and responsibilities. . . . [L]aw schools and high schools can work together to improve students' constitutional literacy and revive a sense of the importance of democratic citizenship among young citizens of the United States.”).

156. Renee Newman Knake, *Democratizing Legal Education*, 45 CONN. L. REV. 1281, 1316 (2013).

157. *Id.*

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Professor of Law and the Joanne and Larry Doherty Chair in Legal Ethics, University of Houston Law Center. I am grateful to Emily Berman, Dave Fagundes, Zach Kaufman, Daniel Morales, James Nelson, and Peter Salib for helpful comments. Emory Powers and Katy Stein provided excellent research assistance. Special thanks also to the editors of the Yale Law Journal for the invitation to write this piece and their thoughtful edits.