Twitter Thread by Zoe Tillman

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Sidney Powell has moved to dismiss Dominion's defamation lawsuit. She argues that when she accused Dominion of being part of an election-rigging scheme with ties to Venezuela, "no reasonable person would conclude" those "were truly statements of fact" https://t.co/RDPD1eGvY3

3. The statements at issue are protected and not actionable

Determining whether a statement is protected involves a two-step inquiry: Is the statement one which can be proved true or false? And would reasonable people conclude that the statement is one of fact, in light of its phrasing, context and the circumstances surrounding its publication. *Keohane,* 882 P.2d at 1299. This inquiry is determined as a matter of law. *Bucher v. Roberts,* 595 P.2d 235, 241 (Colo. 1979) ("Whether a particular statement constitutes fact or opinion is a question of law."). 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

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conclude that the statements were truly statements of fact.

Powell argues she can't be liable if the information she based her "opinions and legal theories" on were actually unreliable, comparing herself to reporters who get 1A protection when they cite sources; but she later also makes clear she disputes that her info was "false"

Plaintiffs' attempts to impugn the various declarations as unreliable, attack the veracity or reliability of various declarants or point to later statements that are arguably inconsistent are beside the point. Journalists usually repeat statements from sources (usually unsworn, often anonymous) on whom they rely for their stories, and sometimes those statements turn out not to be true. Yet

much of the protection afforded to the press by *N.Y. Times Co. v. Sullivan* would be lost if newspapers and television stations could be drawn into long court battles designed to deconstruct the accuracy of sources on which they rely. Journalists must be free to rely on sources they deem to be credible, without being second-guessed by irate public figures who believe that the journalists should have been more skeptical.

Lawyers involved in fast-moving litigation concerning matters of transcendent public importance, who rely on sworn declarations, are entitled to no less protection. If malice, as that term is defined by *N. Y. Times Co. v. Sullivan*, is to be judged by the kind of hindsight proffered by Plaintiffs, it will render *N. Y. Times Co. v. Sullivan* a dead letter. The true victim will be the public, which will be denied the "uninhibited, robust, and wide-open" discourse that the Supreme Court contemplated. *N.Y. Times Co.*, 376 U.S. at 270.

Powell also raises jurisdictional and venue-related arguments, basically saying the parties + allegations lack sufficient ties to DC and the case should be moved to Texas

The (sort of) retreat of the Kraken: Sidney Powell argues she can't be sued for defamation because her voter fraud lies were just "opinions and legal theories."

"...no reasonable person would conclude that the statements were truly statements of fact"
https://t.co/p5RBKaGZw4

The hundreds of criminal cases brought re: the Jan. 6 insurrection show how potent Powell and other Trump allies' conspiracy theories were — for ex, one man charged with assaulting cops echoed Powell's false claims that voting

machines were tampered with https://t.co/p5RBKaGZw4

Even as she tried to distance herself from any liability for what she repeatedly said on TV, in public, and in court, Powell also dug in, arguing Dominion couldn't prove actual malice because "she believed the allegations then and she believes them now" https://t.co/p5RBKaGZw4