LITIGATION NEWS

ABA Litigation Section

FEATURE STORY

Section 230 Shields Meta from Mass Shooting Liability

By Andrea L. McDonald – August 27, 2025

The Fourth Circuit recently affirmed the dismissal of a lawsuit brought against Meta Platforms, Inc., which alleged its social media platform, Facebook, caused a race-motivated mass shooting. Premised on product liability, the claims alleged that the violence was caused by Meta's defective product—the algorithm designed to recommend content to users. The algorithm, according to the complaint, is unreasonably dangerous as it recommends harmful, radicalizing content to users. Finding that the selective promotion of third-party content is editorial in nature, the court held that section 230 of the Communications Decency Act barred the claims. Litigators agree with the opinion yet advise that it does not preclude future litigation against social media providers but highlights new issues that will continue to develop.

Prioritization of Radical Content Is Editorial in Nature

On June 17, 2015, a shooter entered the Emanuel AME Church in Charleston, South Carolina, where he shot and killed nine people during Bible study. Reverend Clementa Pickney was among the Emanuel Nine murdered, witnessed by his wife and daughter. In 2022, Rev. Pickney's daughter brought state and federal causes of action against Meta Platforms, Inc., formerly Facebook, Inc., alleging its content-selecting algorithm "nurtured, encouraged, and ultimately served to solidify and affirm" the shooter's racist views, causing the hate crime against the Black parishioners. However, in *M.P. v. Meta Platforms, Inc.*, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court's dismissal of the claims as barred by section 230 of the Communications Decency Act.

In 1995, Congress enacted section 230 in order to protect "the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." The section provides, among other things, that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider," and preempts any inconsistent state law. In the first federal court of appeals opinion interpreting section 230, *Zeran v. America Online, Inc.*, the Fourth Circuit held that the protection extended to a service provider's "exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content [of another]."

Although the complaint in *M.P. v. Meta Platforms, Inc.,* directed the claims at Meta's "product," its engagement-prioritizing algorithm, the Fourth Circuit agreed with the district court that the claims targeted Meta's manner of publishing of third-party messages. For example, the complaint alleged that the shooter was "radicalized online by white supremacist propaganda that was directed to him by the Defendants." The Fourth Circuit provided its precedent *Erie Insurance Co. v. Amazon.com, Inc.*, as a contrasting example. In *Erie*, Amazon argued that section 230 shielded it from product defect claims because it relied on third-party content to market products sold on its platform. However, there, the defect claims were directed at the characteristics of the product itself, not the marketing of it.

Unlike in *Erie*, the present claims aimed at Meta's "product" necessarily implicated Meta's role as a publisher of third-party content: The alleged defect was the algorithm's prioritization and "dissemination of one type of content over another." Noting that neither prioritizing user engagement nor automating the decision-making process changed the "underlying nature of the act," the Fourth Circuit concluded that decisions of "how to display certain information provided by third parties are traditional editorial functions of publishers, notwithstanding the various methods they use in performing that task."

In support of the claims, the complaint compiled numerous studies finding Meta's algorithm favored divisive content to drive user engagement. While acknowledging the "widespread concern about Facebook's use of its algorithm to arrange and sort racist and hate-driven content," the Fourth Circuit maintained such reports could not change the application of section 230. "The question whether, and to what extent, section 230 should be modified is a question for Congress, not for judges."

The petition for writ of certiorari has been filed with the U.S. Supreme Court.

"[Hate] Groups You Should Join"

Concurring in part and dissenting in part, Judge Rushing argued that the majority extended the protection of section 230 too far. Although agreeing that courts are obligated to recognize the broad immunity conferred under section 230, she contended that it does not extend to Meta's "groups you should join" algorithm. Distinguishing algorithms that prioritize certain third-party messages from those that make "recommendations," Judge Rushing concluded the latter category was not an editorial function.

An algorithm "recommending a group, person, or event is [Meta]'s own speech, not that of a third party." Through his membership in extremist groups, the shooter may have been exposed to third-party content merely published by Meta. However, she reasoned, Meta could be held responsible for its recommendation to join the group in the first instance. "That message is [Meta]'s own and is not encompassed within the traditional editorial functions that Section 230 immunizes."

Acknowledging this point, the majority commented in a footnote that it "express[ed] no opinion on whether Section 230 immunizes [Meta] from liability arising out of that company's 'groups you should join' algorithm." Instead, the majority determined that the complaint failed to connect such messaging to the shooter's violent racism. It did not allege that he saw the referrals on Facebook nor that he joined an extremist group as a result. Furthermore, even if section 230 did not bar the claims, the majority held that the state tort causes of action also failed on the element of proximate cause. The complaint did "not allege how much time [the shooter] spent on Facebook or how he became radicalized on the platform" and did not provide a "factual foundation" linking use of Facebook to the act of murder.

Balancing Precedent and Progress

"The Fourth Circuit's analysis reflects a principled application of established precedent, albeit in the context of a deeply tragic set of facts here in Charleston," observes Ryan D. Ellard, CIPP/US, Charleston, SC, Vice-Chair of ABA Real Property, Trust and Estate Law Section's Real Property Litigation and Alternative Dispute Resolution Committee. He continues, "the court appeared intent on striking a balance: insulating social media platforms from expansive liability while acknowledging the statutory limits of section 230's protection."

"The court seems cognizant of the fact that there should be more liability for social media companies than currently exists, but the plaintiff isn't giving them enough to explore those issues here without overstepping the boundaries of [section 230]," agrees Tiffany Rowe, Washington, DC, former Co-Chair of ABA Litigation Section's Professional Liability Litigation Committee. "The opinion articulates very clearly how the plaintiff can restate and amend the complaint and indicates that there may be a basis for liability if the claims are stated with sufficient specificity." In light of this, Rowe advises practioners "to consider whether pre-litigation discovery is necessary in order to articulate a claim."

Rowe adds, with regard to the dissent and majority's reference to "auto-generated" content, "this highlights an issue that may be a real juggernaut in the future—where AI is taking input from users and actually creating content for them rather than simply compiling it."

Publish at Your Own Risk

"[This case] really puts on display the issues that will continue to develop with respect to social networks, AI, the way our society interacts with them, and the way they interact with us," remarks Rowe. Ellard agrees that "the intersection of algorithmic influence, content moderation, and user harm remains fertile ground for litigation. It's worth noting that there is ongoing multidistrict litigation in the Northern District of California centered on claims of addiction and psychological harm to minors arising from social media use."

"As courts and legislators continue to grapple with the contours of platform immunity in a rapidly evolving digital landscape, litigants will continue to develop new theories," Ellard predicts. "In light of the Fourth Circuit's opinion," Rowe counsels, "practitioners should carefully consider both how to approach these questions and how to articulate them in the pleadings; this is a brand-new world for litigation."

Andrea L. McDonald is an associate editor for Litigation News.

Related Resources

- 47 U.S.C. § 230.
- *Erie Ins. Co. v. Amazon.com, Inc.*, 925 F.3d 135 (4th Cir. 2019).
- *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997).
- *M.P. v. Meta Platforms, Inc.*, 692 F. Supp. 3d 534 (D.S.C. 2023).
- *In re Social Media Adolescent Addiction/Personal Injury Prod. Liab. Litig.*, MDL No. 3047 (N.D. Cal. 2022).
- Christopher Gismondi, Dani Morrison, and Venessa Offutt, "Have Algorithms Opened Up Your Software to Product Liability?," *Mass Torts Litig.* (June 24, 2023).
- Jonathan A. Patchen, "When Your Client Is a Tech Company," *Litig. J.* (Fall 2024).
- Jake Gray and Abby Block, "Beyond the Search Bar: Generative AI's Section 230 Tightrope Walk," *Bus. L. Today* (Nov. 14, 2024).