



Written by [Steve Byas](#) on March 23, 2021

Fake News CNN Headline Distorts Powell's Libel Defense

Headlines can often give readers a false perception of the content of an article. This is particularly true with *Internet* articles, such as the CNN article that purported to report accurately on Sidney Powell's legal defense in the \$1.3 billion defamation lawsuit filed by election-machine giant Dominion Voting Systems. It is well known that many people read the headlines of Internet articles without actually reading the articles, and then draw their conclusions from the headlines alone. As almost *all* headlines one sees when opening Google, Yahoo, or AOL e-mail accounts are slanted in favor of the liberal position, it is not surprising that many readers draw conclusions that liberals are good and conservatives are bad.



AP Images

CNN's [headline](#) read, "Sidney Powell argues in new court filing that no reasonable people would believe her election fraud claims."

The problem is that the story itself does not justify this headline. It is not an accurate description of the defense offered by Powell's lawyers in their motion to dismiss Dominion's defamation suit.

Actually the Powell defense filing makes a number of legal arguments, including the claim that reasonable people would not assume that the allegedly libelous statements are fact, but instead conclusions or opinions Powell has drawn based upon her reading of the evidence. Unfortunately, this argument is missed by someone who simply reads the CNN headline, leaving the reader with the false impression that Powell made statements that she knew to be untrue.

As the actual filing in Powell's defense stated, "Analyzed under these factors, and even assuming, arguendo, that each of the statements alleged in the Complaint could be proved true or false, no reasonable person would conclude that the statements were truly statements of fact." In other words, Powell formed an opinion after reviewing the evidence, and then expressed that opinion. Whether another person would form the identical opinion after reviewing the same evidence is irrelevant, because Powell's statements were her opinion, right or wrong.

"Reasonable people understand that the language of the political arena," the defense filing asserts, "is often vituperative, abusive and inexact," adding, "political statements are inherently prone to exaggeration and hyperbole."

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Dominion Voting Systems has also sued Mike Lindell of My Pillow and Trump adviser Rudy Giuliani for allegedly defaming the company by citing their role in the 2020 presidential election, with disputed results that favored Democrat Joe Biden over Republican Donald Trump. In the Lindell lawsuit,



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Dominion argues that the accusations “have caused irreparable harm to Dominion’s good reputation and threatened the safety of our employees and customers.”

The *only* customers of Dominion’s voting machines, it should be noted, are *governments*, who conduct elections. As such, Dominion could reasonably be considered a public figure. Under American law, it is very difficult for public figures to win libel suits. If it were easy for a public figure to win a defamation suit, it would cause great inhibition for anyone speaking out publicly against a public figure, thus placing a chill on the protections of the First Amendment.

In its article on the Dominion suit against Lindell, the Mises Institute’s Ryan McMaken calls the Dominion suits “garbage,” adding that if Dominion were to prevail, it “opens a Pandora’s box of legal strategies that can be employed to silence people the regime and its allies find to be inconvenient.”

McMaken argues, “Dominion is a private company in name only, and in reality is a *de facto* government agency.”

As such, they “enjoy monopoly privileges and are funded through the coercive collection of taxes. Even the most blue-pilled sympathizer can probably see the danger that arises from also granting this monopolistic agency the right to sue people for criticizing it.”

What sort of election hardware and software used by the various state governments to conduct its elections is a legitimate public debate issue. A person, such as Sidney Powell, should be free to question the use of Dominion’s machines, or the machines of any other company, to conduct elections, without fear of being slapped with a libel suit. A person — such as Powell — who has examined the evidence of how well the Dominion machines performed in their ostensible job of conducting a fair election and has concluded that the machines failed to do that, also has a constitutionally protected right of free speech to publicly express that opinion. As a corollary of that, Powell — or any other critic of Dominion, such as Lindell or Giuliani — should be able to express an opinion as to whether that failure was a result of incompetence, or malevolence, or both.

As the Powell defense filing explained, “Dominion has publicly held itself out as a public figure,” as it brags that more than 40 percent of U.S. voters use its election equipment. The defense filing cited Dominion Chief Executive John Poulos, who expressed concern that the lies told about Dominion *and government election officials* also harmed the credibility of U.S. elections. This is a classic example of attempting to have it both ways. In one instance, Dominion argues that it is some sort of private business, but in the next instance argues that Powell’s opinion has “harmed the credibility of U.S. elections.”

One would think that the “credibility of U.S. elections” is a legitimate public issue, and is thus protected free speech.

After Powell — or Lindell, Giuliani, or some guy in a barber shop — has expressed the opinion that Dominion should not have any role in the conduct of American elections, Dominion or one of its defenders has an equal right to challenge that opinion in the court of public opinion. But filing defamation lawsuits intended to silence its critics is a different matter altogether.

In the case *New York Times v. Sullivan*, the Supreme Court held that any public figure suing a detractor for defamation is under obligation to prove that person they are suing not only made a false statement, but that the person made the false statement knowing it was false, or that the person made the statement with reckless disregard for the truth.



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CNN's misleading headline could lead a reader to conclude that Powell's defense is that she knew it was false, but that no reasonable person would believe her remarks. That is *not* Sidney Powell's defense in this particular case. On the contrary, she contended that Dominion was a major part of an election, the fairness of which has been questioned by millions of Americans.

If someone disagrees, they are free to do so. However, legitimate debate about whether Dominion should continue to provide election machines that are not trusted by millions of Americans would also be helped by better reporting by CNN and other news outlets.



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