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March 23, 2020

VIA E-MAIL (CELA@FEC.GOV)
CONFIDENTIAL

Mr. Jeff S. Jordan
Attn: Kathryn Ross, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7687 (Twitter, Inc.)

Dear Mr. Jordan:

On February 5, 2020, the Federal Election Commission (“FEC” or “Commission”) notified our client, Twitter, Inc. (“Twitter”), of a complaint filed by the campaign of Laura Loomer, a Republican congressional candidate in Florida.

The complaint’s central allegation is that Twitter violated the Federal Election Campaign Act of 1971, as amended (“FECA”) by banning Ms. Loomer from the Twitter platform, thereby providing something of value to her opponents “for the purpose of influencing [an] election.”¹ But Twitter banned Ms. Loomer – who is well-known for unleashing “vicious rhetoric against Muslim-Americans” on Twitter and elsewhere² – more than eight months before she became a candidate. Because Ms. Loomer was not a candidate, or even a potential candidate, at the time, no action on her accounts could possibly violate FECA. Nonetheless, Twitter’s actions

¹ 52 U.S.C. § 30101(8)(A), (9)(A).

² Will Sommer, *Anti-Muslim Activist Laura Loomer to Run for Congress*, Daily Beast (Aug. 2, 2019), at <https://www.thedailybeast.com/anti-muslim-activist-laura-loomer-to-run-for-congress>.

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were reasonable, proper, and in line with the actions of numerous other companies. Other platforms like Lyft, GoFundMe, PayPal, Facebook, Instagram, Venmo, Uber, and Uber Eats have all banned Ms. Loomer. Seemingly, like Twitter, none of these companies did so for partisan political reasons.

The FECA does not require Twitter to provide a platform for someone described as the “Queen of trolls”³ and an “up-and-coming A lister on the Islamophobia circuit.”⁴ To the contrary, Ms. Loomer’s repeated misuse of Twitter conflicts with the company’s values and its policies on abusive and hateful speech, undermining the company’s mission (and therefore long term business prospects): providing a platform for healthy public conversation. Twitter’s decision to remove Ms. Loomer from the platform for these reasons – rather than to influence an election – does not constitute a violation of the FECA.

Separately, as a media entity under the FECA, Twitter is entitled to rely upon both general First Amendment principles and the FECA’s media exemption to choose – without regulatory second-guessing – the content that Twitter will feature on its platform. Moreover, as a federal judge recently held in another matter involving Ms. Loomer, the Communications Decency Act wholly immunizes Twitter’s good faith actions in removing objectionable content from its platform.

Finally, and without any jurisdictional or legal basis, the complaint claims the FEC should proceed against Twitter for violating the “Equal Time” requirements of the Communications Act. First, the Communications Act is outside the FEC’s jurisdiction. Second, the “Equal Time” requirements only apply to broadcasters, not web-based platforms like Twitter.

Accordingly, and as further detailed on the following pages, Twitter respectfully requests that the Commission find no reason to believe that Twitter violated the FECA and dismiss this matter.⁵

³ Craig Timberg and Elizabeth Dwoskin, *Twitter Is Sweeping Out Fake Accounts Like Never Before, Putting User Growth at Risk*, Wash. Post (July 6, 2018), at <https://www.washingtonpost.com/technology/2018/07/06/twitter-is-sweeping-out-fake-accounts-like-never-before-putting-user-growth-risk/>.

⁴ Matthew Stolle, *Conspiracy Theorist Laura Loomer Visit Leaves Muslims in Quandary*, Post Bulletin (July 17, 2019), at https://www.postbulletin.com/news/local/conspiracy-theorist-laura-loomer-visit-leaves-muslims-in-quandary/article_d6ac08ba-a7fe-11e9-a838-07f81b848f28.html.

⁵ The complaint also makes several passing references to an alleged “prior history of [Twitter] shadow banning Republican officials.” Compl. at 7; see also *id.* at 1, 4. Not only do such fleeting allusions fail to “describe a violation of a statute or regulation over which the Commission has jurisdiction,” 11 C.F.R. § 111.4(d)(3), but Twitter has already addressed these claims in its response to Matter Under Review 7443. If the Commission believes this or any other portion of the complaint in this matter merits additional attention, we are available to supplement this response.

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FACTUAL BACKGROUND

I. Background on Twitter

Twitter was incorporated in Delaware in April 2007.⁶ While its principal offices are in San Francisco, California, the company has over 5,000 full-time employees and 35 offices worldwide.⁷ Twitter also has 152 million monetizable daily active users and ranks as one of the largest social networks in the world.⁸ The company is publicly traded and had quarterly revenues that exceeded \$1 billion in Q4 of 2019⁹ and an estimated overall value of approximately \$30 billion.¹⁰ A listing of Twitter's board members is available on the company's website.¹¹ None of the board members are candidates for federal office in the United States or represent federal political parties.

Twitter is a free service that allows users to publicly communicate in messages of up to 280 characters – regardless of the substantive content of the communication.¹² All 100 senators, 50 governors, and nearly every Member of the House of Representatives reach their constituents through Twitter accounts,¹³ with conservatives, in particular having “a strong presence on Twitter.”¹⁴

Twitter's purpose is to serve the public conversation.¹⁵ At its core, Twitter “stands for freedom of expression”¹⁶ and the principle that “every voice has the power to impact the world.”¹⁷ Twitter has been called a “powerful tool for democracy,”¹⁸ and “has bolstered grassroots conversations, disrupted the top-down nature of political leadership and thought, and

⁶ Twitter, *2018 Annual Report*, at <http://www.viewproxy.com/Twitter/2018/AnnualReport2017.pdf>.

⁷ See *id.*; Twitter, *Our Company*, at https://about.twitter.com/en_us/company.html.

⁸ Tim Bradshaw, *Twitter's Quarterly Revenue Tops \$1B for First Time*, *Financial Times* (Feb. 5, 2020), at <https://www.ft.com/content/bc7c151e-48dc-11ea-aeb3-955839e06441>.

⁹ See *id.*

¹⁰ See, e.g., NASDAQ, *Twitter, Inc. Stock Report*, at <https://www.nasdaq.com/symbol/twtr/stock-report> (last visited on Feb. 6, 2020).

¹¹ Twitter, *Board of Directors*, at <https://investor.twitterinc.com/corporate-governance/board-of-directors>.

¹² Twitter, *Twitter Via SMS FAQs*, at <https://help.twitter.com/en/using-twitter/twitter-sms-faqs>; Selena Larson, *Welcome to a World with 280-Character Tweets*, *CNN.com* (Nov. 7, 2017), at <https://money.cnn.com/2017/11/07/technology/twitter-280-character-limit/>.

¹³ See *Twitter: Transparency and Accountability*, 115th Cong. (Sept. 5, 2018), Testimony of Jack Dorsey, Twitter Chief Executive Officer, before the U.S. House Comm. on Energy and Commerce at 2, at <https://docs.house.gov/meetings/IF/IF00/20180905/108642/HHRG-115-IF00-Wstate-DorseyJ-20180905.pdf> (“Dorsey Testimony”).

¹⁴ *Id.* at 6.

¹⁵ Twitter, *The Twitter Rules*, at <https://help.twitter.com/en/rules-and-policies/twitter-rules>.

¹⁶ Bridget Coyne, *Empowering Freedom of Expression for National Voter Registration Day* (Sept. 27, 2017), at https://blog.twitter.com/official/en_us/topics/events/2017/national-voter-reg-day-2017.html.

¹⁷ Twitter, *Our Values*, at https://about.twitter.com/en_us/values.html.

¹⁸ Doug Gross, *5 Ways Twitter Changed How We Communicate*, *CNN* (Mar. 21, 2011), at <http://www.cnn.com/2011/TECH/social.media/03/21/twitter.birthday.communication/index.html>.

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has given voice to groups long hidden on the political periphery [like] the Tea Party movement.”¹⁹

To further advance these ideals, Twitter “live-stream[s] congressional hearings and political events, providing the public access to important developments in our democracy.”²⁰ Twitter also has emphasized news content and is using algorithmically and human-curated timelines to feature “tweets from news organizations and users that are not news professionals . . . to make it easier for everyone to find relevant news and the surrounding conversation so they can stay informed about what matters to them.”²¹

Twitter’s commitment to the public discourse is enhanced by the rules it has established and enforces regarding acceptable speech and behavior on its platform. These rules “ensure all people can participate in the public conversation freely and safely,” and Twitter puts substantial effort into continually improving the health of the conversations it hosts.²² “[A]buse, malicious automation, and manipulation” are constant concerns for the company,²³ with “harassment, troll armies, manipulation through bots and human-coordination, misinformation campaigns, and increasingly divisive echo chambers” of particular concern.²⁴

As a result, Twitter has focused on “building a systemic framework to help encourage more healthy debate, conversations, and critical thinking”²⁵ and removing content that violates Twitter’s Rules and Terms of Service.²⁶ Twitter’s Terms of Service explain that:

We reserve the right to remove Content that violates the User Agreement,²⁷ including for example . . . harassment.

We may suspend or terminate your account or cease providing you with all or part of the Services at any time for any or no reason, including, but not limited to, if we reasonably believe: . . . you have violated these Terms or the Twitter Rules

¹⁹ Van Newkirk, *The American Idea in 140 Characters*, *The Atlantic* (Mar. 24, 2016), at <https://www.theatlantic.com/politics/archive/2016/03/twitter-politics-last-decade/475131/>.

²⁰ See Dorsey Testimony at 2.

²¹ Alex Kantrowitz, *Twitter Is Experimenting with a Way to Show You Even More Breaking News Tweets*, *BuzzFeed.News* (Mar. 15, 2018), at <https://www.buzzfeednews.com/article/alexkantrowitz/twitter-is-experimenting-with-a-way-to-show-you-even-more#.yqa44w9LKW>; see also Alex Eule, *Twitter’s Plan For Growth: Layoffs*, *Barrons.com* (Oct. 27, 2016), at <https://www.barrons.com/articles/twitters-plan-for-growth-layoffs-1477584370> (explaining that “much of the most relevant election news breaking [in 2016 is] on the [Twitter] service”).

²² See Del Harvey, *Serving Healthy Conversation* (May 15, 2018), at https://blog.twitter.com/official/en_us/topics/product/2018/Serving_Healthy_Conversation.html.

²³ Dorsey Testimony at 1.

²⁴ <https://twitter.com/jack/status/969234279321419776>.

²⁵ <https://twitter.com/jack/status/969234281653460992>.

²⁶ See Dorsey Testimony at 2; see also Twitter, *Twitter Terms of Service*, at <https://twitter.com/en/tos#update>; Twitter, *The Twitter Rules*.

²⁷ The User Agreement consists of Twitter’s Terms of Service, Privacy Policy, and the Twitter Rules and Policies. See Twitter, *Twitter Terms of Service*.

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or . . . our provision of the Services to you is no longer commercially viable.²⁸

Twitter's Rules provide that:

Abuse/harassment: You may not engage in the targeted harassment of someone, or incite other people to do so. This includes wishing or hoping that someone experiences physical harm. . . .

Hateful conduct: You may not promote violence against, threaten, or harass other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.²⁹

Twitter's Abusive Behavior guidelines further elaborate on what constitutes abuse or harassment under the Rules:

Abusive Behavior

Twitter Rules: You may not engage in the targeted harassment of someone, or incite other people to do so. We consider abusive behavior an attempt to harass, intimidate, or silence someone else's voice. . . .

We believe in freedom of expression and open dialogue, but that means little as an underlying philosophy if voices are silenced because people are afraid to speak up.

In order to facilitate healthy dialogue on the platform, and empower individuals to express diverse opinions and beliefs, we prohibit behavior that harasses or intimidates, or is otherwise intended to shame or degrade others. In addition to posing risks to people's safety, abusive behavior may also lead to physical and emotional hardship for those affected. . . .

We will review and take action against reports of accounts targeting an individual or group of people with any of the following behavior within Tweets or Direct Messages. . . .

Using aggressive insults with the purpose of harassing or intimidating others

We take action against excessively aggressive insults that target an individual, including content that contains slurs or similar language. . . .³⁰

Twitter's "Hateful Conduct Policy" provides that users "may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, caste,

²⁸ *Id.*

²⁹ Twitter, *The Twitter Rules*.

³⁰ Twitter, *Abusive Behavior*, at <https://help.twitter.com/en/rules-and-policies/abusive-behavior>.

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sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease. We also do not allow accounts whose primary purpose is inciting harm towards others on the basis of these categories.”³¹ The following are examples of the type of conduct that Twitter does not tolerate:

- Violent threats;
- Wishing, hoping or calling for serious harm on a person or group of people;
- References to mass murder, violent events, or specific means of violence where protected groups have been the primary targets or victims;
- Inciting fear about a protected category;
- Repeated and/or non-consensual slurs, epithets, racist and sexist tropes, or other content that degrades someone; and
- Hateful imagery.³²

Finally, Twitter advises users on the consequences of failing to comply with these policies, which include:

- Requiring the violator to remove the offending tweet before they can tweet again;
- Stopping conversations between a reported violator and the reporter’s account;
- Placing an account in read-only mode;
- Asking the user to verify account ownership with a phone number or email address; and
- Permanently suspending an account.³³

Twitter has applied these criteria in numerous situations to temporarily or permanently ban users from its platform.³⁴ In making these determinations, however, Twitter CEO Jack Dorsey explained in sworn testimony before Congress that Twitter does not “consider political viewpoints, perspectives, or party affiliation in any of our policies or enforcement decisions,

³¹ Twitter, *Hateful Conduct Policy*, at <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>.

³² *Id.*

³³ Twitter, *Our Range of Enforcement Options*, at <https://help.twitter.com/en/rules-and-policies/enforcement-options>.

³⁴ See, e.g., Daisy Naylor, *Famous People Who Have Been Banned from Twitter*, The Hook, at <http://thehookmag.com/2017/01/famous-people-banned-twitter-119081/>; *Twitter Suspensions*, Wikipedia, at https://en.wikipedia.org/wiki/Twitter_suspensions.

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period.”³⁵ Indeed, the very “purpose of Twitter is to serve the public conversation, and [the company] does not make value judgments based on personal beliefs.”³⁶

Twitter’s commitment to improving the health of the conversations it hosts is critical to its business. “Marketers are mindful of the backlash they can face on social media when customers feel they advertised in offensive content.”³⁷ Major online advertisers – “the main source of revenue for the company”³⁸ – have insisted that “tech companies . . . do more to minimize divisive content on their platforms.”³⁹ “Brand safety,” in particular, “has been top of mind,” and hundreds of advertisers have discontinued their advertising when it was “running next to objectionable content that promoted racism” or other controversial material.⁴⁰ For example, Unilever – which spent \$2.4 billion in 2017 for online marketing of its brands like Lipton tea, Dove soap, Axe body spray and Ben & Jerry’s ice cream – has “called on Silicon Valley . . . to better police . . . a toxic online environment where propaganda, hate speech and disturbing content” exists.⁴¹ In fact, Unilever has indicated that it will only work with companies like Google and Twitter if they “promise to boost more ‘responsible content’” and “improve consumer ad experiences.”⁴² Procter & Gamble has similarly expressed to Twitter and others that it “simply will not accept or take the chance that [its] ads are associated with violence, bigotry or hate.”⁴³ The company, “which spends billions of dollars every year marketing

³⁵ *Twitter: Transparency and Accountability*, 115th Cong. (Sept. 5, 2018), Transcript of Proceedings before the U.S. House Comm. on Energy and Commerce, at <https://docs.house.gov/meetings/IF/IF00/20180905/108642/HHRG-115-IF00-Transcript-20180905.pdf> (“Hearing Transcript”), lines 238-241.

³⁶ Dorsey Testimony at 11.

³⁷ Suzanne Vranica, ‘Shooting,’ ‘Bomb,’ ‘Trump’: Advertisers Blacklist News Stories Online, Wall St. Journal (Aug. 15, 2019), at <https://www.wsj.com/articles/advertisers-blacklist-hard-news-including-trump-fearing-backlash-11565879086?mod=searchresults&page=1&pos=2>.

³⁸ Craig Timberg and Elizabeth Dwoskin, *Twitter Is Sweeping Out Fake Accounts Like Never Before, Putting User Growth at Risk*; Trefis Team, *Twitter’s Monetization Issues Don’t Appear To Be Going Away*, Forbes.com (June 30, 2017), at <https://www.forbes.com/sites/greatspeculations/2017/06/30/twitters-monetization-issues-dont-appear-to-be-going-away/#3cdcf507835>.

³⁹ Hamza Shaban, *Giant Advertiser Unilever Threatens to Pull Its Ads from Facebook and Google over ‘Toxic Content’* (Feb. 12, 2018), at <http://www.latimes.com/business/technology/la-fi-tn-unilever-ads-google-facebook-20180212-story.html>.

⁴⁰ Lauren Johnson, *Facebook Is Making Its Biggest Play to Improve Brand Safety, But Is It Enough to Gain Marketers’ Trust?*, Ad Week (Sept. 13, 2017), at <https://www.adweek.com/digital/facebook-is-making-its-biggest-play-to-improve-brand-safety-but-is-it-enough-to-gain-marketers-trust/>; see also Gareth Sloane, *Twitter Begins Purging Offensive Tweets, Is Testing a Mute Button*, Ad Age (Apr. 16, 2019), at <https://adage.com/article/digital/twitter-begins-purging-offensive-tweets-testing-mute-button/2165076> (explaining that “Advertisers are concerned about the Twitter environment, because brands don’t want to appear on the same screen as offensive messages”).

⁴¹ Hamza Shaban, *Giant Advertiser Unilever Threatens to Pull Its Ads from Facebook and Google over ‘Toxic Content’*.

⁴² *Id.*

⁴³ Barrett Brunsman, *P&G to YouTube: Don’t Pair Our Ads with Terrorist Propaganda – or Cat Videos*, Cincinnati Business Courier (Sept. 25, 2017), at <https://www.bizjournals.com/cincinnati/news/2017/09/25/p-g-to-youtube-don-t-pair-our-ads-with-terrorist.html>. Companies like Prudential, Coca-Cola, Wal-Mart Stores Inc., Starbucks Corp. and General Motors Co. also have suspended their online advertising where, among other things, their ads appeared with racist and anti-Semitic content. See Jack Nicas, *Google’s YouTube Has Continued Showing Brands’ Ads With Racist and Other Objectionable Videos*, Wall Street Journal (Mar. 24, 2017), at

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products from paper towels to shampoo, [stated that it] would move its money to services that [are not only] completely free of offensive content,”⁴⁴ but that “have more civility when it comes to editorial content, so [that] we have a civil internet.”⁴⁵

Commentators have noted that – prior to taking recent steps to curb abusive practices – “Twitter had been weathering harsh criticism for years for its hands-off approach to digital abuse and harassment on its service.”⁴⁶ Of particular relevance here, critics have directed some of this scrutiny at Twitter, specifically mentioning Ms. Loomer – among others – as vectors for anti-Islamic content on the platform.⁴⁷ Analysts have also attributed prior stock declines to this perception, which they believed was hampering the company’s long term financial prospects.⁴⁸ Since focusing on healthy conversations and combating abuse, Twitter’s audience has grown substantially, and analysts have noted increases in revenue and profits.⁴⁹

II. Background on Laura Loomer

Laura Loomer is a self-described “Guerrilla journalist”⁵⁰ who has – in the words of others – a lengthy history of using “technology platforms for sharing hate speech targeting Muslims”⁵¹ and “assist[ing] Islamophobic hate organizations.”⁵² In their 2019 report on online Islamophobia, the Social Science Research Council called Ms. Loomer a leader in “posting anti-Muslim/xenophobic content” and an “*agent provocateur* who specializes in staging media events

<https://www.wsj.com/articles/googles-youtube-has-continued-showing-brands-ads-with-racist-and-other-objectionable-videos-1490380551>; *Firms Withdraw BNP Facebook Ads*, BBC.com (Aug. 3, 2007), at http://news.bbc.co.uk/2/hi/uk_news/politics/6929161.stm.

⁴⁴ Gerrit de Vynck, *Procter & Gamble Puts Digital Ad Platforms Like Facebook and Google on Notice*, Los Angeles Times (Apr. 11, 2019), at <https://www.latimes.com/business/la-fi-pg-digital-ads-facebook-google-20190411-story.html>.

⁴⁵ Julia Boorstin, *If Facebook and Google Don’t Fix Their Problems, Advertising Execs Say They Could Go Somewhere Else*, CNBC.com (June 21, 2019), at <https://www.cnbc.com/2019/06/21/facebook-and-google-face-scrutiny-from-ad-execs-at-cannes.html>.

⁴⁶ Chriss Street, *Why Disney Passed on Buying Twitter*, Breitbart.com (Oct. 21, 2016), at <https://www.breitbart.com/california/2016/10/21/disney-passed-buying-twitter/>.

⁴⁷ Craig Timberg, *Twitter Fueled Attacks on Muslim Candidates in 2018, Study Finds*, Washington Post (Nov. 4, 2019), at https://www.washingtonpost.com/business/economy/twitter-fueled-attacks-on-muslim-candidates-in-2018-study-finds/2019/11/04/be0bf432-ff51-11e9-9518-1e76abc088b6_story.html.

⁴⁸ Timothy Green, *Why Twitter Stock Dropped 22% in October*, The Motley Fool (Nov. 8, 2016), at <https://www.fool.com/investing/2016/11/08/why-twitter-stock-dropped-22-in-october.aspx>; see also Suzanne Vranica, *Facebook and Google Face Emboldened Antagonists: Big Advertisers*, Wall Street Journal (Mar. 25, 2018), at <https://www.wsj.com/articles/facebook-and-google-face-emboldened-antagonists-big-advertisers-1521998394> (explaining that advertisers are watching the impact that various problems with online networks will have on consumer use of the platforms).

⁴⁹ Seth Fiegerman, *Twitter’s Audience Is Growing Again As It Works to Combat Abuse*, CNN.com (Apr. 23, 2019), available at <https://www.cnn.com/2019/04/23/tech/twitter-q1-earnings/index.html>.

⁵⁰ Ryan Holiday, *How Laura Loomer, Alt-Right ‘Guerrilla Journalist,’ Plays the Media*, The Observer (July 7, 2017).

⁵¹ Bridge Initiative Team, *Factsheet: Laura Loomer* (Oct. 31, 2019), at <https://bridge.georgetown.edu/research/factsheet-laura-loomer/>.

⁵² Tiana Lowe, *Laura Loomer May Be a Laughing Stock, But It’s Pretty Unfunny When Republicans Back Her*, Washington Examiner (Aug. 6, 2019).

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and leveraging them on Twitter.”⁵³ Other publications describe Ms. Loomer as a “purveyor of falsehoods,”⁵⁴ a “conspiracy theorist,”⁵⁵ an “anti-Muslim activist,”⁵⁶ and an “up-and-coming A lister on the Islamophobia circuit.”⁵⁷

On Twitter, Ms. Loomer readily admits to engaging in “the trolling of the left”⁵⁸ and is called the “Queen of the Trolls” for her ability to shape anti-Muslim online narratives.⁵⁹ Ms. Loomer also has a reputation for “consistently misidentifying suspects during breaking news events and, during the midterm elections, spreading hoaxes about voter fraud.”⁶⁰

Beyond her “vicious rhetoric against Muslim-Americans” and journalistic errors, Ms. Loomer has engaged in numerous, legally questionable, “attention-seeking stunts.”⁶¹ For example, on Election Day 2016, Ms. Loomer “appeared at a polling station wearing a burqa and asked for a ballot under the name Huma Abedin.”⁶² In 2017, Ms. Loomer stormed the stage at a production of *Julius Caesar* in New York’s Central Park,⁶³ exclaiming that the actors “are ISIS! CNN is ISIS!”⁶⁴ The New York Police Department subsequently arrested Ms. Loomer and

⁵³ Lawrence Pintak *et al.*, *#Islamophobia: Stoking Fear and Prejudice in the 2018 Midterms*, at 29 (2019), at https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/islamophobia-2018-midterms-ssrc.pdf.

⁵⁴ Jane Lytvynenko, *Laura Loomer Was Banned From Twitter After Spreading Anti-Muslim Falsehoods About Ilhan Omar*, BuzzFeedNews.com (Nov. 22, 2018), at <https://www.buzzfeednews.com/article/janelytvynenko/laura-loomer-banned-twitter>.

⁵⁵ Matthew Stolle, *Conspiracy Theorist Laura Loomer Visit Leaves Muslims in Quandary*.

⁵⁶ Tiana Lowe, *Laura Loomer May Be a Laughing Stock, But It’s Pretty Unfunny When Republicans Back Her*.

⁵⁷ Matthew Stolle, *Conspiracy Theorist Laura Loomer Visit Leaves Muslims in Quandary*; see also Miami New Times Staff, *Dirty Dozen 2019: Miami’s Most Dastardly Scoundrels*, Miami New Times (Dec. 24, 2019), at <https://www.miaminewtimes.com/news/miamis-worst-people-of-2019-laura-loomer-joe-carollo-hassan-whiteside-ghislaine-maxwell-11370410> (describing Ms. Loomer as “a devout Islamophobe with a pathetic martyr complex[whose] greatest achievements consist of being kicked off tech platforms for undiluted bigotry”).

⁵⁸ Ryan Holiday, *How Laura Loomer, Alt-Right ‘Guerrilla Journalist,’ Plays the Media*.

⁵⁹ Craig Timberg, *Twitter Fueled Attacks on Muslim Candidates in 2018, Study Finds*, Washington Post (Nov. 4, 2019); see also Emily Birnbaum, *Facebook Bans Milo Yiannopoulos, Alex Jones, Other ‘Dangerous’ Figures*, The Hill (May 2, 2019), at <https://thehill.com/policy/technology/441854-facebook-bans-dangerous-figures-including-milo-yiannopoulos-and-alex-jones> (explaining that Ms. Loomer referred to Islam as a “cancer on humanity”).

⁶⁰ Bijan Stephen, *The Provocateur Who Went Out into the Cold*, The Verge (Feb. 22, 2019), at <https://www.theverge.com/2019/2/22/18236819/laura-loomer-twitter-protest-ban-conservative-censorship> (brackets omitted).

⁶¹ Will Sommer, *Anti-Muslim Activist Laura Loomer to Run for Congress*, Daily Beast (Aug. 2, 2019), at <https://www.thedailybeast.com/anti-muslim-activist-laura-loomer-to-run-for-congress>.

⁶² Andrew Marantz, *Behind the Scenes with the Right-Wing Activist Who Crashed ‘Julius Caesar,’* The New Yorker (June 20, 2017), at <https://www.newyorker.com/news/news-desk/behind-the-scenes-with-the-right-wing-activist-who-crashed-julius-caesar-laura-loomer>.

⁶³ Amy Wang, *Pro-Trump Protester Arrested After Rushing Stage at Controversial ‘Julius Caesar’ Production in New York*, Washington Post (June 17, 2017), at <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/06/17/pro-trump-protester-arrested-after-rushing-stage-at-controversial-julius-caesar-play-in-new-york/>.

⁶⁴ Andrew Marantz, *Behind the Scenes with the Right-Wing Activist Who Crashed ‘Julius Caesar.’*

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charged her with disorderly conduct and trespassing.⁶⁵ And in 2018, a federal judge also banned Ms. Loomer from the Orlando nightclub shooting trial after she harassed the defendant's family, "asking repeatedly if jihad meant . . . Islamic terrorism while 'sticking her phone' in their faces."⁶⁶

During that same year, Ms. Loomer interrupted Twitter CEO Jack Dorsey's testimony before Congress⁶⁷ and also handcuffed herself to Twitter's New York City headquarters.⁶⁸ Shortly thereafter, in 2019 Ms. Loomer went to Mr. Dorsey's home and, at night, used a projector to turn the wall of his home into her "own social media wall."⁶⁹

These and other actions have resulted in Ms. Loomer being banned – in her words – from "everywhere,"⁷⁰ including "on every single social media platform and major payment processor in the world."⁷¹ Indeed, Ms. Loomer "has been banned not only by big global [businesses] including PayPal and Uber but also by [the Conservative Political Action Conference] for publicly harassing journalists and Muslim Lyft drivers."⁷² Others that have banned Ms. Loomer include Lyft, GoFundMe, Venmo, TeeSpring, Medium, Periscope, Facebook, Instagram, MGM Resorts, and Uber Eats.⁷³

Uber and Lyft, in particular, banned Ms. Loomer "after a series of anti-Muslim tweets aimed at Muslim drivers in 2017 following a terrorist attack in New York"⁷⁴ As one website recounted those Tweets:

⁶⁵ *Id.*

⁶⁶ Luke Barnes, *Far-right Conspiracy Theorist Kicked Out of Pulse Nightclub Shooting Trial*, Think Progress (Mar. 29, 2018), at <https://thinkprogress.org/far-right-conspiracy-theorist-kicked-out-of-pulse-trial-fa87c848def4/>.

⁶⁷ Emily Stewart, *Far-right Protester Interrupts Dorsey Hearing*, Vox (Sept. 5, 2018), at <https://www.vox.com/2018/9/5/17824430/laura-loomer-billy-long-auctioneer-jack-dorsey>.

⁶⁸ Doha Madani and Shoshana Wodinsky, *Far-right Activist Laura Loomer Handcuffed Herself to Twitter's NYC Building; Police Removed Her*, NBC News (Nov. 29, 2018), at <https://www.nbcnews.com/news/us-news/far-right-activist-laura-loomer-handcuffs-herself-twitter-s-new-n941891>.

⁶⁹ Laura Loomer, *Laura Loomer Brings Banned Conservatives To Twitter CEO Jack Dorsey's House, Makes His Wall Her Own Social Media Wall*, Loomered.com (May 8, 2019), at <https://loomered.com/2019/05/08/laura-loomer-brings-banned-conservatives-to-twitter-ceo-jack-dorseys-house-makes-his-garage-door-her-own-social-media-wall/>.

⁷⁰ Christina Zhao, *PayPal Bans Pro-Trump, Far-Right Activist Laura Loomer*, Newsweek (Feb. 5, 2019), at <https://www.newsweek.com/paypal-bans-pro-trump-anti-muslim-fanatic-laura-loomer-1319563>.

⁷¹ Laura Loomer, *I Am Now The Most Banned Woman In The World*, Loomered.com (May 2, 2019), at <https://loomered.com/2019/05/02/i-am-now-the-most-banned-woman-in-the-world/>.

⁷² Tiana Lowe, *Laura Loomer May Be a Laughing Stock, But It's Pretty Unfunny When Republicans Back Her*, Washington Examiner (Aug. 6, 2019).

⁷³ Christina Zhao, *PayPal Bans Pro-Trump, Far-Right Activist Laura Loomer*; Will Sommer, *Anti-Muslim Activist Laura Loomer to Run for Congress*; Laura Loomer, *I Am Now The Most Banned Woman In The World*; Brad Slager, *Right-Wing Firebrand Laura Loomer Declares Her Congressional Campaign in Florida*, Sunshine State News (Aug. 5, 2019), at <http://www.sunshinestatenews.com/story/right-wing-firebrand-laura-loomer-has-declares-her-congressional-campaign-florida>.

⁷⁴ Will Sommer, *Twitter Bans Far-Right Activist Laura Loomer*, Daily Beast (Nov. 21, 2018), at <https://www.thedailybeast.com/twitter-bans-far-right-activist-laura-loomer>.

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Loomer began by identifying herself as a “Proud Islamophobe” and labeling Muslims “savages” who “ruin everything”:

Then let me be the first to say I never want another Muslim entering this country EVER AGAIN! #ProudIslamophobe <https://t.co/1ULHhhorYn>
— Laura Loomer (@LauraLoomer) October 31, 2017

Leave it to Muslims to ruin everything. People can't even enjoy #Halloween without those savages f**king everything up for everyone. <https://t.co/KNRwUM7EJk>
— Laura Loomer (@LauraLoomer) October 31, 2017

She later stated that “Islam is cancer” and “we should never let another Muslim into the civilized world”:

How many more people need to die before everyone agrees that Islam is cancer & we should never let another Muslim into the civilized world?
— Laura Loomer (@LauraLoomer) October 31, 2017

Loomer then declared there is “no such thing as a moderate Muslim. They’re ALL the same”:

There’s no such thing as a moderate Muslim. They’re ALL the same. It’s time for us to accept this reality. I refuse to watch more ppl die.
— Laura Loomer (@LauraLoomer) October 31, 2017

Loomer later lashed out at The New York Times for sending a hijab-wearing reporter to cover the attack:

.@nytimes sent a female Muslim hijab wearing reporter to cover #ISIS terror attack in NYC. I asked her to disavow, she laughed & refused!
— Laura Loomer (@LauraLoomer) November 1, 2017

Loomer claimed that Muslims “deserve” anti-Muslim sentiments in the wake of the attack, urging people to “bring it on”:

They deserve it. Maybe when they all decide to condemn Islamic terror I might feel bad for them, but for now, bring it on. #BanIslam
<https://t.co/WHwdxkZqwK>
— Laura Loomer (@LauraLoomer) November 1, 2017

When news reports revealed that the attacker worked as a driver for Uber, Loomer suggested making a Muslim-free alternative to the ride-sharing service so she never has to “support another Islamic immigrant driver”:

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Someone needs to create a non Islamic form of @uber or @lyft because I never want to support another Islamic immigrant driver.

— Laura Loomer (@LauraLoomer) November 1, 2017

Loomer then revealed that she generally tries “not support Muslim owned businesses companies” in New York and complained that immigration policies make that mission difficult:

I generally try to not support Muslim owned businesses companies here in NY. That shouldn't be hard to do in US, but w/ immigration it is.
<https://t.co/6wySEQQWkR>

— Laura Loomer (@LauraLoomer) November 1, 2017⁷⁵

Ms. Loomer also “posted a photo of two women wearing hijabs near the intersection where [the attack] occurred, writing ‘I bet they’re loving this.’”⁷⁶ Response to these allegations from the Twitter community “was swift and vocal, with many critics accusing the online agitator of stoking racism in the wake of a tragedy.”⁷⁷

Ms. Loomer’s attacks on members of the Islamic faith continued into 2018 when she tweeted out a series of messages that – over the course of the year – resulted in her permanent ban from Twitter. Those tweets follow:

⁷⁵ Jared Holt, *Laura Loomer Goes Ballistic In Anti-Muslim Twitter Meltdown*, Right Wing Watch (Nov. 1, 2017), at <https://www.rightwingwatch.org/post/laura-loomer-goes-ballistic-in-anti-muslim-twitter-meltdown/>.

⁷⁶ Chelsea Bailey, *Laura Loomer Banned from Uber & Lyft After Anti-Muslim Tweetstorm*, NBC News (Nov. 2, 2017), at <https://www.nbcnews.com/news/us-news/laura-loomer-banned-uber-lyft-after-anti-muslim-tweetstorm-n816911>.

⁷⁷ *Id.*

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Feb 2018:

- Tweet 1: @PastorKelly822 **NO. Coming into the western world illegally and spreading Islam like AIDS and refusing to assimilate and raping our women is “not right”**
- Tweet 2: @Sheriff_LVMPD @Uber @LVMPD **I have a better idea. How about @Uber spies on its own I\$lamic drivers whoa re *literally* raping and killing female Uber passengers everyday? Uber is a disaster.**
- Tweet 3: @NYCMayor @Uber @Lyft I had to walk 6 blocks because a Muslim driver didn't like that I'm a Jewish woman. Rebecca Dykes was strangled, raped & murdered this month by a Muslim #Uber driver because he thought her skirt was too short. Uber is endangering women & @NYCMayor has a duty to protect us.
- Tweet 4: Given that New Years in #LasVegas has been categorized by @DHSgov as a bigger target for an Islamic terrorist attack this year, and given @Uber's record of employing Islamic terrorists and rapists, I don't think this is a good idea.
- Tweet 5: .@lyft is just as bad as @Uber. A few months ago, a Muslim #Lyft driver raped a 23 yr old female passenger in Indiana. Lyft never said anything about it. Just like #Uber, Lyft allows their drivers to abuse women without punishment But, they did ban me over some “mean tweets”
- Tweet 6: @Aye_Dionne No. I asked you to google a woman who was raped and murdered by a Muslim @Uber driver who said he killed her because “her skirt was too short”. Uber didn't say a word. And Lebanon told its citizens to not use “dangerous Uber”. I rest my case...
- Tweet 7: Thank you! I'm glad I'm making a difference. And now you have a less likely changed of getting raped or run over by an Islamic immigrant @Uber driver. Others would be wise to follow your lead.

Oct 2018:

- That's Linda Sarsour hijacking a vigil for the innocent Jews who were killed yesterday. Linda is so vile. She is a Jihadi and I hope she goes to jail soon for conspiring with terrorists. She called for Jihad. Jihad= war against non Muslims. Non Muslim = Jews, Christians <https://t.co/8LKFee6dDB>

Nov 2018:

- Isn't it ironic how the twitter moment used to celebrate "women, LGBTQ, and minorities" is a picture of Ilhan Omar? 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. <https://t.co/wDXAQSmSNZ>

When Twitter terminated her account, Ms. Loomer responded that she had "outed that Jew hater Ilhan Omar months before everyone else did, and for calling out a pro-terror member of Congress, I lost my Twitter account forever."⁷⁸

This is Loomer's third legal action against Twitter regarding her suspension. She has lost the previous two actions. In 2019, a federal court dismissed Ms. Loomer's antitrust and First Amendment claims against Google, Facebook, Twitter, and Apple, in which she challenged, *inter alia*, Twitter's suspension of her account.⁷⁹ Following that loss, Ms. Loomer brought another suit against Twitter and a third party seeking to reinstate her account. After Ms. Loomer voluntarily dismissed her claims against Twitter, the judge dismissed the remainder of her claims, labelling parts of her arguments "nonsensical."⁸⁰

On August 2, 2019 – i.e., eight months after her Twitter ban – Ms. Loomer announced that she was running for Congress.⁸¹ This action followed.

THE LAW

As a general statutory matter, corporations are prohibited from making a "contribution" and are otherwise regulated when making an "expenditure" in connection with a federal election.⁸² In relevant part, the term "contribution" is defined as "anything of value made by any person *for the purpose of influencing any election* for Federal office."⁸³ Similarly, the term "expenditure" means "anything of value, made by any person *for the purpose of influencing any election* for Federal office."⁸⁴

A corporate "expenditure" that is coordinated with a candidate may also be regulated as a prohibited "contribution." Specifically, federal law "provides that an expenditure made by any person 'in cooperation, consultation, or concert, with, or at the request or suggestion of, a

⁷⁸ Laura Loomer, *I Am Now the Most Banned Woman in the World*.

⁷⁹ *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d 30 (D.D.C. 2019).

⁸⁰ *Illuminate Media, Inc. v. CAIR Foundation*, Case No. 19-CV-81179, at *5 (Order of Nov. 19, 2019), available at https://d3n8a8pro7vhmx.cloudfront.net/cairhq/pages/1125/attachments/original/1574263282/S.D. Fla. 19-cv-81179_dckt_000033_000_filed_2019-11-19.pdf?1574263282.

⁸¹ Laura Loomer, *Statement of Candidacy* (Aug. 2, 2019), at <https://docquery.fec.gov/cgi-bin/forms/H0FL21078/1346765/>; Jessica Campisi, *Far-Right Activist Laura Loomer Announces 2020 Congressional Bid*, The Hill (Aug. 2, 2019), at <https://thehill.com/homenews/house/456024-far-right-activist-laura-loomer-announces-2020-congressional-bid>.

⁸² 52 U.S.C. § 30118.

⁸³ *Id.* § 30101(8)(A) (emphasis added).

⁸⁴ *Id.* § 30101(9)(A) (emphasis added).

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candidate, his authorized political committees or their agents' constitutes an in-kind contribution" to that candidate.⁸⁵

The terms "contribution" and "expenditure" both contain an exemption for "any news story, commentary, [or] editorial."⁸⁶ In particular, this media exemption applies when an entity engaging in an activity is: (a) a media entity; (b) not owned or controlled by a political party, political committee, or candidate; and (c) is acting as a media entity when conducting its activities.⁸⁷

DISCUSSION

I. Twitter Did Not Make a Corporate Contribution or Expenditure.

Count I of the complaint alleges that Twitter made a prohibited corporate contribution to Ms. Loomer's opponents – though she had none because she was not then a candidate for any office – when the company banned her from the platform.⁸⁸ This claim is without merit for numerous reasons, most notably that in order to be a regulated contribution or expenditure, an activity must be undertaken "for the purpose of influencing an election."⁸⁹ As both the courts and the Commission have made clear, activities undertaken for non-political reasons are not "for the purpose of influencing an election" and, therefore, do not qualify as a contribution or expenditure.⁹⁰

The Commission has long recognized that decisions made for business reasons are not to influence elections. For example, in Advisory Opinion 2012-28 (CTIA), the Commission held that a business "may decide, for commercial reasons, to [provide services to] some political committees and not others" based on "eligibility criteria [designed] to protect the commercial viability of the [business]."⁹¹ The Commission recently applied these general principles to conclude that Microsoft's commercially reasonable efforts "to protect its brand reputation" did

⁸⁵ First General Counsel's Report, Matters Under Review 7199, 7219, 7242 (Patrick Murphy), Nov. 2, 2017.

⁸⁶ See 52 U.S.C. § 30101(9)(B); 11 C.F.R. § 100.73.

⁸⁷ See FEC Adv. Op. 2016-01 (Ethiq); *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

⁸⁸ Compl. at 5-7.

⁸⁹ See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 80 (1976) (explaining that "the FECA regulates activity that is 'unambiguously related to the campaign of a particular federal candidate'").

⁹⁰ See, e.g., *Orloski v. FEC*, 795 F.2d 156, 160 (D.C. Cir. 1986); FEC Adv. Op. 2012-31 (AT&T) (finding no in-kind contribution where business's activity "reflects commercial considerations and does not reflect considerations outside of a business relationship"); FEC Adv. Op. 2012-22 (skimmerhat) (concluding that no contribution would result where company provided Internet services "on a commercial basis only" and where the company "has a vested commercial interest in seeking participation of users from all political parties and ideological backgrounds"); Factual & Legal Analysis in Matter Under Review 7163 (Citizens for Joe Miller) ("explaining that a thing of value given to a campaign is not a 'contribution' if it was not for the purpose of influencing an election"); Factual and Legal Analysis in MUR 6586 (World Wrestling Entertainment, Inc.) (finding no contribution where corporation's intent was to protect its business reputation).

⁹¹ See also FEC Adv. Op. 1994-30 (Conservative Concepts, Inc.) (explaining that activity that is undertaken "for genuinely commercial purposes," among other relevant considerations, would not be a contribution or expenditure).

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not amount to a prohibited in-kind contribution when the company provided election-sensitive customers with free account security services (e.g., cyber security training, technical support in tracking breaches and remedying them, etc.).⁹² The Commission cited Microsoft's concern that its brand reputation would be "at risk of experiencing severe and long-term damage" in the absence of the account security services.⁹³ In addition, the Commission has explained that a technology company "need not make its services available to [candidates] representing all political ideologies, but rather may establish objective business criteria to protect the commercial viability of its business without making contributions to the [candidates] that meet those criteria."⁹⁴

Commissioners and FEC staff have specifically recognized Twitter's authority to control content and access to its platform, stating that "Twitter controls the terms by which users may access the website," the company "maintains the right to restrict content on its website,"⁹⁵ and "Twitter maintains ownership interests in software . . . and retains the right to 'remove or refuse to distribute any content on its services, suspend or terminate users, and reclaim usernames.'"⁹⁶

Here, the decision to ban Ms. Loomer from the Twitter platform months before she even became a candidate had no connection to politics, let alone was an attempt to influence an election in which she was not then participating.⁹⁷ Instead, it was a business decision to prevent a Twitter user – who was intent on promoting hate speech in violation of Twitter's politically-neutral rules – from damaging the company's platform, reputation, and ultimately its brand and commercial business. Ms. Loomer persisted, for example, in repeatedly using anti-Islamic tropes that Muslims are coming to the United States, "refusing to assimilate and raping our women." Ms. Loomer also falsely accused a political activist of inciting "war against non Muslims" – i.e., "Jews[and] Christians." Given the criticism the company was receiving for allowing its platform to be used in such a manner – indeed, the Social Science Research Council repeatedly referred to *Ms. Loomer's* Twitter activity in its Islamophobia report – it was eminently reasonable for Twitter to take action and ban Ms. Loomer for business reasons. Thus, as a matter of fact and law, Twitter's ban of Ms. Loomer was not to influence the election of a then-nonexistent candidate and, therefore, did not result in a contribution or expenditure.

For that reason, the Commission need not examine Count I any further and should dismiss this claim. For the sake of completeness, however, we note that the Commission could also dismiss this claim for several other, equally compelling reasons.

⁹² FEC Adv. Op. 2018-11 (Microsoft).

⁹³ *Id.*

⁹⁴ FEC Adv. Op. 2017-06 (Stein and Gottlieb).

⁹⁵ Matter Under Review 6911 (Lois Frankel for Congress), Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Lee E. Goodman and Caroline C. Hunter (Apr. 12, 2016).

⁹⁶ FEC Adv. Op. 2017-05 (Great America PAC) (internal brackets omitted). Likewise, in the enforcement context, the Commission's Office of General Counsel has noted without disapproval that Twitter "maintains the right to restrict content on [its] website." First General Counsel's Report, MUR 6911 (Lois Frankel for Congress et al.), at 4 & n.14 (Sept. 3, 2015) (citing Twitter's Terms of Service). Similarly, OGC has referenced Twitters' reservation of its "right at all times . . . to remove or refuse to distribute any Content on the Services[and] to suspend or terminate users."

⁹⁷ See, e.g., *supra* at 14.

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First, Twitter qualifies for the so-called media exemption from federal campaign finance law. Grounded in First Amendment principles, the exemption excepts from regulation “any cost incurred in covering or carrying” news stories⁹⁸ and permits a media entity to choose between “competing claims of parties” and which content “to feature, investigate or address in news, editorial and opinion coverage.”⁹⁹

The Commission “has not limited the press exemption to traditional news outlets” and has applied it to “news stories, commentaries, and editorials *no matter in what medium they are published*,” [including] Internet Web sites and entities that distribute their content exclusively on the Internet,¹⁰⁰ as well as websites that curate news content.¹⁰¹ Given Twitter’s news-oriented nature,¹⁰² there is little question that Twitter qualifies as a media entity under federal campaign finance law. And decisions about what content to disseminate to Twitter users is at the very heart of the media function.¹⁰³

Moreover, Twitter cannot be compelled to provide a platform for speech to which the company objects. The guarantee of free speech “necessarily compris[es] the decision of both what to say and what not to say,”¹⁰⁴ and the First Amendment safeguards the “choice of material . . . [that]—whether fair or unfair—constitute[s] the exercise of editorial control and judgment.”¹⁰⁵ Thus, for example, a newspaper cannot be required to publish op-ed columns with which it disagrees or simply wishes to exclude.¹⁰⁶ Nor can private citizens organizing a parade on city streets be compelled “to include among the marchers a group imparting a message that the organizers do not wish to convey.”¹⁰⁷ While it is not necessary to reach these kinds of constitutional issues in order to resolve this matter, the Commission would be well served to construe its regulations to avoid infringing upon such fundamental freedoms.¹⁰⁸

Second, and as a technical legal matter, Twitter’s banning of Ms. Loomer would be a prohibited corporate contribution to Ms. Loomer’s opponents only if done “in cooperation,

⁹⁸ 11 C.F.R. § 100.73.

⁹⁹ Statement of Reasons of Commissioners Darryl R. Wold, Danny L. McDonald, David M. Mason, Karl J. Sandstrom, and Scott E. Thomas, Matters Under Review 4929, 5006, 5090, and 5117 (ABC, CBS, NBC, New York Times, Los Angeles Times, and Washington Post et al.) (Dec. 20, 2000).

¹⁰⁰ FEC Adv. Op. 2008-14 (Melothe); *see also id.* (explaining that the Commission “has also recognized the Internet as a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach”).

¹⁰¹ FEC Adv. Op. 2016-01; *see also* FEC Adv. Op. 2005-16 (Fired Up) (finding that a website qualified as a media entity where it was “viewable by the general public and akin to a periodical or news program distributed to the general public”).

¹⁰² *See supra* at 4.

¹⁰³ *See* FEC Adv. Op. 2016-01.

¹⁰⁴ *Riley v. Nat’l Fed’n of the Blind of N.C.*, 487 U.S. 781, 796-797 (1988).

¹⁰⁵ *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp.*, 515 U.S. 557, 575 (1995).

¹⁰⁶ *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

¹⁰⁷ *Hurley*, 515 U.S. at 559.

¹⁰⁸ *See AFL-CIO v. FEC*, 333 F.3d 168, 175 (D.C. Cir. 2003) (noting the Commission’s prior failure, under the doctrine of constitutional avoidance, to “tailor its [regulations] to avoid unnecessarily infringing upon First Amendment rights”); *see also Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) (explaining that “where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress”).

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consultation, or concert, with, or at the request or suggestion of, a candidate, [a candidate's] authorized political committee[] or [its] agents.”¹⁰⁹ The decision to ban Ms. Loomer was not undertaken at the suggestion of, after any, let alone substantial, discussions with, or with the material involvement of her opponents, as required by the Commission's regulations.¹¹⁰ Indeed, and as Loomer admits, the decision was made months before Ms. Loomer ever became a federal candidate.¹¹¹ The complaint does not allege, nor could it, that any such conduct – much less actual “coordination” – occurred.

Third, because Twitter's services are offered for free, and the definitions of contribution and expenditure are predicated on providing something of value, a denial of free services to Ms. Loomer cannot result in Twitter making a regulated contribution or expenditure subject to sanction under federal campaign finance law.¹¹²

II. The FCC's Equal-Time Rule – Which Is Outside the FEC's Jurisdiction – Applies to Broadcasters, Not Twitter.

Count II of the complaint alleges that Twitter failed to provide “equal access” to Ms. Loomer under the Equal Time requirements of the Communication Act.¹¹³ This claim is frivolous. First, the FEC clearly has no jurisdiction over alleged violations of the Communications Act.¹¹⁴ Second, the “Equal Time Rule” applies only to candidate uses of radio and television “broadcasting station[s].”¹¹⁵ On its face, it does not apply to an online platform like Twitter.

III. The Communications Decency Act Immunizes Twitter from Liability.

Notwithstanding the foregoing, Twitter's decision to ban Ms. Loomer from the platform is immune from liability pursuant to 47 U.S.C. § 230(c) of the Communications Decency Act (“CDA”), which provides as follows:

(c) Protection for “Good Samaritan” blocking and screening of offensive material

¹⁰⁹ See *supra* at 14-15.

¹¹⁰ See 11 C.F.R. § 109.21(d).

¹¹¹ See *supra* at 14.

¹¹² Cf. Matter Under Review 6911 (Lois Frankel for Congress), Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Lee E. Goodman and Caroline C. Hunter (Apr. 12, 2016) (noting that “Twitter is a free service that does not charge users to create accounts, display profiles, or send tweets”); see also First General Counsel's Report, MUR 6911 (Lois Frankel for Congress et al.), at 3 (Sept. 3, 2015) (noting same).

¹¹³ Compl. at 7-8.

¹¹⁴ See 52 U.S.C. § 30109 (limiting the FEC's enforcement jurisdiction to FECA matters and those involving presidential matching funds). Indeed, the only relief mechanism is through a complaint filed with the Federal Communications Commission. See *Forbes v. Arkansas Educ. Television Comm'n Network Found.*, 22 F.3d 1423, 1427 (8th Cir. 1994) (stating that the “proper course of action is to bring [a] claim before the Federal Communications Commission”); *Schneller v. WCAU Channel 10*, 413 F. App'x 424, 426 (3d Cir. 2011) (collecting authority).

¹¹⁵ 47 U.S.C. §§ 153(6), 307(a).

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(1) Treatment of publisher or speaker

No 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.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material [provided by another information content provider].

Section 230(c)(1) of the CDA bars legal action “seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content” created by third parties.¹¹⁶ Courts have consistently recognized that this grant of immunity is broad and applies to a wide array of claims and legal theories.¹¹⁷ As the Ninth Circuit has explained, “any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230.”¹¹⁸ Indeed, within the past few months, one federal court has already ruled against Ms. Loomer under the CDA, finding that Twitter cannot “be held liable for its decision to exercise traditional editorial functions, such as moderating [Ms.’ Loomer’s] content on its platform.”¹¹⁹

To trigger immunity, three elements must be satisfied: (1) the defendant must be a provider of an “interactive computer service;” (2) the challenged communication must be “provided by another information content provider;” and (3) “the asserted claims must treat the defendant as a publisher [of that] information.”¹²⁰ Each of these criteria are met here.

¹¹⁶ *Barrett v. Rosenthal*, 40 Cal.4th 33, 43 (2006) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997)).

¹¹⁷ See, e.g., *Jefferson v. Zuckerberg*, Civ. A. No. 17-3299, 2018 WL 3241343, at *4 (D. Md. July 3, 2018) (“CDA immunity is broad and must be determined at ‘the earliest possible stage of the case.’”).

¹¹⁸ *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1170-1171 (9th Cir. 2008) (en banc) (emphasis added).

¹¹⁹ *Illoominate Media, Inc.*, Case No. 19-CV-81179, at *5; see also *Mezey v. Twitter, Inc.*, Case No. 1:18-cv-21069, 2018 WL 5306769, at *1 (S.D. Fla. July 19, 2018) (concluding same as to another banned Twitter user).

¹²⁰ *Maynard v. Snapchat, Inc.*, 346 Ga. App. 131, 134 (2018).

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First, Twitter is an “Interactive Computer Service” within the meaning of the statute.¹²¹ *Second*, the information at issue is a communication provided by another information content provider – i.e., Ms. Loomer’s complaint involves Tweets that she, not Twitter, posted. *Third*, Ms. Loomer’s complaint challenges Twitter’s decision to remove content and, thus, impermissibly seeks to impose liability on Twitter for performing “a publisher’s traditional editorial functions.”¹²²

In applying this third criterion, and as noted above, courts have recognized that CDA immunity attaches to a wide range of activities, including “reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content.”¹²³ Thus, it is well-established that the removal of content and decisions about what content to include or block are inextricably bound up in the role of publisher and is thus “publisher conduct immunized by the CDA.”¹²⁴ Courts have even concluded that “providing accounts . . . is publishing activity” subject to CDA immunity.¹²⁵ Put simply, “removing content is something publishers do,” and imposing liability on the basis of this conduct “necessarily involves treating” the platform as a publisher, triggering immunity.¹²⁶

In addition, section (c)(2) of the CDA “presumptively immunizes an online provider’s termination of user accounts” and “wipes out most user claims against online providers for account termination because the online provider can argue that the termination was intended to

¹²¹ See, e.g., *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1166, 1121 (N.D. Cal. 2016) (noting that no party “dispute[s] that Twitter is an interactive computer service provider”); *Frenken v. Hunter*, 2018 WL 1964893, at *2 (N.D. Cal. Apr. 26, 2018) (same). Courts have stated that “the prototypical service qualifying for this statutory immunity is an online messaging board . . . on which Internet subscribers post comments and respond to comments posted by others.” *Jefferson v. Zuckerberg*, 2018 WL 3241343, at *5. Interactive service providers do not become information content providers ineligible for immunity “merely by virtue of reviewing the contents” of accounts and making decisions about removal. *Caraccioli v. Facebook, Inc.*, 700 F. App’x 588, 590 (9th Cir. 2017).

¹²² *Barrett*, 40 Cal. 4th at 43.

¹²³ *Barnes*, 570 F. 3d at 1102 (noting that “it is immaterial whether this decision comes in the form of deciding what to publish in the first place or what to remove among the published material”); *Joseph v. Amazon.com, Inc.*, 46 F. Supp. 3d 1095, 1106 (W.D. Wash. 2014) (“Whether the website operator removes certain reviews, publishes others, or alters content, it is still entitled to CDA immunity, since those activities constitute a publisher’s traditional editorial functions”); *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008) (“Decisions relating to the monitoring, screening, and deletion of content [are] actions quintessentially related to a publisher’s role”); *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir. 2003) (“Publisher liability necessarily precludes liability for exercising the usual prerogative of publishers to choose among proffered material”); *Bennett v. Google, LLC*, 882 F. 3d 1163, 1167-68 (D.C. Cir. 2018) (“[The] decision to print or retract is fundamentally a publishing decision for which the CDA provides explicit immunity” and that a decision about “output control” is “the very essence of publishing”).

¹²⁴ *Sikhs for Justice (SFJ) v. Facebook, Inc.*, 144 F. Supp.3d 1088, 1095 (N.D. Cal. 2015).

¹²⁵ *Fields*, 217 F. Supp. 3d at 1123-24 (“Despite being aimed at blocking Twitter accounts instead of particular tweets, plaintiffs’ provision of accounts theory is still based on Twitter’s alleged violation of a duty . . . derive[d] from [its] status or conduct as a publisher”); *Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 889-90 (N.D. Cal. 2017) (finding immunity even where plaintiffs argued their claims depended on access to Twitter’s services generally because plaintiffs “explicitly base their claims on the content” of the posts); *Cohen v. Facebook, Inc.*, 252 F. Supp. 3d 140, 157 (E.D.N.Y. 2017) (“Facebook’s choices as to who may use its platform are inherently bound up in its decisions as to what may be said on its platform, and so liability [here]. . . would equally derive from Facebook’s status or conduct as a publisher or speaker”).

¹²⁶ *Barnes*, 570 F.3d at 1103.

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shut down the user's objectionable content or activity."¹²⁷ Importantly, "any provider of an interactive computer service" can take advantage of this defense so long as "they act to restrict access to the content because they consider it obscene or otherwise objectionable."¹²⁸

Here, Twitter learned that an individual was misusing the company's platform to broadcast anti-Islamic views and hurtful rhetoric to thousands of other Twitter users. Consistent with its existing policies and efforts to improve the health of the conversations it hosts, Twitter acted to limit Ms. Loomer's access to the platform. These actions are precisely the type of conduct immunized by the CDA, which wholly bars Ms. Loomer's claims.

CONCLUSION

Twitter is committed to maintaining a robust platform for all users – be they conservative, liberal or somewhere in between – to engage and debate public issues, including those involving political candidates and policies. At the same time, and to maintain its reputation as a place where individuals can safely share and debate ideas, Twitter remains committed to providing a space for engagement that is free from threats and harassment.

Having an "up-and-coming A lister on the Islamophobia circuit" on its platform – who readily admits to trolling others and being banned from "everywhere" – represented a threat to Twitter's brand and business. In banning Ms. Loomer from the platform – months before she even became a candidate – Twitter reacted proportionately and lawfully to protect its business interests and not to influence any election. Accordingly, the Commission should find no reason to believe that Twitter violated the FECA and should dismiss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Caleb P. Burns". The signature is fluid and cursive, with the first name "Caleb" and last name "Burns" clearly legible.

Caleb P. Burns
Andrew G. Woodson

¹²⁷ Eric Goldman, *Online User Account Termination and 47 U.S.C. S 230(c)(2)*, 2 UC Irvine L. Rev. 659, 663, 670 (2012).

¹²⁸ *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1105 (9th Cir. 2009), as amended (Sept. 28, 2009).