

MY PILLOW GUY AND THE FUTURE OF POLITICAL DEFAMATION ACTIONS

By: Jack Greiner on March 1, 2021 on graydon.law

Mike Lindell, the “My Pillow Guy” who more recently has asserted himself in baseless election fraud allegations now finds himself a defendant in [a \\$1.3 billion defamation suit](#) brought by the Dominion voting machine company. This is another example of what I refer to as “political defamation.” By that I mean, a defamation suit that arises from speech related to political issues. There have been a number of such suits filed over the last few years. [Devin Nunes](#) and [Sarah Palin](#) are high profile libel plaintiffs. [E. Jean Carroll](#) has a libel suit in progress against Donald Trump based on his comments about Ms. Carroll’s allegations that Trump sexually assaulted her.

Part of the conversation around the rash of political defamation suits is the impact of social media on the national conversation. Twitter and Facebook provide virtual megaphones that simply didn’t exist when *New York Times v. Sullivan* was decided. And there are voices out there [pushing for regulation of those sites](#). That may or may not happen. But I wonder if increased civil litigation will have a sort of regulatory impact.

I’ve often reflected on how much safer cars have become in my lifetime. As a kid, I routinely rode in cars without seatbelts. Parents held infants in the front seat, not in car seats. Antilock brakes and air bags weren’t invented. And I want to emphasize that I’m not 100 years old. I’m talking about relatively recent history. But also in my lifetime, lawyers brought product liability suits that forced car manufacturers to make safer cars. And that’s true with other products besides cars. We can bemoan excessive verdicts, but civil litigation consistently serves as a private regulatory system.

I wonder if suits like Dominion will have a similar impact. Obviously, the analogy isn’t perfect, given that most product manufacturers don’t have First Amendment protection. But to the extent the Dominion suit is able to identify specific false statements uttered by Lindell, and especially if it can prove Lindell knew the statements were false, or was reckless about the truth, then the First Amendment won’t offer protection. And others tempted to trade in baseless conspiracy theories may think twice before doing so. And that may have some of the effect that the advocates for regulation are after.