

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7687

DATE COMPLAINT FILED: 1/28/20

DATE OF NOTIFICATION: 1/30/20

LAST RESPONSE RECEIVED: 3/23/20

DATE ACTIVATED: 4/29/20

EXPIRATION OF SOL: 8/02/24

ELECTION CYCLE: 2020

COMPLAINANT: Charlie Spies**RESPONDENT:** Twitter, Inc.**RELEVANT STATUTES AND****REGULATIONS:**

52 U.S.C. § 30101(8)(A), (9)(A)

52 U.S.C. § 30102(e)(1)

52 U.S.C. § 30118(a)

11 C.F.R. § 100.52(a)

11 C.F.R. § 100.111(a)

11 C.F.R. § 114.2(b)

INTERNAL REPORTS CHECKED: None**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Complaint alleges that social media platform Twitter, Inc. (“Twitter”), made corporate contributions in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint alleges that Twitter banned Laura Loomer from its platform in November 2018 and did not reinstate her Twitter account after she became a Congressional candidate in August 2019, thereby providing Loomer’s political opponents a prohibited in-kind

¹ Compl. at 1 (Jan. 28, 2020).

1 corporate contribution.² Twitter contends that it has not made contributions or expenditures
2 because it banned Loomer eight months before she became a candidate, and did so as a business
3 decision to prevent a Twitter user, who promoted hate speech in violation of Twitter's Rules and
4 Terms of Service, from damaging the company's platform, reputation, and ultimately its brand
5 and commercial business.³ As discussed below, Twitter has explained that it has a commercial
6 motivation behind the ban, rather than an electoral purpose. Therefore, it appears that no
7 contribution has been made. Accordingly, we recommend that the Commission find no reason to
8 believe that Twitter violated 52 U.S.C. § 30118(a) by making a prohibited in-kind corporate
9 contribution.

10 **II. FACTUAL BACKGROUND**

11 Twitter, a publicly-traded corporation, is one of the largest web-based social networking
12 platforms in the world and allows users to publicly communicate in messages of up to 280
13 characters for free.⁴ Twitter's profit is mainly derived through advertising.⁵ Twitter requires
14 users to abide by specific Rules and Terms of Service that prohibit "hateful conduct" if they wish
15 to use Twitter's service.⁶

16 According to the Complaint, Laura Loomer is an investigative journalist and activist and
17 an active Twitter user who had 260,000 followers.⁷ On November 21, 2018, Twitter banned

² *Id.* at 1-2. The Complaint also alleges that Twitter's actions in this matter violate the Federal Communications Commission's equal-time rule, an area of law not within the Commission's jurisdiction. *Id.* at 7.

³ Resp. at 1-2, 16 (Mar. 23, 2020).

⁴ Resp. at 3.

⁵ *Id.* at 7.

⁶ *Id.* at 4-5.

⁷ Compl. at 3.

1 Loomer for alleged violations of Twitter's Rules and Terms of Service.⁸ Twitter says that
2 Loomer has a lengthy history of using "technology platforms for sharing hate speech targeting
3 Muslims" and "assist[ing] Islamophobic hate organizations."⁹ Due to her activities, Loomer has
4 apparently been banned not only by Twitter, but also Facebook, Instagram, PayPal, Venmo,
5 GoFundMe, Uber, Uber Eats, Lyft, TeeSpring, Medium, Periscope, MGM Resorts, and the
6 Conservative Political Action Committee.¹⁰

7 Several months after Twitter closed her account, Loomer registered to become a
8 candidate for Congress in the 21st Congressional District of Florida. On August 2, 2019,
9 Loomer filed her Statement of Candidacy and Laura Loomer for Congress filed its Statement of
10 Organization as her principal campaign committee.¹¹ The Complaint further states that in
11 December 2019, Twitter announced that "anyone who was permanently suspended will not be
12 reinstated."¹² To date, Loomer does not have an active Twitter account.¹³

13 The Complaint alleges that Twitter's original 2018 ban of Loomer and the later failure to
14 reinstate her account was intended to influence an election and therefore an in-kind corporate
15 contribution to her opponents.¹⁴ The Complaint asserts that corporate contributions were

⁸ *Id.*; Resp. at 12.

⁹ Resp. at 8.

¹⁰ *Id.* at 2, 10.

¹¹ Laura Loomer, Statement of Candidacy (Aug. 2, 2019); Laura Loomer for Congress, Statement of Organization (Aug. 2, 2019).

¹² Compl. at 4 (quoting Cassandra Fairbanks, *Twitter to Verify All Congressional and Gubernatorial Candidates, But Will Not Be Reinstating Laura Loomer*, THE GATEWAY PUNDIT (Dec. 12, 2019), available at <https://www.thegatewaypundit.com/2019/12/twitter-to-verify-all-congressional-and-gubernatorial-candidates-but-will-not-be-reinstating-laura-loomer>).

¹³ Compl. at 4-5.

¹⁴ *Id.* at 4, 6.

1 provided to Loomer's opponents in three distinct ways: the loss of Loomer's ability to
2 communicate with over 260,000 followers on Twitter; the cost of Twitter's staff resources to
3 make the decision and take the actions to ban Loomer; and the potential contributions that
4 Loomer lost as a result of being banned from Twitter.¹⁵ The Complaint asserts that Twitter has a
5 political bias and history of "arbitrary and discriminatory enforcement of its Rules and
6 Guidelines in order to stifle" specific political ideologies that it disagrees with.¹⁶ According to
7 the Complaint, any loss of contributions by Loomer and any loss in her ability to communicate
8 with her followers is "something of value" to her opponents.¹⁷

9 In its Response, Twitter states that it permanently suspended Loomer's account eight
10 months before Loomer declared her candidacy, and therefore, its actions were not motivated by
11 an intent to influence an election.¹⁸ Further, Twitter contends that its actions were motivated by
12 business considerations to prevent damage to the company's platform, reputation, and brand.¹⁹
13 Twitter states that its advertisers and users do not want to participate in or financially support a
14 platform that permits Loomer's type of speech.²⁰ Twitter contends that the Loomer tweets were
15 "attacks on members of the Islamic faith," which violated Twitter's Rules and Terms of

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 6.

¹⁸ Resp. at 1.

¹⁹ *Id.* at 16.

²⁰ *Id.* at 7-8.

1 Service.²¹ Twitter asserts that its efforts at combatting violations of their Rules and Terms of
2 Service have direct correlations to stock prices and long-term financial prospects.²²

3 **III. LEGAL ANALYSIS**

4 The Act and Commission regulations prohibit any corporation from making contributions
5 to a candidate's principal campaign committee.²³ A "contribution" is defined to include any gift
6 of money or "anything of value" made by any person for the purpose of influencing a federal
7 election.²⁴ The Commission has previously concluded that a commercial vendor providing
8 services to political committees will not make a contribution for the purpose of influencing an
9 election when its business activity "reflects commercial considerations and does not reflect
10 considerations outside of a business relationship."²⁵ A commercial vendor need not make its
11 services available to committees representing all political ideologies, but rather may establish
12 objective business criteria to protect commercial viability of its business without making
13 contributions to the committees that meet those criteria.²⁶

14 Twitter has credibly explained that its decisions were based on an objective application of
15 its Rules and Terms of Service and part of a larger commercial motivation to protect its brand

²¹ *Id.* at 11-12.

²² *Id.* at 8.

²³ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

²⁴ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a). *See also* 52 U.S.C. § 30101(9)(A)(i) (definition of "expenditure" includes any gift of money or "anything of value" made by any person for the purpose of influencing a federal election); 11 C.F.R. § 100.111(a) (same).

²⁵ Advisory Op. 2012-31 (AT&T) at 4.

²⁶ *See* Advisory Op. 2017-06 (Stein and Gotlieb) at 6; *see also* Advisory Op. 2012-28 (CTIA — The Wireless Association) at 3, 8-9 (no contribution to committee where "wireless service providers may decide, due to commercial considerations, to accept proposals from some political committees and not others"); Advisory Op. 2012-26 (Cooper for Congress, *et al.*) at 10 (no contribution to committee where its participation was subject to "objective and to commercially reasonable" criteria).

1 and attract advertisers rather than an effort to influence an election. Twitter states that banning
2 Loomer for violations of its Rules and Terms of Service was part of an effort to “remove abusive
3 and hateful speech” from its platform.²⁷ Twitter asserts that this type of speech undermines
4 Twitter’s mission to provide a platform for healthy public conversations, which negatively
5 impacts its brand and ability to attract advertisers.²⁸ In Congressional testimony, Jack Dorsey,
6 Twitter’s Chief Executive Office, represents that Twitter is not motivated by any political bias
7 and in fact has accounts from various political ideologies, as long as the account holders do not
8 violate Twitter’s Rules and Terms of Service.²⁹ Twitter cites a news article in which Loomer’s
9 tweets are specifically cited as an example of how Twitter’s platform has allegedly fueled racist
10 attacks on specific religious groups.³⁰ Accordingly, Twitter asserts that this specific public
11 perception damages its brand and revenue.³¹

12 Neither the Complaint nor other available information indicate that Twitter’s application
13 of its Rules and Terms of Service was biased or that it was motivated by something other than a
14 commercial interest. Further supporting Twitter’s position is the fact that it banned Loomer
15 eight months prior to Loomer announcing her candidacy. Thus, Twitter’s action appears to

²⁷ Resp. at 2.

²⁸ *Id.*

²⁹ See Resp. at 3 (citing *Twitter: Transparency and Accountability*, Testimony of Jack Dorsey, House Comm. on Energy and Commerce at 3, 115th Cong. (Sept. 5, 2018), available at <https://docs.house.gov/meetings/IF/IF00/20180905/108642/HHRG-115-IF00-Wstate-DorseyJ-20180905.pdf>).

³⁰ Resp. at 8 (citing Craig Timberg, *Twitter Fueled Attacks on Muslim Candidates in 2018, Study Finds*, THE WASHINGTON POST (Nov. 4, 2019), available 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).

³¹ *Id.* (citing Timothy Green, *Why Twitter Stock Dropped 22% in October*, THE MOTLEY FOOL (Nov. 8, 2016), available at <https://www.fool.com/investing/2016/11/08/why-twitter-stock-dropped-22-in-october.aspx> (Twitter’s stock price dropped in October 2016 after Disney reportedly lost interest in buying Twitter due, at least in part, to the hate speech permeating the platform).)

- 1 reflect commercial considerations, rather than an effort to influence a federal election.³²
2 Accordingly, we recommend that the Commission find no reason to believe that Twitter violated
3 52 U.S.C. § 30118(a) by making prohibited corporate in-kind contributions.³³

4 **IV. RECOMMENDATIONS**

- 5 1. Find no reason to believe the allegation that Twitter, Inc. violated 52 U.S.C. § 30118(a)
6 by making a prohibited in-kind corporate contribution;
7
8 2. Approve the attached Factual and Legal Analysis;
9
10 3. Close the file; and

³² Because we conclude that Twitter's actions are not contributions under the Act, it is unnecessary to address Twitter's additional defenses asserted in its response, *i.e.*, the press exemption, whether an entity must coordinate with the recipient political committee in these circumstances to violate the Act, or whether Twitter being a free service exempts Twitter's action as a contribution or expenditure. *See* Resp. at 17-18.

³³ Twitter is the subject of several other complaints alleging that the limitations Twitter placed on complainants' accounts act as prohibited in-kind contributions to, or undisclosed independent expenditures supporting, their political opponents. *See* First Gen. Counsel's Rpt., MURs 7443, 7447, and 7550 (Twitter, Inc.) (recommending that the Commission find no reason to believe that Twitter violated 52 U.S.C. §§ 30104(c) or 30118 by making prohibited in-kind corporate contributions or failing to disclose independent expenditures)

1 4. Approve the appropriate letters.

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Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

July 23, 2020
Date

Peter G. Blumberg
Peter G. Blumberg
Acting Deputy Associate General Counsel
for Enforcement

Mark Allen
Mark Allen
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