

IN THE
Supreme Court of the United States

ASHLEY ANN KRAPACS,

Petitioner,

v.

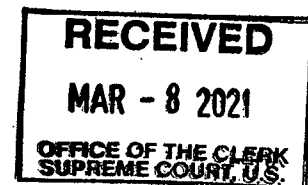
THE FLORIDA BAR,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Florida

PETITION FOR REHEARING

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FEBRUARY 1, 2021

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PETITION FOR REHEARING

This Petition for Rehearing is restricted to the grounds specific in Rule 44.2, namely intervening circumstances of substantial or controlling effect and substantial grounds not previously presented.

Petitioner, Ashley Ann Krapacs, filed her Petition for Writ of Certiorari on November 24, 2020. Petitioner argued that the actions taken against her by The Florida Bar violated her First Amendment Right to freedom of speech. On December 24, 2020, based upon the events that transpired in Florida, the New York Bar also disbarred Petitioner. (App. 1). Petitioner's First Amendment Right to freedom of speech has now been violated by both the Florida Bar and the New York Bar.

Petitioner argued in her Petition for Writ of Certiorari that there are unresolved questions regarding the extent of First Amendment protections, freedom of speech and freedom of the press, particularly regarding political statements made by attorneys. Recent events, specifically those that transpired between the filing of this case and the denial of the writ of certiorari, demonstrate the dire need for clarification on this issue by this Court that would result in clear guidelines for both attorneys and state bars regarding what is acceptable under the First Amendment.

From November 2020 through January 2021, many high-profile male attorneys made a plethora of statements via social media as well as various media outlets regarding the November 2020 election. Many of these statements were patently false, unsupported by any evidence, and many of these statements incited

violence and resulted in the insurrection of the United State Capitol on January 6, 2021, a tragic event that resulted in loss of life.

In particular, the actions and statements of New York lawyer Rudy Giuliani from November 2020 through January 2021 are particularly disturbing. Giuliani, in addition to filing more than 50 lawsuits on behalf of former president Donald J. Trump which had no basis in law or fact, made numerous statements regarding election fraud although no actual evidence of fraud existed. Alison Durkee, *Trump And The GOP Have Now Lost More Than 50 Post-Election Lawsuits* (2020), available at <https://www.forbes.com/sites/alisondurkee/2020/12/08/trump-and-the-gop-have-now-lost-50-post-election-lawsuits/?sh=5d431b6c2960>. Giuliani's actions and statements strike at the heart of our democratic system. As a result of his conduct, Dominion Voting Systems filed a civil defamation lawsuit against Giuliani on January 25, 2021. Kevin Breuninger, *Dominion sues Rudy Giuliani in \$1.3 billion defamation case, doesn't rule out suing Trump* (2021), available at <https://www.cnn.com/2021/01/25/dominion-files-defamation-lawsuit-against-rudy-giuliani-for-election-claims.html>. Dominion estimates they suffered \$1.3 billion in damages due to Giuliani's false statements regarding voter fraud. The damage to the legal profession as a result of Giuliani's actions, however, is incalculable. The general public, watching and reading a New York attorney repeatedly spouting off lies on behalf of the former president, paints a picture that such conduct by attorneys is acceptable and/or commonplace, only perpetuating negative stereotypes that many in the general public already harbor about attorneys.

The New York Bar sat idly by as Giuliani's assault on our constitutional democracy continued. It was only recently that the New York Bar became involved, only after the group Lawyers Defending American Democracy filed a formal ethics complaint against Giuliani on January 22, 2021. Associated Press, *Lawyers Want Giuliani Investigated, License Suspended* (2021), available at <https://www.usnews.com/news/us/articles/2021-01-21/lawyers-want-giuliani-investigated-license-suspended>.¹ For more than two months, the New York Bar failed to respond in any way to Giuliani's abhorrent conduct. The New York Bar disbarred Petitioner in December 2020 for making political statements that pale in comparison to those made by Giuliani. The harsh standard applied to Petitioner in New York due to her public political statements obviously is not being applied to Giuliani, perhaps because he is male, or perhaps because of his high profile. Regardless of the reason for the inconsistent application of the rules regulating attorneys in New York, the result is the same: some New York lawyers, like Giuliani, are afforded greater First Amendment protections of freedom of speech than others, such as Petitioner.

In addition to the recent false statements made by Giuliani and the filing of dozens of frivolous lawsuits, at least two members of Congress (both male attorneys) made public statements which incited violence and ultimately lead to the insurrection of the United States Capitol on January 6, 2021. The most inflammatory of those

¹ It is important to note that while attorney disciplinary proceedings typically begin when a complaint is filed against an attorney, state bars have the authority to initiate complaints against attorneys without waiting for a member of the general public to file a complaint.

statements include those made by Senator Ted Cruz of Texas and Senator Josh Hawley of Missouri.

Senator Cruz, a Texas attorney, took to Twitter and various other media outlets from November 2020 through the present repeatedly alleging that serious claims of voter fraud existed. As of this filing, no evidence of voter fraud has been presented. His statements, unsupported by evidence, have caused substantial damage to the integrity of the election process and constitute a blatant assault on our democratic system. Senator Cruz ultimately joined a group of GOP senators in objecting to the certification of the election, despite that the election results had already been challenged dozens of times in the courts without success and despite multiple recounts. Senator Cruz's dangerous statements and actions gave unfounded legitimacy to claims that the election was rigged, which empowered a mob of protestors to infiltrate the United States Capitol and attempt to assassinate many members of the House of Representatives. Senator Cruz, who is an attorney licensed in Texas, has perpetuated false statements and spread inflammatory rhetoric without evidence to back up his claims, and as a result has tarnished the image of the legal profession and caused a massive threat against national security.

Senator Hawley also gave credence to numerous claims of voter fraud, particularly regarding elections results in Pennsylvania, despite there being no evidence that the election in Pennsylvania was tainted and despite recounts and legal rulings that the election was conducted lawfully there. Senator Hawley publicly voiced his intent to join Senator Cruz in objecting to the certification of the election,

despite no evidence of voter fraud. His false statements that the election was tainted also fueled the angry mob that invaded the United States Capitol on January 6, 2021. Senator Hawley, a Missouri attorney, has also conducted himself in a manner that causes great damage to the integrity of the legal profession.

The goal of the violent attack on the United States Capitol on January 6, 2021 was to overturn the election of President Joe Biden, and that agenda was directly advanced by Senator Cruz and Senator Hawley, despite the complete lack of evidence of voter fraud. Their calls to invalidate the votes of tens of millions of voters shock the conscience and erode our election process and our entire system of government. As recently as January 22, 2021, Senator Cruz and Senator Hawley continue to defend their actions, with Senator Cruz stating that he was just doing what he was elected to do, and Senator Hawley stating that he will “never apologize” for trying to overturn the legitimate election. Errol Louis, *Ted Cruz and Josh Hawley have been playing with dynamite* (2021), available at <https://www.cnn.com/2021/01/22/opinions/ted-cruz-josh-hawley-ethics-complaint-capitol-riot-louis/index.html>.

While a Senate Ethics Committee complaint has been filed against Senator Cruz and Senator Hawley, as of this filing, Petitioner is unable to find any indication that the Texas State Bar has taken any action against Senator Cruz for his conduct, nor that the Missouri State Bar has taken any action against Senator Hawley for his conduct. Sabrina Eaton, *Sen. Sherrod Brown of Ohio files ethics complaint against Republican Sens. Ted Cruz and Josh Hawley* (2021), available at

<https://www.msn.com/en-us/news/politics/sen-sherrod-brown-of-ohio-files-ethics-complaint-against-republican-sens-ted-cruz-and-josh-hawley/ar-BB1cYENZ>). Again, the state bars choose to sit idly by as attorneys who have been given the privilege to practice law in their states continue to very publicly and very openly commit violations of the rules regulating attorneys.

Compared to the statements and actions of the above individuals, the public statements of Petitioner which formed the basis for her disbarment in both Florida and New York pale in comparison. Petitioner never made false statements. Petitioner never made statements which incited violence or encouraged an attack on our government. Petitioner's statements did not threaten the national security of the United States. Petitioner's statements did not result an attempt to assassinate many members of the House of Representatives. All statements made by Petitioner contained either opinion-based statements regarding what she was experiencing as she attempted to obtain protection against domestic violence, or fact-based statements which were supported by substantial evidence. It is apparent that the state bars choose to target certain individuals, solely because their statements are unpopular, while taking no action against attorneys whose statements constitute blatant violations of rules regulating attorney conduct.

State bars hold the power to regulate attorney admissions and enforce rules regulating lawyers practicing in their respective states. However, when states abuse that regulatory authority by aggressively and unnecessarily censoring some attorneys while turning a blind eye to others who are publicly and blatantly

committing violations, inciting violence, and encouraging the overthrow of our government, the result is unconscionable. The result is that some attorneys are afforded far greater protections under the First Amendment than others, which clearly runs counter to the United States Constitution and sets a tremendously dangerous precedent. The plain reading of the United States Constitution makes clear that First Amendment protections apply to all individuals equally. It becomes necessary for this Court to intervene to ensure consistent application of the rules and consistent First Amendment protections for all individuals. As it stands, without clear precedent from this Court, states can continue taking severe action against attorneys like Petitioner, who made public political statements solely for the purpose of increasing awareness about the struggles domestic violence survivors endure, while ignoring the actions taken by attorneys whose statements result in devastating damage to our entire system of government and to the integrity of the legal profession. Absent clear, consistent guidelines from this Court, in practice, states will continue to be allowed to grant greater First Amendment protections to some attorneys, while stripping these rights from others, without any legitimate or legal basis for doing so.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing to establish the proper test for attorney content-based political speech and the First Amendment.

Respectfully submitted,

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February 1, 2021

No. 20-751

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Supreme Court of the United States

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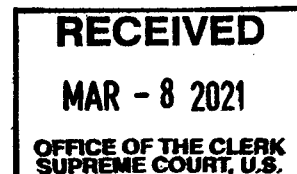
THE FLORIDA BAR,

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**RULE 44.2 GOOD FAITH CERTIFICATION
REGARDING PETITION FOR REHEARING OF
DENIAL OF PETITION FOR WRIT OF CERTIORARI**

Ashley Ann Krapacs, pursuant to Supreme Court Rule 44.2, hereby certifies that the forgoing attached Petition for Rehearing and is limited to other substantial grounds not previously considered and is made in good faith and not for delay. Specifically, the grounds not specifically previously considered include recent current events which transpired after the filing of Petitioner's Writ of Certiorari.



Submitted this March 4, 2021.

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Subscribed and sworn to before me by the said affiant on the date below designated.

Date: 3/4/2021

Janice Krapacs
Notary Public



JANICE KRAPACS
Notary Public, State of Ohio
My Commission Expires:
06/22/2025