“He’s literally suing an imaginary cow”: Late-night hosts mock Nunes

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On Monday, Devin Nunes’ cow was an obscure Twitter account with around 1,200 followers. Then Rep. Devin Nunes (R-Calif.) filed a lawsuit demanding that Twitter and several Twitter accounts—including the user behind the pseudonymous cow—pay him $250 million for the “pain, insult, embarrassment, humiliation, emotional distress and mental suffering, and injury to his personal and professional reputations” caused by their tweets.

Now, Devin Nunes’ cow has more than 420,000 Twitter followers—that’s more than Nunes himself, who has 395,000 followers.

It’s a beautiful example of the Streisand Effect. Nunes appears to have filed the lawsuit in part to raise his own profile within the conservative movement, as the lawsuit was peppered with gratuitous swipes at the Democratic Party, Fusion GPS, and other high-profile villains in the conservative pantheon.

But the lawsuit appears to have done more to raise the profile of Devin Nunes’ cow than it did Nunes himself. Television comedians Jimmy Kimmel, Trevor Noah, and Stephen Colbert all

had fun at Nunes' expense on Tuesday night.

"He's literally suing an imaginary cow," Kimmel said, noting that Nunes had co-sponsored the Discouraging Frivolous Lawsuits Act during the last session of Congress. "We can't have livestock insulting our elected officials. This DevinCow account obviously really bothers Devin Nunes. So in the interest of civility, I'm asking you please don't follow @DevinCow on Twitter."

It won't be easy for Nunes to win his case against the imaginary cow

Santa Clara University legal scholar Eric Goldman is skeptical that Nunes will win his lawsuit. The law gives online service providers like Twitter broad immunity for content posted by its users. As for Devin Nunes' cow, many of the supposedly defamatory statements made by the parody account are clearly non-actionable opinions.

Devin Nunes' cow describes Nunes as a "treasonous cowpoke." The parody account wrote that "Devin's boots are full of manure. He's udder-ly worthless and its [sic] pasture time to move him to prison." It also claimed that Nunes was "whey over his head in crime."

A defamation lawsuit is supposed to identify false statements that damage a victim's reputation. Statements of opinion—to say nothing of obvious jokes—can't be defamatory. A number of the statements in the Nunes lawsuit appear to fall into this latter category.

Other statements by Devin Nunes' cow make factual claims that could theoretically be defamatory. For example, one tweet cited in the lawsuit claims that "Devin Nunes used Leadership PAC funds on luxury vacay in his family's native Portugal."

Of course, this statement would not be defamatory if the

statement were true or if the person who tweeted it believed it to be true. But beyond that, Goldman argues, the fact that the account is called “Devin Nunes’ cow” could work in the defendant’s favor.

“I could see a variety of reasons why the courts would treat the account as not serious, not credible—as things that consumers in the information marketplace would discount,” Goldman said. Defamation law is designed to protect people from false statements that actually damage their reputation. But are people really going to take it seriously when a fictional cow accuses Nunes of misconduct?

Ironically, a key precedent here is Devin Nunes’ ideological ally, President Donald Trump. During the 2016 campaign, then-candidate Trump tweeted that one of his critics, Barbara Jaffe, had begged Trump for a job. Jaffe sued Trump for defamation.

But a judge dismissed the lawsuit, writing that Trump’s Twitter feed was “rife with simplistic and vague insults” and that Trump and Jaffe were “engaged in a petty quarrel.” Therefore, the judge concluded, “a reasonable reader would recognize defendants’ statements as opinion, even if some of the statements, viewed in isolation, could be found to convey facts.”

Similar reasoning could apply to Nunes’ lawsuit against his cow (and against another parody account, Devin Nunes’ Mom). While some individual tweets contain claims that could be interpreted as defamatory if viewed in isolation, the overall context—of an anthropomorphized cow slinging barnyard insults at Nunes—may lead the judge to conclude that no one would actually take the claims seriously.

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