



INTERNATIONAL SQUARE
1825 EYE STREET, NW, SUITE 900
WASHINGTON, DC 20006
TELEPHONE: 202-457-0160
FACSIMILE: 844-670-6009
http://www.dickinsonwright.com

CHARLIE SPIES
CSpies@dickinsonwright.com
202.466.5964

BEFORE THE FEDERAL ELECTION COMMISSION

Laura Loomer for Congress
P.O. Box 1465
720 Lucerne Ave
Lake Worth, FL 33460

v.

Twitter, Inc.
1355 Market Street, Suite 900
San Francisco, CA 94103

MUR No. 7687
2020 JAN 28 PM 1:04
OFFICE OF
GENERAL COUNSEL

Complaint

When the Federal Election Campaign Act (“FECA”) was passed and amended, television was the dominant medium for federal campaigns, and rules were established by the Federal Election Commission (“FEC”) and the Federal Communications Commission (“FCC”) to ensure that candidates had equal access to this public forum. Social media companies, like Twitter, are the new public forum and when they discriminate against conservatives through shadow-banning and/or outright banning, it is un-American and fundamentally wrong.

Twitter’s anti-conservative discrimination becomes illegal when Twitter moved from banning private citizen Laura Loomer to banning federal candidate Laura Loomer while maintaining free (but very valuable) access for her opposing campaigns. When Laura Loomer, an investigative journalist and political activist, became a federal candidate for Florida’s 21st District, FEC and FCC regulations prohibited Twitter from banning her campaign from its website. Just as a radio or television station may not sell time only to a candidate’s opponent, Twitter may not do so either without providing equal access to all candidates running for the same office.

In its latest attempt to silence the views it does not like, Twitter has run afoul of several FEC and FCC regulations. This complaint is filed pursuant to 52 U.S.C. §§ 30118(a) and 30109(a)(1) and is based on information providing reason to believe that Twitter, Inc. (“Twitter”) has violated and is engaging in the continuing violation of the corporate contribution and/or expenditure prohibitions established by FECA, 52 U.S.C. § 30101, *et. seq.* and Commission regulations. Specifically, by banning federal candidate Laura Loomer from its platform, Twitter is providing something of value to Loomer’s political opponents for the

purpose of influencing the election in Florida's 21st District. Also, when Twitter banned Loomer, it prevented Loomer from having equal access to the platform that was given to her political opponents, thereby also violating the FCC's equal-time rule. 47 U.S.C. §§ 315(a).

The standard for an FEC investigation is, "If the Commission, upon receiving a complaint... has reason to believe that a person has committed, or is about to commit, a violation of [FECA]... [t]he Commission shall make an investigation of such alleged violation..." 52 U.S.C. § 30109(a)(2); *see also* 11 C.F.R. § 111.4(a). That standard is easily met in this matter and the Commission should take proper action.

FACTS

Twitter is a social media networking service where users can send and receive short posts known as "tweets." Users can also interact with tweets through likes, re-tweets, and comments. Twitter is one of the largest social networks worldwide, with 330 million active users.¹ Users may also be "verified" on Twitter with a blue check mark, which indicates that the account is one of public interest.² Twitter will verify accounts maintained by users in music, acting, government, politics, media, and other prominent groups. Although Twitter is free to join, it places a valuation on access to its platform by allowing users to promote their tweets or account for a fee.³ The average cost of a promoted tweet is roughly \$1.35 per click, reply, or retweet.⁴ To promote an account, it costs users between \$2.50 and \$4 per account follow.⁵ Twitter suggests that advertisers spend \$30 per day in order to consistently reach audiences.⁶ Twitter recommends that individuals and groups that want to increase their follower list, see more engagement with their tweets, or gain more traffic for their website to use the promotion feature.⁷

All Twitter users are bound to the platform's Hateful Conduct Policy, and violations of such could lead to account suspension or removal from the platform. Twitter's Hateful Conduct Policy prohibits its users from "promot[ing] violence against or directly attack[ing] or threaten[ing] other people on the basis of race, ethnicity, national origin, sexual orientation,

¹ See Twitter, Q1 2019 Earnings Report, at 5, *available at* https://s22.q4cdn.com/826641620/files/doc_financials/2019/q1/Q1-2019-Slide-Presentation.pdf.

² Twitter, About Verified Accounts, <https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts>.

³ See Twitter, Create a Tweet Engagements Campaign (last accessed Jan. 9, 2020), *available at* <https://business.twitter.com/en/help/campaign-setup/create-a-tweet-engagement-campaign.html>.

⁴ Shashank Mehrotra, *How Much Does It Cost to Advertise on Facebook, Twitter, LinkedIn and YouTube?* LinkedIn (July 2, 2016).

⁵ *Id.*

⁶ See Twitter, Get Started with Twitter Ads, *available at* <https://business.twitter.com/en/solutions/twitter-ads.html?ref=en-btc-solutions-footer>. Twitter announced that it was banning all political advertising, which went into effect November 22, 2019. See Kate Conger, *Twitter Will Ban All Political Ads, C.E.O. Jack Dorsey Says*, THE NEW YORK TIMES (Oct. 30, 2019). However, Twitter does not preclude candidates from soliciting donations through the platform.

⁷ Twitter, Get Started with Twitter Ads, *available at* <https://business.twitter.com/en/solutions/twitter-ads.html>.

gender, gender identity, religious affiliation, age, disability, or serious disease.”⁸ It also prohibits accounts whose “primary purpose is inciting harm towards others” on the basis of the above categories.⁹ It also states that it is committed to combatting “abuse motivated by hatred, prejudice, intolerance, particularly abuse that seeks to silence the voices of those who have been historically marginalized.”¹⁰ Twitter claims to take action against reports of accounts targeting an individual or group with violent threats, calls for serious harm, references to violent events, incitement of fear about a protected category, repeated or non-consensual slurs, or depicting hateful imagery.¹¹ Even if discriminatorily applying that content-based “policy” is Twitter’s right, it legally may only be enforced against private citizens and not against candidates for federal office.

Laura Loomer is the frontrunner candidate for the Republican primary for U.S. Representative for Florida’s Twenty First Congressional District.¹² Loomer is also an investigative journalist and activist. She has gained notoriety for her guerilla-style journalism, and often conducts ambush interviews on live stream, which is known as getting “LOOMERED.”¹³ As a result of her work, Loomer amassed a large base of followers on social media. For example, prior to being banned, Loomer’s Twitter account had over 260,000 followers.¹⁴

On November 21, 2018, Twitter banned Loomer from Twitter, asserting that Loomer violated Twitter’s Hateful Conduct Policy. The tweets that ostensibly caused Loomer’s ban were political commentary (supporting LGBTQ rights and opposing Sharia Law) about then Representative-elect Ilhan Omar (D-Minn.). Those tweets stated, “Isn’t it ironic how the twitter moment used to celebrate ‘women, LGBTQ, and minorities’ is a picture of Ilham Omar?” and “Ilhan is pro Sharia Ilhan is pro-FGM under Sharia, homosexuals are oppressed & killed. Women are abused & forced to wear the hijab. Ilhan is anti-Jewish.”¹⁵ After posting these tweets, Loomer received a notification from Twitter that her account had been suspended.¹⁶ Upon receiving this information, Loomer posted a video on YouTube explaining that her tweets were “one hundred percent true” and that her tweets were “not malicious [or] hateful.”¹⁷

⁸ Twitter Help Center, Hateful Conduct Policy, available at <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Loomer announced her candidacy on August 2, 2019. Loomer has six opponents in the Republican primary but has both outraised and achieved more grassroots support than all of the other Republicans combined. If she wins the primary, she will then face the Democrat nominee in the general election. The incumbent is Democrat Representative Lois Frankel.

¹³ See Laura Loomer for Congress, *About Laura Loomer*, available at https://lauraloomerforcongress.com/?page_id=2539.

¹⁴ Will Sommer, *Twitter Bans Far-Right Activist Laura Loomer*, THE DAILY BEAST (Nov. 21, 2018); see also Linda Giventash, *Laura Loomer Banned from Twitter after Criticizing Ilhan Omar*, NBC NEWS (Nov. 22, 2018).

¹⁵ Given her suspension from Twitter, direct links to her tweets are unavailable. For reference, see Will Sommer, *Twitter Bans Far-Right Activist Laura Loomer*, THE DAILY BEAST (Nov. 21, 2018).

¹⁶ See YouTube Video, available at <https://www.youtube.com/watch?v=njWOWyLoqds&feature=youtu.be>.

¹⁷ *Id.*

Even after her ban, Twitter is still discriminating against Laura Loomer and her Congressional campaign. On December 12, Twitter announced that it would begin verifying candidates in response to concerns that its ban on political ads would hurt lesser known candidates.¹⁸ However, when asked whether this policy would apply to Loomer's congressional campaign, Twitter stated that "anyone who was permanently suspended will not be reinstated, verified, or labeled."¹⁹

Although Twitter claims to apply Twitter rules equally to all of its users,²⁰ publically available information indicates otherwise. Twitter has previously faced scrutiny for their discriminatory treatment of conservative voices on their platform. A report by *Vice News* alleged that Twitter was limiting the visibility of prominent Republicans in search results ("shadow-banning").²¹ Those who were impacted included Republican Party chair Ronna McDaniel, Rep. Mark Meadows, Rep. Jim Jordan, Rep. Matt Gaetz, and Rep. Devin Nunes.²² A similar review of prominent Democrat officeholders indicated that Democrats were not being shadow-banned.²³ This and other reporting prompted Congress to hold two separate hearings with Twitter and other social media platforms regarding alleged bias.²⁴

Remarkably, Democratic officials have repeatedly made comments substantially similar to Loomer's about Republican politicians without facing repercussions from Twitter. For example, Rep. Alexandria Ocasio-Cortez accused President Trump of engaging in "antisemitism" towards House Intelligence Chairman Adam Schiff in a tweet on October 5, 2019.²⁵ Additionally, Rep. Maxine Waters called President Trump a "lying, crooked, tax evader, porn star fornicator" and stated that he should "take his ridiculous self home" and resign.²⁶ Neither Rep. Ocasio-Cortez nor Rep. Waters were banned from Twitter in light of their comments.

Because Twitter banned Loomer from its platform, it now detrimentally impacts her Congressional campaign for Florida's 21st District because she is now prevented from accessing a vital tool to communicate her message to potential voters and members of the public. The

¹⁸ Cassandra Fairbanks, *Twitter to Verify All Congressional and Gubernatorial Candidates, But Will Not Be Reinstating Laura Loomer*, THE GATEWAY PUNDIT (Dec. 12, 2019).

¹⁹ *Id.*

²⁰ See Twitter, Safety on Twitter, https://about.twitter.com/en_us/safety.html (last accessed Jan. 13, 2020). Twitter states that "[w]e treat everyone equally: the same Twitter Rules apply to all."

²¹ Alex Thompson, *Twitter Appears to Have Fixed "Shadow Ban" of Prominent Republicans Like the RNC Chair and Trump Jr.'s Spokesperson*, VICE NEWS (July 25, 2018).

²² *Id.*

²³ *Id.*

²⁴ Twitter CEO Jack Dorsey testified before the House Energy and Commerce Committee about the moderation of online conduct on September 5, 2018. See Cecilia Kang, *et. al.*, *Twitter Dorsey Avoids Taking Sides in Partisan House Hearing*, THE NEW YORK TIMES (Sept. 5, 2018); Cecilia King and Sheera Frenkel, *Republicans Accuse Twitter of Bias Against Conservatives*, THE NEW YORK TIMES (Sept. 5, 2018). Carlos Monje, Jr., Twitter Director of Public Policy and Philanthropy, testified for the Senate Judiciary Constitution Subcommittee on April 1, 2019 about alleged bias against conservative voices on its platform. See David Shepardson, *Facebook, Google Accused of Anti-Conservative Bias at U.S. Senate Hearing*, REUTERS (Apr. 10, 2019).

²⁵ Alexandria Ocasio-Cortez (@AOC), Twitter, (Oct. 5, 2019), <https://twitter.com/aoc/status/1180476191951802369?lang=en>.

²⁶ Maxine Waters (@RepMaxineWaters), Twitter (May 28, 2019), https://twitter.com/RepMaxineWaters/status/1133523174623240193?ref_src=twsrc%5Etfw.

Supreme Court has recognized that social media platforms, like Twitter, are a “modern public square” that provide “the most powerful mechanisms available to a private citizen to make his or her voice heard.”²⁷ Since social media platforms provide a soapbox for little to no cost, political candidates rely heavily on Twitter to win their respective races. For example, President Trump stated that he would not have been elected President if he did not have Twitter.²⁸ Additionally, social media is widely credited for propelling Senator Bernie Sanders’ 2016 Presidential campaign.²⁹ Given its prominence in the 2016 election cycle, almost every federal candidate, including five of Loomer’s Republican opponents,³⁰ have Twitter accounts to provide campaign updates, sell merchandise, and solicit contributions.

Not only does Loomer’s Twitter ban hinder her ability to communicate with voters, but it also prevents potential donors from contributing to her campaign. An early study by Columbia University found that candidates who created a Twitter account saw an average increase of at least \$5,773 in aggregate political donations.³¹ This statistic only increases when applied to nationally-recognized political candidates. Presidential candidates, such as Donald Trump, Bernie Sanders, and Elizabeth Warren have been able to raise millions of dollars, mainly from small-money donors, using social media platforms like Twitter.³² It also will certainly increase for verified accounts. Since most of Loomer’s political opponents (who will be verified per Twitter’s new policy) have a Twitter account while Loomer is not allowed to, potential donors may not even know about the existence of Loomer’s political campaign. This prevents Loomer for Congress from reaching political donors that could materially benefit the campaign, which puts her political opponents at a significant competitive advantage.³³

CAUSES OF ACTION

COUNT 1

Prohibited Contributions by Corporations

Under FECA, a contribution is defined as any “gift, subscription, loan, advance, or deposit of money, or anything of value made by any person for the purpose of influencing any

²⁷ *Packingham v. North Carolina*, 137 S. Ct. 1730, 1738.

²⁸ Ed Pilkington, Trump Heaps Praise on Twitter and Denies Using It to Spread Falsehoods, *The Guardian* (Mar. 15, 2017).

²⁹ Hadas Gold, Sanders Bests Clinton on Social Media, *Politico* (Mar. 4, 2016).

³⁰ See Christian Acosta (@VOTEACOSTA2020), Twitter, <https://twitter.com/voteacosta2020?lang=en>; Live with Michael Bluemling Jr. (@LiveBluemling), Twitter, <https://twitter.com/livebluemling>; Elizabeth Felton (@Felton4Congress), Twitter, <https://twitter.com/Felton4Congress>; Victor Garcia da Rosa For Congress (@vgarciadarosa), Twitter, <https://twitter.com/vgarciadarosa?lang=en>; Mike Vilardi (@MikeVilardi), Twitter, <https://twitter.com/mikevilardi?lang=en>.

³¹ Maria Petrova, Ananya Sen, and Pinar Yildirim, *Social Media and Political Donations: New Technology and Incumbency Advantage in the United States*, Columbia University (September 9, 2016).

³² See generally Annie Blackbourn, *How Social Media Made Waves in the 2016 Election*, *THE BADGER HERALD* (Nov. 4, 2016).

³³ Verification will allow Loomer’s opponents reach audiences it would not have otherwise. Since the account will be considered one that has “public interest”, more people will see the account, which naturally leads to more engagement with the account. Twitter is essentially providing these candidates with name recognition, which, puts them at a competitive advantage with voters. While many people know of Laura Loomer, there are still many voters for Florida’s 21st District who may not, and even among those that know her, they may not know she is a federal candidate. This could detrimentally impact the vitality of her campaign.

election for Federal office.” 52 U.S.C. § 30101(8); 11 C.F.R. § 100.52. The phrase “anything of value” includes all in-kind contributions. *Id.* at § 100.52(d)(1). The term “person” includes corporations. 52 U.S.C. § 30101(11). Federal law prohibits corporations, such as Twitter from making contributions to Federal candidates. 52 U.S.C. § 30118(a). If a corporation makes its facility available to one candidate for free, it must do so for all candidates. 11 C.F.R. § 114.13.

By banning Loomer from Twitter, Twitter is giving something of value to Loomer’s opponents while at the same time denying Loomer’s political campaign something of quantifiable value over \$250,000. The over \$250,000 valuation comes because Loomer is not an average candidate. She is not only the Republican frontrunner for Florida’s 21st District, but she is also a nationally-recognized political figure. In fact, prior to being banned from Twitter, she amassed over 265,000 followers. Under Twitter’s valuation of \$1.35 per tweet, the Loomer campaign’s ability to communicate with Ms. Loomer’s followers is worth over \$250,000 per tweet.³⁴ With Twitter banning her from doing so, she has now lost access to a potentially vital pool of resources. Additionally, banning an individual from Twitter likely requires a decision from the highest levels of the corporation. Any staff time used to make the decision to ban Loomer should be considered in a calculation of contributions made by Twitter to Loomer’s political opponents in the FL-21 race. Twitter also allows candidates to solicit contributions from its users, which gives candidates vital access to a pool of donors it would not reach otherwise. Candidates who create a Twitter account receive over \$5,000 in aggregate donations.³⁵ Because of that, she had the potential to raise hundreds of thousands of dollars just from Twitter alone. Therefore, there is no doubt that Twitter provided something of value to Loomer’s political opponents by banning her from its platform.

Based on publically available information regarding the Twitter corporation’s political bias, it is clear that Twitter’s continued ban of Loomer’s Twitter account is for the purpose of influencing the Congressional election in Florida’s 21st District. If Twitter is going to provide access to its corporate-funded platform to one candidate in Florida’s 21st Congressional District, it must provide access to all of the candidates, including Loomer.

Twitter’s Hateful Conduct Policy does not apply to Loomer’s tweets. Nowhere in her tweets does she harass, make prejudicial remarks, or incite violence against Representative Omar based on a protected status. Loomer’s tweets were nothing more than a criticism of a public official, which she has the First Amendment right to do. In fact, her rhetoric is identical to Democrat officeholders who have made criticisms about Republican officials with no

³⁴ This figure certainly does not include followers that could have followed her in the over nine-month window between her ban from Twitter and her announcement of her political committee or the followers that would have accrued due to her announcement of her federal candidacy. It also does not include the number of people that would engage with her tweets that may not follow her Twitter account. All of these factors would only increase her value on Twitter.

There are also other ways to determine the value of a Twitter account. Certain applications, such as Webfluential, will allow an individual to determine how much a particular Tweet is worth depending on several factors, including number of followers and user engagement. For comparison, the value of South Carolina Senate candidate Jaime Harrison, who has roughly 255,000 followers, is between \$770 and \$940 per tweet. *See* Webfluential, Your Estimated Social Value, available at <https://webfluential.com/influence-estimator>.

³⁵ *See* Petrova, *supra* Note 28. This study was conducted in 2016, when the use of social media entities, such as Twitter, for political campaigns was at its infancy.

punishment from Twitter. This treatment, coupled with Twitter's prior history of banning and shadow banning Republican officials, indicates that Twitter does not apply its rules and guidelines fairly to all of its users. Rather, it clearly demonstrates a consistent pattern of arbitrary and discriminatory enforcement of its Rules and Guidelines in order to stifle conservative candidates for political office. This all confirms that Twitter had no other legitimate purpose in banning Loomer from its platform other than to influence the Congressional election in Florida's 21st District.

Thus, Twitter provided a prohibited corporate in-kind contribution to Loomer's political opponents, violating 52 U.S.C. § 30118(a).

COUNT II Failure to Provide Equal Access

In response to growing concerns that broadcast stations could influence the outcome of elections through the corporate in-kind contribution of promoting access to their platform to only select federal candidates, the FCC passed the "Equal-Time Rule," which states that "if any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station." 47 U.S.C. §§ 315(a), 73.1941(a). To comply with the law and provide equal access to candidates, licensees are prohibited discriminating between candidates in practice, regulations, facilities, or services for or in connection with the service, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage. *Id.* at § 73.1941(e).

A legally qualified candidate is defined as any person who (1) has publically announced his or her intent to run for nomination or office; (2) is qualified under the applicable local, State or federal law to hold the office for which he or she is a candidate; and (3) has met other qualifications.³⁶ 47 C.F.R. § 73.1940. Laura Loomer is considered a legally qualified candidate under FCC regulations.

Twitter only giving access to its corporate-funded platform to select favored candidates implicates the exact issue that the Equal-Time Rule was passed to address with broadcasters. By banning Laura Loomer from its platform, Twitter is failing to provide equal access to all political candidates for Florida's 21st District. The Internet, and particularly social media, is the modern public forum, which is why Federal candidates rely heavily on it to win elections. Twitter, by allowing candidates for federal office to have free access to its platform, is no different from other broadcasting entities, such as radio or television. When Twitter allows a political candidate to publish its political message and solicit contributions on its platform, it has the duty to allow all candidates for that office to do the same. By banning Laura Loomer for Congress from

³⁶ The third prong requires a person to meet either section (b)(c)(d) or (e) of the Regulations. Relevant to this case is section (b), which considers an individual to be a legally qualified candidate if that person (1) has qualified for a place on the ballot; or (2) has publically committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office. See 47 C.F.R § 17.1940(b).

accessing its platform, Twitter is not providing her with equal access as her political opponents, which it is obligated to do by law.

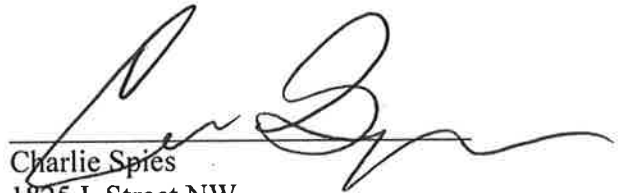
The writers of the Equal Time Rule feared the exact conduct being exhibited by Twitter. If social media platforms are allowed to arbitrarily remove certain voices, especially federal candidates, from engaging in political discourse, they have the ability to influence and manipulate elections, which should alarm every person that participates or will participate in the voting process.

PRAAYER FOR RELIEF

1. Wherefore, the Commission should find expedited reason to believe that Respondent Twitter is engaging in an ongoing knowing and willful violation of 52 U.S.C. § 30101, *et. seq.*; and move expeditiously to force Twitter to comply with the law.
2. Further, the Commission and/or the Department of Justice should determine and impose appropriate sanctions for any and all violations, should enjoin respondent(s) from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

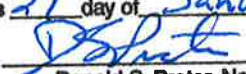
Dated: January 27, 2020

Respectfully submitted,



Charlie Spies
1825 I. Street NW
Suite 900
Washington, D.C. 20006

CC:
U.S. Department of Justice
Attn: Atty. Gen. William Barr
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 27 day of January, 2020

Donald S. Prater, Notary Public, D.C.
My commission expires May 31, 2020.

