U.S. Supreme Court Hears Case on Social Media Speech

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In December, the Supreme Court of the United States heard oral arguments in *Elonis v. United States*. This case concerns holding individuals criminally liable for comments made on social media that are considered "true threats." Elonis made multiple posts on Facebook concerning his desire to kill his ex-wife, law enforcement officials, and school students. He was convicted of threatening another person over the interstate lines (the internet) in violation of 18 U.S.C. § 875(C). At issue is whether a conviction under the statute requires proof of the defendant's subjective intent to threaten, or whether it is enough to show that a "reasonable person" would regard the statement as threatening.

This is the Supreme Court's first case involving the limits of speech on social media. Elonis argued that the government must prove that he specifically intended his speech to be taken as a threat. Alternatively, the federal government requests the Court to apply a "reasonable person" standard, and hold that if a "reasonable person" would interpret an internet rant as a "true threat," then that should be enough to hold the speaker as criminally responsible.

The Court had difficulties with both of these positions. Regarding the "reasonable person" standard, Chief Justice John Roberts struggled to define who exactly a "reasonable person" would be; would a teenager with only a few Facebook friends be evaluated differently than one with many? Also, when evaluating the specific intent argument, Justice Ruth Bader Ginsburg questioned how exactly the government could prove whether a particular online threat, "in the mind of the threatener[,] was genuine?" Justice Elena Kagan proposed a middle ground approach which she described as a "recklessness" standard. Under this approach, a person could be convicted as long as he knew that there was a substantial probability that his speech would place fear in a person, even if he did not actually intend to threaten them.

What You Need To Know

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It will be months before we find out which interpretation the Court sides with. Since this is the first case on free speech on social media, the holding could provide insight into how the Court will rule on First Amendment issues in social media. *Elonis* could provide schools with a better understanding of how to address free speech issues in social media with students and staff.

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