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**Opinion: As the Giuliani Case Goes Forward, Courts Should Think Deeply About the First Amendment**

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Opinion by Bruce A. Green and Rebecca Roiphe

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A New York appellate court has temporarily suspended former mayor Rudolph Giuliani's law license, writing that he had made “demonstrably false and misleading statements to courts, lawmakers and the public at large.” Just as lawyers who participated in the Watergate scandal were held to account, so too should former president Donald Trump's lawyers pay a price if they engaged in illegal or unethical conduct. As this case continues, however, the disciplinary agency and courts should be careful not to chill lawyers' political speech.

The court's opinion recounts Giuliani's misleading statements that cast doubt on the legitimacy of the presidential election and concludes that he knew they were false. These were specific statements, not just hyperbole or opinion. For example, the opinion says, Giuliani falsely asserted that more absentee ballots were received than had been mailed out in Pennsylvania, and that tens of thousands of underage voters, 2,500 felons and 800 deceased people voted in Georgia.

Giuliani's knowingly false statements, the opinion said, violated rules governing lawyers' professional conduct that, unsurprisingly, forbid lawyers from lying to judges and others while representing clients.

Except for one assertion about the status of a complaint, which he later corrected, Giuliani is not accused of improprieties in court proceedings where he functioned as an advocate. For the most part, the court focused on Giuliani's public statements and justified its interim suspension by citing the risk that Giuliani would continue disseminating “false statements in the media” while the disciplinary process ran its course.

Of course, suspending Giuliani from law practice may prevent him from representing clients in court cases and elsewhere, but it will not keep him off the radio, podcasts or other media, where he has a First Amendment right to speak as a private citizen — including the right to make false statements.

Does Giuliani's status as a lawyer change this calculus?

There is no question that it is against the law for lawyers, like nonlawyers, to defame others, lie under oath, lie to public officials or commit fraud. What is unclear is whether lawyers can be punished for lying on public media when they are speaking as private citizens, in situations where nonlawyers, though subject to moral condemnation, would be constitutionally protected from government sanction.

In Giuliani's case, the court gave the First Amendment concerns short shrift, because the case was about his professional improprieties "in connection with his representation of a client." We agree that courts have the right to enforce rules requiring lawyers to be truthful to protect the integrity of a court proceeding or the wellbeing of a client. But it is hard to see how either of those are at issue here.

The court pointed out that even when a lawyer is speaking in public not in connection with a proceeding, his lies may be particularly harmful because they erode public confidence in the legal profession's integrity and tarnish the legal profession's reputation, and because speaking with the authority of an attorney makes lies more credible, magnifying their harm.

As the case goes forward, courts should think more deeply about the First Amendment question. It is unlikely that the public credits media personalities who are attorneys more than others, or that, when these attorneys are caught in lies, the public sees it as a reflection on the entire legal profession. It seems likely, for instance, that the harm from Giuliani's lies resulted from his proximity to the former president rather than his status as a lawyer.

Lawyers have the right as private citizens to engage in political debate. This includes a right to lie about the government — not because lies are desirable, but because it is too dangerous to give the state the power to determine which statements are true or false when it comes to political speech. Robust political debate would be chilled because people would fear misspeaking. Efforts to expose government wrongdoing would be abandoned out of concern about retribution.

To encourage criticism of the government, the First Amendment gives the public breathing room. Lawyers need it too. They should not have to choose between a law license and the license to engage in the same vigorous political speech as other citizens. It is true that lawyers are officers of the court, but they have also historically played an important part in holding government to account. It would be a shame to strip them of this powerful role.

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