

[After Losing Bid to Toss Dominion Defamation Case, My Pillow Lawyers Eye Appeal](#)

What You Need to Know

- Lawyers for My Pillow are asking a federal judge to take some of their legal arguments about Dominion acting as the government to a federal appeals court.
- The attorneys, including Alan Dershowitz, argue that the interlocutory appeal could help end the litigation.
- The judge has already rejected My Pillow's attempt to throw out a defamation lawsuit from Dominion.

Attorneys for My Pillow are asking the federal judge presiding over Dominion Voting Systems' defamation lawsuit against the company to let them take to a federal appeals court some of their legal arguments about Dominion effectively acting as the government in the 2020 election.

U.S. District Judge Carl Nichols of the District of Columbia earlier this month fully rejected motions to dismiss Dominion's defamation lawsuits against lawyers Sidney Powell and Rudy Giuliani, as well as My Pillow and its CEO, Mike Lindell. In Tuesday's motion, the My Pillow lawyers asked Nichols to alter his ruling to certify multiple legal questions to the U.S. Court of Appeals for the D.C. Circuit that they argue could end the litigation.

The lawyers asked the judge to certify two legal questions to the federal appeals court. The first is: "Whether a defamation complaint by

‘a public official against critics of [its] official conduct’ must be dismissed at the pleading stage under *New York Times v. Sullivan* if the complaint (a) fails to allege any direct evidence of a statement or act that the defendant knew was false, and (b) relies only on circumstantial inferences to prove reckless disregard.”

The second question asks: “Whether, under *New York Times v. Sullivan*, a court may deny a motion to dismiss a defamation complaint by ‘a public official against critics of [its] official conduct’ without taking judicial notice of material establishing a robust public debate on the issues set forth in the complaint.”

Both questions push forward with the argument that Dominion is a government entity because of its role in the 2020 election. “This case raises the fundamental question of the First Amendment’s ‘actual malice’ boundaries where a plaintiff acts as the government by carrying out essential government functions,” the brief reads.

While Dominion contracts with state and local governments for elections, it is not considered part of the government.

My Pillow attorneys, including Alan Dershowitz and Supreme Court veteran Nathan Lewin, argue they believe the appeals court will rule in their favor and find “Dominion’s complaint did not satisfy the most stringent actual malice requirement under *New York Times v. Sullivan*, which applies to a government actor operating in the context of a large public debate.” Lawyers with the Minnesota firm of Parker Daniels Kibort are also representing My Pillow.

“This is because (a) the complaint fails to allege any personal statement or act by Michael Lindell showing that he knew his allegations concerning Dominion were false or that he recklessly disregarded the truth of his allegations, and (b) the robust public debate surrounding the subject matter of Lindell’s statements affords him constitutional protection and bars any inference that he spoke with actual malice,” the filing continues.

The brief cites Dominion’s multiple other defamation lawsuits against those who falsely claimed the voting company helped rig the election against President Donald Trump, and says any potential appellate ruling would also impact that litigation.

Dominion recently filed new lawsuits against former Overstock CEO Patrick Byrne and One America News Network in D.C. federal court, as well as a complaint against Newsmax in Delaware Superior Court.