Devin Nunes’ ludicrous $250 million lawsuit against Twitter, explained

Enlarge / Rep. Devin Nunes (R-Calif.) in 2018.

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A lot of people on Twitter have been criticizing and mocking Rep. Devin Nunes (R-Calif.), and he’s not going to take it anymore. On Monday, he sued several of his online critics—as well as Twitter itself—for defamation, negligence, and conspiracy. He claims that his critics’ harsh words have cost him $250 million in “pain, insult, embarrassment, humiliation, emotional distress and mental suffering, and injury to his personal and professional reputations.”

Eric Goldman, a legal scholar at Santa Clara University, isn’t optimistic about Nunes’s chances. “There were so many obvious examples in the complaint of tweets that were clearly not defamatory,” Goldman told Ars in a phone conversation. “It’s not a lawsuit I would have wanted to bring, as a lawyer or as a plaintiff.”

Nunes will face a particularly uphill battle with respect to Twitter, Prof. Goldman argues. Section 230 of the Communications Decency Act gives online platforms like Twitter broad immunity against liability for the writings of their users. “Twitter is clearly going to qualify for Section 230,”

Goldman says. And that means that Nunes won’t get a dollar—to say nothing of $250 million—from the social media giant.

Conservatives can boost their profiles by suing big tech firms

Enlarge / Dennis Prager
Michael Brochstein/SOPA Images/LightRocket via Getty Images
So why include Twitter in the lawsuit?

“The audience for this complaint is probably not the court,” Goldman argues.

Recent years have seen a rash of lawsuits brought by conservative political figures against big technology companies.

In 2017, conservative commentator Dennis Prager sued YouTube for allegedly censoring his videos. The same year, right-wing social media service Gab sued Google for rejecting its Android app. In 2018, the conservative group Freedom Watch sued

Google, Facebook, Apple, and Twitter for allegedly censoring conservative viewpoints.

Legally speaking, those lawsuits haven't been successful. Prager lost last year, then filed another lawsuit in January. Gab dropped its lawsuit within weeks of filing it. A federal court dismissed the Freedom Watch lawsuit last week.

But while none of these lawsuits have succeeded in the court of law, they may still have been useful in other ways. They have allowed the plaintiffs to portray themselves as the heroes in David-and-Goliath struggles against increasingly unpopular technology giants. Filing a lawsuit against a big technology company is an easy way for right-leaning people and organizations to raise their own profiles.

Nunes' lawsuit has plenty of signs that it was written for grassroots conservatives as much as for the judge in the case.

"As part and parcel of its Twitter's role as an Internet content provider, Twitter and its CEO, Jack Dorsey, actively endorse and promote the many agendas of the Democratic Party," the lawsuit claims at one point.

Nunes sued two parody Twitter accounts, "Devin Nunes' Mom" and "Devin Nunes' cow" that lobbed crude insults at Nunes in the months before the 2018 election. Nunes asks the courts to unmask them.

"Whether the accounts are controlled by wealthy Democrats, the Democratic National Committee, an opposition research firm, such as Fusion GPS, the 'Russians,' the 'Chinese,' or some other foreign government or non-governmental organization (NGO), the corruption of American Democracy and society by intentional falsehoods, fraud, and defamation must stop," the lawsuit claims.

Legally speaking, gratuitous references to the Democratic Party and Fusion GPS don't help Nunes make his case. But these

references are red meat for grassroots conservatives.

Virginia’s anti-SLAPP law could hit Nunes

Enlarge / House Intelligence Committee chairman Rep. Devin Nunes (R-Calif.) walks to the House floor on Capitol Hill, March 24, 2017, in Washington DC.
Drew Angerer/Getty Images

A potential problem for Nunes, Goldman argues, is that losing the lawsuit could be expensive. The lawsuit was filed in state courts in Virginia, where defendant Liz Mair resides. In 2017, Virginia passed legislation strengthening its anti-SLAPP law, which aims to discourage frivolous lawsuits against people based on their speech. The law allows winning defendants in such suits to collect attorney’s fees.

Nunes’ lawsuit features page after page of examples of allegedly defamatory tweets. A few of these—like claims that Nunes invested in a winery that was implicated in a scandal involving cocaine and prostitution—could be legitimate grounds

for a defamation lawsuit if they were proven to be false.

But many other tweets—like claims that Nunes was a "presidential fluffer," that he was on President Trump's "taint team," and that he was a "feckless cunt"—are clearly nothing more than colorful insults. Nobody could possibly interpret them as serious factual allegations, which means there's no chance a court will find them to be defamatory.

"The court is not going to be impressed with commingling of maybe problematic statements with clearly non-problematic statements," Goldman told Ars. So even if a few of the defamation claims in the lawsuit prove to have merit, Nunes could still find himself paying the defendants' legal bills for the many frivolous claims in the lawsuit, Goldman says.

"Nunes might be writing a check to Devin Nunes' cow," Goldman predicts.

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