

From: Eugene Volokh <volokh@stanford.edu>
Sent: Wednesday, November 19, 2025 5:04 PM
To: elena@judgewatch.org
Subject: **RE: Follow-Up: Your First Amendment Scholarship -- & Participation, as Amicus Curiae or Counsel, in Federal Lawsuit vs The NYT & 33 Other Press Defendants, in Vindication of the First Amendment & Constitutional, Lawful Governance**

I'm afraid I'm slammed, and can't respond in detail. I also want to avoid anything that may appear to be legal advice. But (1) lawsuits against the press for defamation generally end up in federal court when there is diversity of citizenship between the parties, and (2) I think your general arguments about a supposed federal question basis for your lawsuit are inconsistent with how the federal courts have interpreted the Guarantee Clause and the other provisions

To be sure, you disagree with me on that. But we'll see what the court will decide on this – if you can avoid the other procedural barriers identified in the court's decision from [last week](#), which, to be blunt, doesn't give me any confidence in the quality of the arguments in the lawsuit. Sorry that I can't continue this conversation further.

Eugene Volokh

From: elena@judgewatch.org <elena@judgewatch.org>
Sent: Wednesday, November 19, 2025 1:47 PM
To: Eugene Volokh <volokh@stanford.edu>
Subject: Follow-Up: Your First Amendment Scholarship -- & Participation, as Amicus Curiae or Counsel, in Federal Lawsuit vs The NYT & 33 Other Press Defendants, in Vindication of the First Amendment & Constitutional, Lawful Governance

Dear Professor Volokh,

Thank you for your below November 16th e-mail, which I just discovered as I was preparing to write you an update.

However, I am at a loss to understand what you are talking about. Why is [CJA's federal lawsuit against the press](#) for "journalistic fraud", "institutional reckless disregard for truth", etc., any different from the legions of other federal lawsuits against the press for defamation – such as President Trump's, which do not involve "a violation of federal law or of the U.S. Constitution". And what is your response to the express basis for bringing the lawsuit in federal court, set forth at paragraph 1, surely encompassed by your "quick look":

"Pursuant to Article 4, §4 of the United States Constitution, 'The United States shall guarantee to every State in this Union a Republican Form of Government...', and the First Amendment to the Constitution pertaining to the press, as explicated

by federal caselaw...and the First Amendment's guarantee of 'the right of the people...to petition the Government for a redress of grievances', and the further guarantees of the Fifth Amendment^{fn} and the Fourteenth Amendment, §1^{fn} to every 'person' of 'due process of law' and 'the equal protection of laws', plaintiffs seek declaratory relief and compensatory, presumed, and punitive damages against defendants for their *knowingly* false, 'fake news', corruption-abetting, election-rigging journalism, concealing and enabling the destruction of constitutional, lawful governance in New York State, culminating in corrupt candidates running on the 2025 election ballots – and, in particular, for New York City mayor, for New York City public advocate, for Manhattan borough president, for Manhattan district attorney, for Brooklyn district attorney, and to be district attorneys in approximately a dozen other counties throughout the state – and their election.” (underlining added).

Please advise – and respond to my question, which you have not answered, as to whether you or other scholars have undertaken ANY

“SCHOLARSHIP of the 'journalistic fraud' and 'institutional reckless disregard for truth' causes of action, proposed more than two decades ago by the law review articles '[Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence](#)' (2003) and '[Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press](#)' (2004-2005) – or of CJA's landmark lawsuits based thereon in the New York state courts.”

Also, what is your position with respect to my [November 17th e-mail to the Hoover Institution](#), to which I cc'd you – also resting on the [federal lawsuit](#). Did your “quick look” at the lawsuit on November 16th not suffice to reveal that it is a gold-mine of primary-source, documentary evidence for Hoover Institution scholarship in the multiple research and topic areas indicated by my November 17th e-mail, including its [Center for Revitalizing American Institutions](#), of which you are a participant and “[Law & Policy](#)” of which you are part. Is it not your duty to so-alert your Hoover Institution colleagues to this – and have you, as yet, done so?

Thank you.

Elena Sassower

From: Eugene Volokh <volokh@stanford.edu>

Sent: Sunday, November 16, 2025 4:00 PM

To: elena@judgewatch.org

Subject: Re: Your First Amendment Scholarship -- & Participation, as Amicus Curiae or Counsel, in Federal Lawsuit vs The NYT & 33 Other Press Defendants, in Vindication of the First Amendment & Constitutional, Lawful Governance

Thanks for writing, but on a quick look — all I can take right now, given the press of other business — your case does not seem well-founded. Among many other problems, there's no basis for bringing it under *federal* law; whatever the possible misconduct of defendants may or may not be, it is not a violation of federal law or of the U.S. Constitution.

Eugene Volokh

From: elena@judgewatch.org <elena@judgewatch.org>

Sent: Sunday, November 16, 2025 9:11 AM

To: Eugene Volokh <volokh@stanford.edu>

Subject: Your First Amendment Scholarship -- & Participation, as Amicus Curiae or Counsel, in Federal Lawsuit vs The NYT & 33 Other Press Defendants, in Vindication of the First Amendment & Constitutional, Lawful Governance

TO: [Hoover Institution Senior Fellow Eugene Volokh/Stanford University](#)

As you may recollect, I am director and co-founder of the non-partisan, non-profit citizens' organization [Center for Judicial Accountability, Inc. \(CJA\)](#), with decades of first-hand experience and primary-source, documentary evidence germane to your scholarship. Five years ago, on November 21, 2020, you telephoned me with questions about a pdf posted on CJA's website. The e-mails you sent me at that time are [here](#) and [here](#) and mine to you, reflecting our conversation, is [here](#). I received no response from you to it – nor to my [July 18, 2023 e-mail](#), re-sent [July 20, 2023](#).

In our November 21, 2020 conversation, I stated that I was:

“searching for scholarship for CJA’s groundbreaking public interest lawsuits against [The New York Times](#) and [Gannett](#) for ‘journalistic fraud’ and ‘institutional reckless disregard for truth’ – causes of action whose viability under the First Amendment is...established by the FULLY-POSTED RECORD of each lawsuit showing that [The New York Times](#) and [Gannett](#) had NO defense to recognition of these causes of action and were each protected by the courts, on both trial and appellate levels.” (hyperlinks, capitalization, underlining in the original).

The purpose of this e-mail is to alert you that seven weeks ago, on October 8th, CJA commenced a second lawsuit against [The New York Times](#) for “journalistic fraud” and “institutional reckless disregard for truth” – a federal lawsuit that was additionally against 24 other press defendants, pivotally focused on their rigging of Zohran Mamdani’s electoral win as New York City mayor by their *knowingly* false, corruption-abetting journalism. Three weeks later, by the above-attached and here-linked [October 29th verified amended complaint](#), the lawsuit was expanded to include subsequent events and another 9 press defendants, for a total of 34.

It appears there is still NO SCHOLARSHIP of the “journalistic fraud” and “institutional reckless disregard for truth” causes of action, proposed more than two decades ago by the law review articles “[Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence](#)” (2003) and “[Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press](#)” (2004-2005) – or of CJA’s landmark lawsuits based thereon in the New York state courts. Is that correct? Certainly, there was no mention of these in your October 17, 2024 Free Speech Unmuted podcast “[Misinformation: Past, Present, and Future](#)”.

This “cancel culture” of scholarship – where there is NO SCHOLARSHIP of facts and law that are “inconvenient” and run counter to preferred “narratives” – has destroyed constitutional, lawful governance by fictions. This must now end – and it is your obligation to end it by honest scholarship that is not “cherry-picked” and polluted by conflicts of interest, which is what has been going on.

Additionally, inasmuch as you are not an “ivory tower” academic, but engage in litigation, filing [amicus curiae briefs](#) and representing clients – [presumably only media clients](#) – I invite your participation in the federal lawsuit, either as *amicus curiae* in support of plaintiffs or as paid or *pro bono* counsel to the unrepresented corporate plaintiff CJA, which I cannot represent as I am not an attorney.

My opinion, as the non-lawyer individual plaintiff, is that this monumental lawsuit, brought “*on behalf of the People of the State of New York & the Public Interest*”, is a summary judgment case, as there is NO defense to it factually or legally. The SOLE issue is the magnitude of compensatory, presumed, and punitive damages – a jury determination that will reasonably be many tens of billions of dollars. Do you disagree?

I look forward to discussing the foregoing with you – no matter how early or late, and as soon as possible. When might I expect your call?

Thank you.

Elena Sassower, Director
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