



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 22, 2022

BY EMAIL ONLY

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Caleb P. Burns, Esq.
Andrew G. Woodson, Esq.
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

RE: MUR 7687 (Twitter, Inc.)

Dear Messrs. Burns and Woodson:

On January 30, 2020, the Federal Election Commission notified your client, Twitter, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 15, 2022, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that Twitter violated 52 U.S.C. § 30118(a) by making a prohibited in-kind corporate contribution. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Richard Weiss, the attorney assigned to this matter, at (202) 694-1021.

Sincerely,

A handwritten signature in cursive script that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Twitter, Inc.

MUR 7687

4
5 **I. INTRODUCTION**

6 The Complaint alleges that social media platform Twitter, Inc. (“Twitter”), made
7 corporate contributions in violation of the Federal Election Campaign Act of 1971, as amended
8 (the “Act”).¹ The Complaint alleges that Twitter banned Laura Loomer from its platform in
9 November 2018 and did not reinstate her Twitter account after she became a Congressional
10 candidate in August 2019, thereby providing Loomer’s political opponents a prohibited in-kind
11 corporate contribution.² Twitter contends that it has not made contributions or expenditures
12 because it banned Loomer eight months before she became a candidate, and did so as a business
13 decision to prevent a Twitter user, who promoted hate speech in violation of Twitter’s Rules and
14 Terms of Service, from damaging the company’s platform, reputation, and ultimately its brand
15 and commercial business.³ As discussed below, Twitter has explained that it has a commercial
16 motivation behind the ban, rather than an electoral purpose. Therefore, it appears that no
17 contribution has been made. Accordingly, the Commission finds no reason to believe that
18 Twitter violated 52 U.S.C. § 30118(a) by making a prohibited in-kind corporate contribution.

¹ Compl. at 1 (Jan. 28, 2020).

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).

1 **II. FACTUAL BACKGROUND**

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

7 According to the Complaint, Laura Loomer is an investigative journalist and activist and
8 an active Twitter user who had 260,000 followers.⁷ On November 21, 2018, Twitter banned
9 Loomer for alleged violations of Twitter’s Rules and Terms of Service.⁸ Twitter says that
10 Loomer has a lengthy history of using “technology platforms for sharing hate speech targeting
11 Muslims” and “assist[ing] Islamophobic hate organizations.”⁹ Due to her activities, Loomer has
12 apparently been banned not only by Twitter, but also Facebook, Instagram, PayPal, Venmo,
13 GoFundMe, Uber, Uber Eats, Lyft, TeeSpring, Medium, Periscope, MGM Resorts, and the
14 Conservative Political Action Committee.¹⁰

15 Several months after Twitter closed her account, Loomer registered to become a
16 candidate for Congress in the 21st Congressional District of Florida. On August 2, 2019,
17 Loomer filed her Statement of Candidacy and Laura Loomer for Congress filed its Statement of

4 Resp. at 3.

5 *Id.* at 7.

6 *Id.* at 4-5.

7 Compl. at 3.

8 *Id.*; Resp. at 12.

9 Resp. at 8.

10 *Id.* at 2, 10.

1 Organization as her principal campaign committee.¹¹ The Complaint further states that in
2 December 2019, Twitter announced that “anyone who was permanently suspended will not be
3 reinstated.”¹² To date, Loomer does not have an active Twitter account.¹³

4 The Complaint alleges that Twitter’s original 2018 ban of Loomer and the later failure to
5 reinstate her account was intended to influence an election and therefore an in-kind corporate
6 contribution to her opponents.¹⁴ The Complaint asserts that corporate contributions were
7 provided to Loomer’s opponents in three distinct ways: the loss of Loomer’s ability to
8 communicate with over 260,000 followers on Twitter; the cost of Twitter’s staff resources to
9 make the decision and take the actions to ban Loomer; and the potential contributions that
10 Loomer lost as a result of being banned from Twitter.¹⁵ The Complaint asserts that Twitter has a
11 political bias and history of “arbitrary and discriminatory enforcement of its Rules and
12 Guidelines in order to stifle” specific political ideologies that it disagrees with.¹⁶ According to
13 the Complaint, any loss of contributions by Loomer and any loss in her ability to communicate
14 with her followers is “something of value” to her opponents.¹⁷

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.

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 6.

1 In its Response, Twitter states that it permanently suspended Loomer’s account eight
2 months before Loomer declared her candidacy, and therefore, its actions were not motivated by
3 an intent to influence an election.¹⁸ Further, Twitter contends that its actions were motivated by
4 business considerations to prevent damage to the company’s platform, reputation, and brand.¹⁹
5 Twitter states that its advertisers and users do not want to participate in or financially support a
6 platform that permits Loomer’s type of speech.²⁰ Twitter contends that the Loomer tweets were
7 “attacks on members of the Islamic faith,” which violated Twitter’s Rules and Terms of
8 Service.²¹ Twitter asserts that its efforts at combatting violations of their Rules and Terms of
9 Service have direct correlations to stock prices and long-term financial prospects.²²

10 III. LEGAL ANALYSIS

11 The Act and Commission regulations prohibit any corporation from making contributions
12 to a candidate’s principal campaign committee.²³ A “contribution” is defined to include any gift
13 of money or “anything of value” made by any person for the purpose of influencing a federal
14 election.²⁴ The Commission has previously concluded that a commercial vendor providing
15 services to political committees will not make a contribution for the purpose of influencing an
16 election when its business activity “reflects commercial considerations and does not reflect

¹⁸ Resp. at 1.

¹⁹ *Id.* at 16.

²⁰ *Id.* at 7-8.

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).

1 considerations outside of a business relationship.”²⁵ A commercial vendor need not make its
2 services available to committees representing all political ideologies, but rather may establish
3 objective business criteria to protect commercial viability of its business without making
4 contributions to the committees that meet those criteria.²⁶

5 Twitter has credibly explained that its decisions were based on an objective application of
6 its Rules and Terms of Service and part of a larger commercial motivation to protect its brand
7 and attract advertisers rather than an effort to influence an election. Twitter states that banning
8 Loomer for violations of its Rules and Terms of Service was part of an effort to “remove abusive
9 and hateful speech” from its platform.²⁷ Twitter asserts that this type of speech undermines
10 Twitter’s mission to provide a platform for healthy public conversations, which negatively
11 impacts its brand and ability to attract advertisers.²⁸ In Congressional testimony, Jack Dorsey,
12 Twitter’s Chief Executive Office, represents that Twitter is not motivated by any political bias
13 and in fact has accounts from various political ideologies, as long as the account holders do not
14 violate Twitter’s Rules and Terms of Service.²⁹ Twitter cites a news article in which Loomer’s
15 tweets are specifically cited as an example of how Twitter’s platform has allegedly fueled anti-

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).

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>).

1 Muslim attacks on specific religious groups.³⁰ Accordingly, Twitter asserts that this specific
2 public perception damages its brand and revenue.³¹

3 Neither the Complaint nor other available information indicate that Twitter's application
4 of its Rules and Terms of Service was biased or that it was motivated by something other than a
5 commercial interest. Further supporting Twitter's position is the fact that it banned Loomer
6 eight months prior to Loomer announcing her candidacy. Thus, Twitter's action appears to
7 reflect commercial considerations, rather than an effort to influence a federal election.³²
8 Accordingly, the Commission finds no reason to believe that Twitter violated 52 U.S.C.
9 § 30118(a) by making a prohibited corporate in-kind contribution.

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).)

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.