Supreme Court Rules for Twitter and Declines to Address Section 230 in Much-Anticipated ISIS Case

Description

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On May 18, 2023, in *Twitter, Inc. v. Taamneh et al.*, the United States Supreme Court ruled against an Islamic State of Iraq and Syria ("ISIS") attack victim's family who sought to hold Twitter, and other social media platforms, accountable for aiding and abetting ISIS. The family alleged that large social media companies knowingly allowed ISIS and its supporters to use their websites as platforms and "recommendation" algorithms as tools for recruiting, fundraising, and spreading propaganda, which ultimately aided in the execution of a terrorist attack. The Supreme Court unanimously held that the family's allegations were insufficient to establish that Twitter was culpable in the attack.

The terrorist attack in question occurred in 2017, when Abdulkadir Masahripov killed 39 people, including Nawras Alassaf, at Reina nightclub in Istanbul. Alassaf's family brought suit under an Antiterrorism Act provision (18 U.S.C. § 2333), which permits U.S. nationals who have been injured by reasons of international terrorism to file civil suit for damages. Rather than suing ISIS directly, the family sued Facebook, Twitter, and Google (which owns YouTube) for aiding and abetting ISIS. The family contended that the tech companies knew that ISIS was using their platforms, which played an important role in ISIS's efforts, but failed to take any actions to keep their content off these platforms.

In a decision written by Justice Clarence Thomas, the Supreme Court explained that the crux of the case was the issue of whether tech companies should be held liable for an alleged failure to stop ISIS from using these platforms. The Court reasoned that to establish liability for "aiding and abetting", Twitter would have needed to associate itself somehow with the ISIS venture by taking an affirmative act to facilitate the attack. However, the family's complaint relied on Twitter's failure to act, and such omission was insufficient to state a claim under 18 U.S.C. § 2333. Further, the family had not demonstrated an adequate link between the tech companies and ISIS to establish liability. There was a lack of a "concrete nexus" between the tech companies' assistance and the Istanbul attack. The relationship between the companies and ISIS was the same arm's length relationship that the companies had with their billion other users. The same could be said of platforms providing services for cell phones, emails, and the internet generally, which are not seen as culpable for the services they provide to the public.

The only "affirmative conduct" that Twitter allegedly undertook was creating the platforms and setting up algorithms to display content relevant to user inputs and user history. Further, the Court refuted the family's argument that the platforms' "recommendation algorithms" go beyond passive aid, reasoning that the recommendation algorithms are merely a part of the infrastructure through which all content is filtered and do not convert passive assistance into active abetting. Because the algorithms sort all content and information provided by users, they are agnostic as to the nature of the content. Twitter took no action with respect to the ISIS content, or any other content, after the sorting-algorithms were up and running. Therefore, the plaintiffs failed to demonstrate the level of assistance required for liability for aiding and abetting under the Antiterrorism Act.

Twitter vs. Taamneh was expected to be a consequential case for freedom of speech online that could have incentivized platforms, such as Twitter, to regulate all speech posted on their websites in order to avoid liability. Many were hoping that in *Taamneh*, the highest court would place limits on the scope of Section 230, a controversial law that was enacted to provide immunity for online computer services with respect to third-party content generated by its users. However, the justices left the issue of Section 230 untouched, possibly to be

addressed in another case or by Congress.

For more information on *Twitter, Inc. v. Taamneh*, please connect with Madeline Ursini or David DiSegna. Partridge Snow & Hahn LLP is available to answer questions about the decision. For additional information and resources, visit the firm's Corporate & Business page.

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