

## [Devin Nunes Lawsuit Against Twitter Could Turn Into Silicon Valley Censorship Shills Worst Nightmare](#)

A Virginia judge ruled last week that the Republican lawmaker's lawsuit against Twitter could proceed to trial in Virginia, meaning the company may finally be forced to disclose evidence of bias against conservative users.

 Sean Davis

By [Sean Davis](#)

When Rep. Devin Nunes, R-Calif., [sued Twitter](#) in Virginia court in March for negligence over multiple cases of defamation and impersonation by the social media giant's users, he was mocked and laughed at for thinking his case would accomplish anything. But following a Virginia judge's ruling last week that Nunes' suit could proceed to trial in the Old Dominion, it may be Nunes who gets the last laugh.

Nunes, who was first elected to Congress 2002, rose to prominence following the 2016 election as the chairman of the House Permanent Select Committee on Intelligence (HPSCI). With Nunes leading the charge to investigate the origins of the allegations of treasonous Russian collusion against President Donald Trump and his political campaign, the collusion narrative was rapidly shown to be a false fabrication bought and paid for by the presidential campaign of Hillary Clinton and the Democratic National Committee. As HPSCI chair, it was Nunes who forced Fusion GPS to disclose that its hiring of Christopher

Steele, a foreign spy, to collude with foreign officials to manufacture and spread dirt on Trump and his associates was in fact funded by Team Clinton. It was Nunes who forced the declassification and release of key spy warrants that showed the FBI and Department of Justice fed false allegations to federal spy courts in order to justify spying on Trump campaign affiliates.

Through his work exposing the faulty foundation of the Russian collusion hoax, Nunes attracted the ire of left-wing dark money groups and Democratic activists eager to take him down and thus teach a lesson to anyone else who might dare question the favored conspiracy theories of the Left. Those activists teamed up with McClatchy, the publishing company that owns Nunes' hometown paper, to peddle deranged and false allegations against Nunes in particular and Republicans in general. Which brings us back to the lawsuits against Twitter and several of its users that Nunes filed in Virginia state court in March.

The lawsuits, which are separate yet intertwined, allege defamation against Nunes by the owners of two anonymous Twitter accounts and Liz Mair, a political consultant whose company is based in Virginia. The suit against Twitter alleges negligence by the social media company in knowingly allowing and supporting the defamation to continue on its platform.

"During Nunes re-election campaign in 2018, Mair conspired (and presumably was paid by) one or more as-yet unknown 'clients' to attack and smear Nunes," the complaint against Mair alleges. "True to her word on LinkedIn, Mair relentlessly smeared and defamed Nunes during the campaign, filming stunts at Nunes' office in Washington, D.C. and posting them online, publishing videos on YouTube that falsely accused Nunes of

multiple crimes, repeatedly publishing false and defamatory statements on Twitter, defaming Nunes online and to the press, and filing fraudulent complaints against Nunes accusing him, inter alia, of violating House Ethics Rules[.]”

“What do I do for these clients?” Mair once publicly wrote on her LinkedIn page. “Anonymously smear their opposition on the Internet.”

Nunes also sued the users behind two anonymous Twitter accounts, one of which impersonated his own mother on the social media platform. Twitter ignored the defamation and impersonation, which violated the company’s own policies and terms of use, for months on end despite being notified over and over that the accounts were violating the law and Twitter’s terms of service.

While Twitter lawyers eagerly dismissed Nunes’ lawsuits as a joke, John Marshall, the Virginia judge who was assigned the cases, has not been so quick to dismiss the allegations of defamation and negligence. Rather than quietly settle with Nunes and pledge to do better going forward, Twitter instead chose to go to war with both Nunes and Marshall. Working in tandem, lawyers for Twitter, Mair, and the users and organizations running the anonymous account smear operation against Nunes attempted to have the case thrown out of Virginia entirely, claiming that Twitter’s user terms required Nunes to file in California, a much friendlier legal regime for tech monopolies like Twitter. Nunes countered with the arguments that because at least one of the defendants perpetrated the defamatory actions in Virginia, actual harm was committed in Virginia, and

Twitter actively does business in Virginia, the proper venue for the suit was Virginia.

Marshall took the arguments under consideration and sought to determine whether the facts supported keeping the case in Virginia. At one point, he asked Twitter to provide to him under seal information on the users managing the anonymous accounts and their locations, the number of Twitter users in Virginia, and the amount of revenue earned by the company in the state.

Rather than comply with the court order, [Twitter gave the judge the middle finger](#) and refused to provide the information demanded by the court. The judge responded by allowing the trial against Twitter to proceed in Virginia, a move that could wreak havoc not just on Twitter's bottom line going forward, but also its entire business model. As a result of Marshall's order, the case will now proceed to trial, and Twitter will be subject to full-blown discovery by Nunes and his legal team.

Given recent congressional testimony by Twitter founder and CEO Jack Dorsey that the social media publisher is not politically biased and "does not use political ideology to make any decisions" about content, the discovery phase might well put Dorsey himself in legal peril. If Twitter is forced to turn over documents showing that the company regularly censors conservative political content or shadow-bans conservative users, Dorsey could potentially face charges of lying to Congress.

"Twitter does not use political ideology to make any decisions," Dorsey [testified](#) in September of 2018, "whether related to ranking content on our service or how we enforce our rules."

While publicly claiming that the company supports transparency and openness, the reality is that the company's operations and algorithms are a black box, and one which Twitter executives have fought to keep hidden from public scrutiny. Full discovery could reveal that Twitter's claims of neutral algorithms and no political ideological bias might not have been based in fact. Even worse for Twitter, the state of Virginia does not grant an automatic right to appeal a trial court's ruling while the case is in process.

"With few exceptions, there is no automatic right to appeal in Virginia from the trial court of record to an appellate court," [states](#) a Virginia State Bar handbook on appellate procedure.

Marshall, the trial judge, also rejected Twitter's argument that the global tech company with operations and users in nearly 200 countries would be significantly inconvenienced if it were required to litigate in Virginia instead of California, where its headquarters are located. The implication of the venue ruling means that Twitter could potentially be subject to negligence lawsuits throughout the country, wherever harm is delivered or felt as a result of the company's failure to enforce its own rules and policies.

Additionally, Section 230 of the federal Communications Decency Act (CDA), which has traditionally provided internet service providers and third-party publishing platforms safe harbor from civil liability claims, may not apply in this particular case given the nature of Nunes' claims against the company. Rather than directly alleging that Twitter itself should be treated as the publisher of the content at issue, a claim which would be barred under the CDA, Nunes instead claims that Twitter selectively and

deliberately neglected to enforce its own policies regarding the accounts that targeted Nunes for defamation. Federal courts have ruled that Section 230 of the CDA does not shield tech companies from so-called promissory estoppel claims, which arise from a failure to provide promised products or services. Nunes will also likely argue that it is up to a jury to determine based on facts that will arise from discovery whether Twitter was acting as a content-neutral third-party service provider subject to the CDA's safe harbor, or whether it was acting as a publisher itself by manipulating its rules and algorithms to promote certain political content.

Nunes need not even win in court for Twitter to face significant legal and enterprise liabilities going forward given the risks that discovery poses to Twitter. Depending on what is unearthed during the discovery process, Twitter could eventually find itself facing class-action lawsuits for securities fraud if the company made claims to investors or Congress that were contradicted by internal documents.

By having to reveal its inner workings in a court outside its preferred jurisdiction, Twitter could be facing its worst possible nightmare. Unable to have the case dismissed to its preferred jurisdiction in California, it is now subject to discovery which could reveal that Twitter's claims of neutrality were nonsense from the start. It could be subject to individual and class-action suits alleging harm all across the country in jurisdictions it desperately wanted to avoid. And the tech monopoly could even face civil or criminal securities liabilities if discovery shows that it made material false statements to Congress, investors, or the Securities and Exchange Commission about its company's operations.

In many ways, Twitter has already lost a big battle with significant implications for the company's future. Being forced to go through discovery in what it clearly considers to be a hostile venue is not a costless exercise for the tech giant. Twitter now has a choice to make: will it quietly concede Nunes' claims, promise to eliminate political bias in its operations, and stave off a potential legal disaster, or will it continue to thumb its nose at court orders in the hope that some federal court might save it from itself?

Twitter's response will have ramifications far beyond its own business. How this case shakes out could shape the legal environment for social media companies for years or decades to come.