

# Legal Institutions Must Warn Against Phony Election Suits

By **Elise Bean** (October 22, 2024)

The U.S. electoral system, already strained by years of unsubstantiated attacks on its integrity, is facing a formidable threat as the 2024 presidential election nears.

The presidential race is currently a toss-up,[1] and allies of the major political parties have already filed well over 100 election-related lawsuits,[2] primarily in key swing states, seeking to challenge voting regulations and protocols ahead of the election.

Postelection lawsuits could subject U.S. democratic systems to yet another wave of challenges and risk overturning the will of the voters. Rather than hope the legal system can withstand the possibility of another tsunami of litigation, proactive measures should be taken now to protect the courts and caution lawyers against filing unsupported claims of election fraud.

Recent history shows why action is needed now. Following the election in 2020, attorneys representing former President Donald Trump filed over 60 lawsuits challenging the voting results,[3] but the courts repeatedly dismissed them, in some cases labeling the claims "utterly baseless,"[4] "without merit,"[5] or failing in both "particularity and plausibility." [6]

In *King v. Whitmer*, U.S. District Judge Linda V. Parker declared that a lawsuit filed by nine lawyers to overturn the election results in Michigan was "a historic and profound abuse of the judicial process." [7]

Courts and bar associations responded by imposing accountability measures against many of the attorneys who filed unsubstantiated or misleading claims — levying fines, mandating legal education sessions and, in some cases, commencing disbarment proceedings.[8]

Disciplinary measures have been taken across the country, including in Arizona, California, Colorado, Florida, Georgia, Michigan and Wisconsin, among other jurisdictions.

Some of the lawyers who spearheaded false claims surrounding the last presidential election continue to face repercussions for their actions. Former New York Mayor Rudy Giuliani, for example, was permanently disbarred in Washington, D.C., nearly four years after the 2020 election, following an earlier revocation of his license in New York for his role in efforts to overturn election results in Pennsylvania.

The punishments were intended, in part, to deter other lawyers from engaging in similar misconduct in the future.[9]

While every candidate has the right to challenge election results in court, attorneys operate under professional obligations, described in American Bar Association Model Rules 3.1, 3.3 and 8.4 — to act with diligence and honesty, bring meritorious claims that are supported by evidence, and omit claims that are unfounded or based on false information.[10]

Ignoring those legal obligations may not only damage an attorney's professional reputation, but also jeopardize or end that attorney's right to practice law.



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To discourage attorneys who may be tempted to repeat the misconduct condemned by courts in 2020, the legal community should take steps now to make clear that attorneys will again face consequences — serious personal consequences — for filing unsubstantiated lawsuits claiming election fraud.

Legal institutions, including the ABA, state and local bar associations, and federal and state court systems not only have the authority, but also the responsibility to take proactive steps to discourage lawyers from participating in, or enabling unfounded legal challenges to, our democratic process.

This summer, the ABA's Task Force for American Democracy issued a strong statement about the role of lawyers in protecting democracy and election integrity, and offered recommendations on actions that could be taken by lawyers and state and local bar associations.[11]

One recommendation urged state and local bar associations to "enforce lawyers' ethical obligations when it comes to the filing of questionable election-related lawsuits." Another urged bar associations to host or support seminars and public speaking engagements that "promote the rule of law, democracy and confidence in our elections."

While commendable, the ABA needs to send a tougher message. The message should urge state and local bar associations to warn their members about the professional consequences if they attempt to file unsubstantiated or misleading litigation challenging election results.

State and local bar associations should also be urged to get ready now — identify personnel, assemble legal materials and monitor court filings challenging election results — to take prompt disciplinary action against lawyers who misuse the courts.

The administrators of our judicial system should also act. Federal courts can penalize attorneys who file abusive claims, and state courts typically adjudicate disciplinary actions filed against attorneys charged with misconduct.

The Administrative Office of the U.S. Courts and organizations supporting state courts should prepare educational materials now identifying relevant statutory authority, ethics rules and legal precedents related to penalizing lawyers who file unsubstantiated or misleading lawsuits challenging election results.

They should also consider issuing guidance or advisories against the misuse of courts by lawyers filing claims of election fraud without adequate supporting facts and evidence.

Attorneys who attempt to twist the law for partisan gain pose a significant threat to the stability of the legal system that protects our democracy. Distorting the rule of law diminishes public trust in lawyers and the courts, and weakens the institutions that guarantee fair electoral outcomes.

Now is the time for those charged with protecting our legal system to issue clear warnings to the legal community about the consequences of election-related misconduct.

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[1] <https://abcnews.go.com/538/closest-presidential-election-1876/story?id=113956232>.

[2] <https://www.nytimes.com/2024/09/29/us/politics/trump-2024-presidential-campaign-election-lawsuits.html?smid=nytcore-ios-share&referringSource=articleShare&sgrp=c-cb>.

[3] <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

[4] <https://www.reuters.com/legal/legalindustry/attorney-sanctions-upheld-utterly-baseless-lawsuit-challenging-2020-election-2022-12-13/>.

[5] [https://www.washingtonpost.com/context/read-the-opinion-federal-judge-dismisses-trump-campaign-lawsuit-in-pennsylvania/2afd3821-220b-4596-b172-aaa1d3ab63a5/?itid=lk\\_inline\\_manual\\_5](https://www.washingtonpost.com/context/read-the-opinion-federal-judge-dismisses-trump-campaign-lawsuit-in-pennsylvania/2afd3821-220b-4596-b172-aaa1d3ab63a5/?itid=lk_inline_manual_5).

[6] <https://azmirror.com/2020/12/09/judge-skewers-gop-lawsuit-to-throw-out-az-election-citing-total-lack-of-evidence/>.

[7] King v. Whitmer, 556 F. Supp. 3d 680 (E.D. Mich. 2021).

[8] <https://theconversation.com/trumps-lawyers-in-lawsuits-claiming-he-won-in-2020-are-getting-punished-for-abusing-courts-and-making-unsupported-claims-and-false-statements-230071>.

[9] <https://www.democracymirror.com/wp-content/uploads/2024/05/2024-05-31-report-and-recommendation-of-the-board-on-professional-responsibility.pdf>.

[10] [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/).

[11] <https://www.americanbar.org/content/dam/aba/administrative/news/2024/aba-democracy-task-force.pdf>.