

**BEFORE THE FEDERAL ELECTION COMMISSION**

**PAUL F. NEHLEN III**

P.O. Box 796  
Williams Bay, Wisconsin 53191

Complainant,

v.

MUR No. \_\_\_\_\_

**TWITTER, INC.**

1355 Market Street, Suite 900  
San Francisco, California 94103

Respondent.

**COMPLAINT**

1. This Complaint is filed pursuant to 52 U.S.C. §§ 30118(a), 30109(a)(1), & 30121(a)(1)(A) and is based on information providing reason to believe that Twitter, Inc. ("Twitter") violated the corporate contribution and/or expenditure prohibitions established by the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, et seq. and Commission regulations, including violations of 11 C.F.R. § 110.13(b)(2) and (c) related to staging organizations responsibilities for candidate debates; and has actively interfered in federal elections to censor certain viewpoints, particularly conservative or Republican, congressional candidates.

2. Specifically, Twitter banned Complainant for the purpose of influencing the 2018 mid-term election by making an in-kind contribution to Complainant's political opponents: Democratic candidates vying for Paul Ryan's seat as the U.S. Representative from Wisconsin's First Congressional District.

3. Further, as an interactive-news coverage website, Twitter operates as a debate platform for political candidates running for office, yet Twitter uses subjective criteria, rather than objective criteria (as required by 11 C.F.R. §

110.13(b)(2) and (c)) when it decides which political candidates will be allowed to debate each other on its debate platform.

4. 52 U.S.C. § 30109(a)(2) provides that: "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...."

5. "A "reason to believe" finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope." 72 Fed. Reg. 12545 (March 16, 2007).

### FACTS

6. Twitter is an interactive-news coverage website, with an average of 330 million active users per month from all over the world.<sup>1</sup> Twitter describes itself as "the live public square, the public space — a forum where conversations happen."<sup>2</sup> Twitter's CEO, Jack Dorsey, has characterized Twitter as "a public utility, like water or electricity."<sup>3</sup>

7. Twitter recognizes its status as a news website: for example, in 2016 Twitter changed how its mobile application ("app") is categorized in the Apple

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<sup>1</sup> See Twitter, Inc., Annual Report (Form 10-K), at 47 (Feb. 23, 2018).

<sup>2</sup> Ronan Costello, Twitter: The Public Square of #GE16, Twitter Blog (Feb. 12, 2016), <[https://blog.twitter.com/official/en\\_us/a/2016/twitter-the-public-square-of-ge16.html](https://blog.twitter.com/official/en_us/a/2016/twitter-the-public-square-of-ge16.html)> (last visited Jul. 26, 2018); see also Twitter Values, <[https://about.twitter.com/en\\_us/values.html](https://about.twitter.com/en_us/values.html)> (pledging that the company will "work with journalists, candidates and civil society to ensure Twitter is what you need it to be: the online public square ...") (last visited Jul. 26, 2018).

<sup>3</sup> D.T. Max, "Two Hit Wonder," THE NEW YORKER (Oct. 21, 2013), <<https://www.newyorker.com/magazine/2013/10/21/two-hit-wonder>> ("[Dorsey] insists that Twitter is neither liberal nor conservative; it's a public utility, like water or electricity. 'I like technology that is unbiased,' he says.") (last visited July 26, 2018).

Store from the "social media" category to the "news" category, and as of April 2016 it has consistently been ranked as the #1 news app in the Apple store.<sup>4</sup>

8. In 2017, Pew Research found that three-quarters of Twitter users reported that they used the platform to read the news<sup>5</sup>.

9. Social media accounts have significant value as a communication tool to reach constituents and amass public support.

10. The United States District Court for the Southern District of New York recently decided that it was unconstitutional for President Donald Trump to block private citizens from his Twitter profile and feed (see *Knight First Amendment Institute at Columbia Univ. v. Trump*, 2018 U.S. Dist. LEXIS 87432 (S.D.N.Y. May 23, 2018)), finding that President Trump's Twitter feed was a public forum, and he could not block users from it based on mere disagreement with the speech of users.

11. The Supreme Court recently declared in *Packingham v. North Carolina* that the social media platform Twitter is "perhaps the most powerful mechanism available to a private citizen to make his or her voice heard" and described social media sites such as Twitter as the "modern public square." 137 S. Ct. 1730, 1737 (2017). In recent years, Twitter has become a favored medium of communication for public officials to communicate and share ideas with their constituents and the public at large.

12. Twitter is an important communications channel for governments and heads of state. As the U.S. Supreme Court explained:

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<sup>4</sup> See Sarah Perez, "Twitter aims to boost its visibility by switching from 'Social Networking' to 'News' on the App Store," TECHCRUNCH (Apr. 28, 2016) <<https://techcrunch.com/2016/04/28/twitter-aims-to-boost-its-visibility-by-switching-from-social-networking-to-news-on-the-app-store/>> (last visited July 26, 2018).

<sup>5</sup> See Natasha Lomes, "Even more US adults now getting news from social media, says Pew," TECHCRUNCH (Sep. 9, 2017), available at <<https://techcrunch.com/2017/09/09/even-more-us-adults-now-getting-news-from-social-media-says-pew/>> (last visited Jul. 26, 2018).

On Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought.

See *Packingham, supra*.

13. Candidates often communicate and engage in political debates on Twitter.

14. For example, in 2016, then-candidates Donald Trump and Hillary Clinton often exchanged words on Twitter, with each other and with their followers.<sup>6</sup>

15. Twitter is the new political debate platform because the debates that take place on Twitter shape elections more than old-fashioned televised debates between candidates. For example, despite the fact that then-candidate Trump skipped televised primary debates,<sup>7</sup> Trump's use of Twitter to discuss his political platform helped him win the 2016 Presidential election.<sup>8</sup>

16. Accordingly, as a debate platform, Twitter is subject to the same regulations that traditional debate platforms must comply with because, "[i]n today's America, Twitter drives much of the news cycle and much of the political debate...modern political candidate cannot win without a Twitter presence."<sup>9</sup>

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<sup>6</sup> See Twitter exchange between candidate Donald Trump and Hillary Clinton, available at: <<https://twitter.com/realdonaldtrump/status/741007091947556864?lang=en>> (Jun. 9, 2016), (last visited July 26, 2018).

<sup>7</sup> See Clare Foran, "Donald Trump Skips a Debate—Again," THE ATLANTIC (Mar. 16, 2016), available at <<https://www.theatlantic.com/politics/archive/2016/03/donald-trump-debate-fox/474135/>> (last visited July 26, 2018).

<sup>8</sup> See Mathew Ingram, "The 140-Character President," COLUMBIA JOURNALISM REVIEW (Fall 2017), available at <[https://www.cjr.org/special\\_report/trump-twitter-tweets-president.php/](https://www.cjr.org/special_report/trump-twitter-tweets-president.php/)> (last visited Jul. 26, 2018).

<sup>9</sup> Noah Peters, "Twitter Censorship Should Terrify Everyone," THE DAILY CALLER (Feb. 21, 2018), <<http://dailycaller.com/2018/02/21/twitter-censorship-should-terrify-everyone/>> (last visited July 26, 2018); see also Vann R. Newkirk II, "The American Idea in 140 Characters," THE ATLANTIC (Mar. 24, 2016), <<https://theatlantic.com/politics/archive/2016/03/twitter-politics-last-decade/475131/>>

17. Twitter recognizes the role that it plays in shaping political debates during election season, and recently announced that it would automatically verify candidate's accounts that qualify for the general election.<sup>10</sup>

18. Every Congressman who won their election in November 2016 had a presence on Twitter (at least throughout the election cycle, if not longer). Not a single member of the U.S. House of Representatives won in November 2016 without a Twitter account.

19. After the 2016 election, Twitter took its first significant step in limiting political speech it disagrees with<sup>11</sup> by creating the Twitter Trust and Safety Council.<sup>12</sup>

20. Twitter claims that the purpose of the Trust and Safety Council is to work with "safety advocates" to "prevent abuse."<sup>13</sup>

21. However, the organizations that make up the Trust and Safety Council are almost entirely left-leaning organizations who monitor speech online: for example, the Dangerous Speech Project<sup>14</sup>, the Southern Poverty Law Center<sup>15</sup>, and the Anti-Defamation League<sup>16</sup>

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("Twitter's early promise as a political tool has become ingrained as a political reality. A candidate without Twitter is a losing candidate.") (last visited July 26, 2018).

<sup>10</sup> See Nancy Scola, "Twitter to verify election candidates in the midterms," POLITICO (May 23, 2018) <<https://www.politico.com/story/2018/05/23/twitter-verify-candidates-midterms-2018-1282802>>; (last visited July 26, 2018).

<sup>11</sup> "The Trust and Safety Council can't actually protect users from abuse; its only power is stop controversial users from issuing controversial opinions on Twitter." Pascal-Emmanuel Gobry, "Twitter's new Trust and Safety Council is an Orwellian nightmare," The Week (Feb. 23, 2016) available at <<http://theweek.com/articles/607490/twitters-new-trust-safety-council-orwellian-nightmare>> (last visited July 26, 2018).

<sup>12</sup> A complete list of Twitter's Trust and Safety Council is available at: <[https://about.twitter.com/en\\_us/safety/safety-partners.html](https://about.twitter.com/en_us/safety/safety-partners.html)> (last visited Jul. 26, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> The Dangerous Speech Project's website is here: <<https://dangerousspeech.org/>>.

<sup>15</sup> The Southern Poverty Law Center's website is here: <<https://www.splcenter.org/>>.

<sup>16</sup> The American Defamation League's website is here: <<https://www.adl.org/who-we-are>>.

22. Twitter has long been criticized by users for favoring liberal speech on its platform over conservative speech<sup>17</sup>, a bias that appears to have been confirmed by current and former employees admitting on a hidden camera that Twitter utilizes techniques to "shadow-ban" and otherwise limit the reach of conservative accounts.<sup>18</sup>

23. Conrado Miranda, a former Twitter software engineer, admitted to an undercover journalist for Project Veritas that Twitter routinely bans specific users from the platform at the request of foreign governments:<sup>19</sup>

24. Twitter initially responded to the Project Veritas video by dishonestly denying that it ever shadow-bans accounts<sup>20</sup>; however, Twitter has since backtracked on this position after Vice News confronted Twitter with screenshots that show that the Republican Party chair Ronna McDaniel, several conservative Republican congressmen, and Donald Trump Jr.'s spokesman do not appear in the auto-populated drop-down search box on Twitter, Twitter responded:

"We are aware that some accounts are not automatically populating in our search box and shipping a change to address this." Asked why only conservative Republicans appear to be affected and not liberal Democrats, the spokesperson wrote: "I'd

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<sup>17</sup> See Jessica Guynn, "Twitter accused of political bias in right-wing crackdown," USA TODAY (Nov. 18, 2016) <<https://www.usatoday.com/story/tech/news/2016/11/18/conservatives-accuse-twitter-of-liberal-bias/94037802/>> (last visited July 26, 2018).

<sup>18</sup> See Valerie Richardson, "Conservatives demand Twitter answers after Project Veritas videos point to political bias" THE WASHINGTON TIMES (Jan. 16, 2018) <<https://www.washingtontimes.com/news/2018/jan/16/twitter-political-bias-seen-project-veritas-video/>> (last visited July 26, 2018).

<sup>19</sup> Project Veritas, "Twitter Bans Users Under Pressure From Their Foreign Governments," YouTube, <[https://www.youtube.com/watch?v=SMU4SZ\\_Cims](https://www.youtube.com/watch?v=SMU4SZ_Cims)> [<http://archive.is/XqQYg>] (last visited July 25, 2018), at 0:57.

<sup>20</sup> "Twitter does not shadowban accounts," Twitter told Fox News; see Christopher Carbone, "Twitter responds to Project Veritas allegation that it can share Trump's direct messages" FOX NEWS (Jan. 11, 2018), available at <<http://www.foxnews.com/tech/2018/01/11/twitter-responds-to-project-veritas-allegation-that-it-can-share-trumps-direct-messages.html>> (last visited July 25, 2018).

emphasize that our technology is based on account \*behavior\* not the content of Tweets."<sup>21</sup>

25. Based on Vice News' published report, all of the Democratic counterparts to the above-named Republicans, such as Democratic Party chair Tom Perez and Democratic members of Congress such as Maxine Waters, Joe Kennedy III, Keith Ellison, and Mark Pocan, continue to appear in drop down search results.<sup>22</sup>

26. Vice News notes that, "[n]ot a single member of the 78-person Progressive Caucus faces the same situation in Twitter's search."<sup>23</sup>

27. Vice News also notes that Twitter directed it one of Twitter's May 15, 2018 blog posts that explains how Twitter has created a new approach to combat "troll behavior".<sup>24</sup>

28. The blog post says that Twitter has started using, "new tools to address this conduct from a behavioral perspective, [Twitter] is able to improve the health of the conversation..."<sup>25</sup>

29. The blog post goes on to say that, "[t]hese signals will now be considered in how we organize and present content in communal areas like conversation and search."<sup>26</sup>

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<sup>21</sup> Alex Thompson, "Twitter is "shadow banning" prominent Republicans like the RNC chair and Trump Jr.'s spokesman," Vice News (Jul 25, 2018) <[https://news.vice.com/en\\_us/article/43paqq/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman?utm\\_campaign=sharebutton](https://news.vice.com/en_us/article/43paqq/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman?utm_campaign=sharebutton)> (last visited July 25, 2018).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See Del Harvey and David Gasca, "Serving healthy conversation," Twitter Blog (May 15, 2018), available at <[https://blog.twitter.com/official/en\\_us/topics/product/2018/Serving\\_Healthy\\_Conversation.html](https://blog.twitter.com/official/en_us/topics/product/2018/Serving_Healthy_Conversation.html)> (last visited July 25, 2018).

<sup>26</sup> *Id.*

30. Twitter also admits in the post that Twitter has been testing this new approach to censoring political speech prior to informing its users:

In our early testing in markets around the world, we've already seen this new approach have a positive impact, resulting in a 4% drop in abuse reports from search and 8% fewer abuse reports from conversations. That means fewer people are seeing Tweets that disrupt their experience on Twitter.<sup>27</sup>

31. Twitter has likely expended significant costs in implementing this new program on Twitter which effectively shadow bans conservative voices: these costs likely amount to an in-kind contribution to Democratic candidates.

32. Further, Twitter CEO Jack Dorsey has openly denounced bi-partisanship by promoting an article on Twitter that urges Democrats to thoroughly defeat their opponents by eliminating political opposition; given that Dorsey is often personally involved with banning individuals from Twitter<sup>28</sup>, Dorsey's statements and actions on behalf of Twitter show that there is a significant likelihood that Twitter purposefully bans candidates with the intent of influencing the next election and as a way of making in-kind contributions to Democratic candidates.

33. Paul Nehlen is a candidate in the Republican primary for U.S. Representative from Wisconsin's First Congressional District.

34. The seat is currently occupied by Paul Ryan, the Speaker of the House of Representatives, who is not running for reelection.

35. This is the second time Paul Nehlen has run for this office. In 2016, he was the runner-up in the Republican primary.

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<sup>27</sup> *Id.*

<sup>28</sup> See Austin Carr, "When Jack Dorsey's Fight Against Twitter Trolls Got Personal," FAST COMPANY (April 9, 2018) <<https://www.fastcompany.com/40549979/when-jack-dorseys-fight-against-twitter-trolls-got-personal>> (last visited July 26, 2018).



36. Before Nehlen became involved in politics, he led a largely private life working in the manufacturing industry; he holds several patents, mostly for safety equipment he invented for large machinery.<sup>29</sup>

37. As a lifelong Republican, Nehlen decided to get involved in politics.

38. Nehlen has been dubbed a controversial candidate by many people because he openly calls himself a "pro-white candidate" and a "race realist". Nehlen has openly espoused the view that First Amendment free speech protections should protect users of major social media platforms.

39. Although Nehlen's political views are irrelevant to this Complaint because federal election laws are viewpoint neutral, his views are discussed because they are disfavored by the named Respondent.

40. On January 12, 2018, BuzzFeed published an article wherein they published a private Twitter direct message ("DM") exchange where Nehlen uses the term "Jewish Media" to describe some of his perceived political opponents.<sup>30</sup>

41. Nehlen and his campaign team responded to the BuzzFeed article and engaged in a debate on Twitter about the article and the DM exchange, wherein Nehlen expressed his defense of his use of the term, and other Twitter users expressed their disagreements with Nehlen's arguments.

42. As part of the debate, Nehlen and his campaign team took the position that there are many Jewish people who work for the media. Opposing Twitter users argued that his use of the term was anti-Semitic.

43. Several Twitter users complained to Twitter that Nehlen's debate tweets violated the Twitter Rules.

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<sup>29</sup> See Paul Nehlen's election website at: <<http://www.electnehlen.com/>>

<sup>30</sup> See Charlie Warzel, "How The Alt-Right – And Paul Ryan's Challenger – Coordinate To Fight The 'Jewish Media'," BUZZFEED NEWS (Jan. 12, 2018), available at: <[https://www.buzzfeed.com/charliwarzel/how-the-alt-right-and-paul-ryans-challenger-coordinate-to?utm\\_term=.ajEoN3qKRR#.lyzz6eabYY](https://www.buzzfeed.com/charliwarzel/how-the-alt-right-and-paul-ryans-challenger-coordinate-to?utm_term=.ajEoN3qKRR#.lyzz6eabYY)> (last visited Jul. 26, 2018).

44. One user, @TepiZep, admitted to reporting Nehlen to Twitter from Germany. This user is not a U.S. citizen and cannot vote for or against Nehlen in the primary.

45. Twitter reviewed the complaints, and initially determined that Nehlen's tweets did not violate Twitter Rules.<sup>31</sup>

46. However, on January 23, 2018, Twitter suspended Nehlen from using Twitter for 7-days, during which he could not debate his platform with potential voters or respond to criticisms of his campaign on Twitter.

47. Twitter also required that Nehlen delete his debate tweets, despite the fact that as a candidate for public office, Nehlen's tweets could be considered a public record if he were elected.<sup>32</sup>

48. Twitter did not inform Nehlen of its reasoning for reversing its initial decision.

49. Nehlen appealed Twitter's suspension and the requirement to delete his debate tweets to Twitter, and Twitter denied his appeal.

50. At the time of Nehlen's suspension, he was the second Republican candidate for federal office to be suspended or banned from Twitter within a two-week period.<sup>33</sup>

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<sup>31</sup> Twitter sent an email to Nehlen dated February 10, 2018 stating, "We have investigated the reported content and could not identify any violations of the Twitter Rules (<https://support.twitter.com/articles/18311>) or applicable law. Accordingly, we have not taken any action at this time."

<sup>32</sup> "What our elected officials say is a matter of public record, and Twitter is an increasingly important part of how our elected officials communicate with the public", says Chris Gates, the President of the Sunlight Foundation, a non-profit that advocates for an open government. See Chris Gates, "Eulogy for Politwoops," Sunlight Foundation Blog (Jun. 4, 2015) available at <https://sunlightfoundation.com/2015/06/04/eulogy-for-politwoops/> (last visited Jul. 26, 2018).

<sup>33</sup> On or around January 14, 2018, Twitter banned Republican Congressional candidate Chris DePizzo from Twitter; upon information and belief, Twitter has never stated a reason for the DePizzo's ban.

51. On January 24, 2018, the day after Twitter suspended Nehlen, Twitter permanently banned Nehlen's campaign spokesman's Twitter account: @EbolaSweden.

52. Twitter did not give a reason for permanently banning Nehlen's campaign spokesman's account.

53. On or around January 25, 2018, another Twitter user shared one of his Twitter accounts with Nehlen's spokesperson, Josh Smith<sup>34</sup>, so that Smith could continue to advocate for the Nehlen campaign during Nehlen's suspension.

54. Smith renamed the account @NehlenSpox and prominently displayed "Spokesman, Paul Nehlen for Congress" on the account's profile.

55. Twitter banned the @NehlenSpox account later that day.

56. Upon information and belief, Twitter also banned many other Twitter accounts that were supportive of Paul Nehlen and engaged in political debates about Paul Nehlen's campaign on Twitter.

57. Based on published reports, Twitter also likely "shadowbanned"<sup>35</sup> Nehlen and/or his campaign spokesperson, and many of his supporters, or otherwise engaged in downward throttling of the accounts to prevent people from seeing the accounts, during the time Nehlen campaigned and debated on Twitter. Nehlen does not know when the shadowban started.

58. Based on published reports, Nehlen asserts that Twitter likely shadowbanned him on the platform due to his conservative political views, and that shadowbanning amounts to an in-kind contribution to Democratic candidates, an independent expenditure for Democratic candidates, and

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<sup>34</sup> For clarity, at the time of this filing, Josh Smith is no longer Nehlen's campaign spokesman.

<sup>35</sup> As described by a former Twitter employee Abhinav Vadrevu, "The idea of a shadowban is that you ban someone but they don't know they've been banned, because they keep posting, but no one sees their content. So they just think that no one is engaging with their content, when in reality, no one is seeing it...", Project Veritas, *supra*, at 7:07, 7:42.

amounts to subjective criteria for sponsoring political debate, in violation of Federal Regulations.

59. When Nehlen regained access to his account seven days later, he tweeted a link to a webpage outside Twitter containing screenshots of his now-deleted debate tweets.

60. Twitter immediately locked his account until he deleted the link to the debate tweets.

61. Back on Twitter, Nehlen continued to debate the issues surrounding the BuzzFeed article, and tweeted a list of verified twitter users who had criticized his political campaign in the previous one month period.

62. Nehlen noted that most of his critics on his list were Jewish.

63. Many Twitter users were offended by Nehlen's tweet about his list of mostly Jewish critics, and engaged him in debate about the list on Twitter.

64. Some Twitter users reported Nehlen's tweet and the subsequent debate to Twitter, complaining that it violated the Twitter Rules.

65. Once again, Twitter reviewed these complaints, and initially determined that the tweet did not violate the Twitter Rules.

66. Twitter sent Nehlen a total of five e-mails notifying him of the complaints and Twitter's conclusions that he did not violate the Twitter Rules.

67. On February 9, 2018, Nehlen posted a tweet with the text, "Honey, does this tie make my face look pale?", with an altered image of Britain's Prince Harry and American actress Meghan Markle, wherein the newly revealed face of the "Cheddar Man"<sup>36</sup> appeared superimposed over Markle's face. Ms. Markle, now the Duchess of Sussex, was then engaged to Prince Harry.

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<sup>36</sup> Cheddar Man is Britain's oldest human fossil; a DNA study recently concluded that Cheddar Man likely had dark skin. See Selena Brace, *et al.*, "Population Replacement in Early Neolithic Britain," (posted online February 18, 2018), available at <<https://www.biorxiv.org/>

68. Prince Harry is sixth in the line of succession to the British throne. Any children he may have with Ms. Markle would be next in line.

69. Nehlen's position was that the Tweet was meant to be a political statement on immigration policy, since increased border security in the United States is one of Nehlen's campaign platforms.

70. Many Twitter users were offended by the Tweet, given that Megan Markle is of mixed-race, African-American descent, and engaged Nehlen in a debate about the tweet, the experience of racism in America, and about his political positions.

71. A number of Twitter users reported his tweet to Twitter, complaining that it violated the Twitter Rules.

72. Twitter reviewed these complaints, and initially determined that the tweet did not violate the Twitter Rules.

73. Twitter sent Nehlen twenty-three emails notifying him of the complaints and of their decision that the tweet did not violate Twitter's rules.

74. On February 11, 2018, Twitter reversed its initial decision, and permanently banned Nehlen from the platform.

75. Nehlen appealed the decision, but Twitter denied the appeal on February 12, 2018.

76. Twitter has also recently banned another Republican candidate from Twitter.<sup>37</sup>

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content/early/2018/02/18/267443.full.pdf >, (last visited Jul. 26, 2018). The image is a forensic facial reconstruction for the London Natural History Museum. See <<http://www.channel4.com/info/press/news/natural-history-museum-ucl-unveil-face-of-cheddar-man-in-c4-doc>>.

<sup>37</sup> On or around May 1, 2018, Twitter indefinitely locked Republican candidate Patrick Little's account, contingent upon him deleting several campaign tweets.

77. Twitter has also banned a Republican candidate's campaign video from Twitter.<sup>38</sup>

78. However, to the Complainant's knowledge, based upon a good-faith search of publically available information, Twitter has never banned a Democratic candidates' Twitter account or campaign ad.

**SUMMARY OF THE LAW**

79. 52 U.S.C. § 30118(a) provides

It is unlawful ... for any corporation whatever ... to make a contribution or expenditure in connection with any election at which ... a Senator or Representative in ... Congress are to be voted for, or in connection with any primary election ... held to select candidates for any of the foregoing offices ....

80. The term "contribution" is defined in FECA as, "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i) (emphasis added); see also 11 C.F.R. §§ 100.51-100.56.

81. As used in the definition of "contribution," the phrase "anything of value" includes "all in-kind contributions." The "provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution." 11 C.F.R. § 100.52(d)(1).

82. Pursuant to 52 U.S.C. § 30101(11), "The term 'person' includes a[] ... corporation...".

83. FECA's "press exemption" provides that the term "expenditure" does not include "any news story, commentary, or editorial distributed through the

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<sup>38</sup> See Anna North, "Twitter's ban on Marsha Blackburn's ad mentioning "baby body parts," explained" Vox.com (Oct 10, 2017), available at: <<https://www.vox.com/identities/2017/10/10/16449920/marsha-blackburn-twitter-ban>> (last visited July 26, 2018).

facilities of any broadcasting station, newspaper, magazine, or other periodical publication .... " 52 U.S.C. § 30101(9)(B)(i)

84. FECA's "press exemption" provides that "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any...newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not" a contribution or expenditure. 11 C.F.R. §§ 100.73 and 100.132.

85. The Commission conducts a two-step analysis to determine whether the "press exemption" applies. First, the Commission asks whether the entity engaging in the activity is a press entity. See, e.g., AO 2010-08 at 4 (*Citizens United*).

86. Second, the Commission applies the two-part analysis presented in *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y.1981): (1) Whether the press entity is owned or controlled by a political party, political committee or candidate; and (2) Whether the press entity is acting as a press entity in conducting the activity at issue (i.e., whether the entity is acting in its "legitimate press function"). See, e.g., AO 2010-08 at 5 (citing *FEC v. Phillips Publ'g*, 517 F. Supp. 1308, 1312-13 (D.D.C.1981).

87. Regarding the "legitimate press function" requirement, the district court in *Readers Digest Association* explained:

If, for example, on Election Day a partisan newspaper hired an army of incognito propaganda distributors to stand on street corners denouncing allegedly illegal acts of a candidate and sent sound trucks through the streets blaring the same denunciations, all in a manner unrelated to the sale of its newspapers, **this activity would not come within the press exemption** even though it might comply with a technical reading of the statutory exemption, being a "news story ... distributed through the facilities of . . . (a) newspaper."

509 Supp. at 1214 (emphasis added).

88. Federal law prohibits corporations from making contributions to Federal Candidates. See 52 U.S.C. § 30118(a).

89. The term independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate. See 11 C.F.R. § 100.16(a) and 52 U.S.C. § 30101(17).

90. Pursuant to 11 C.F.R. § 110.13(a) relating to candidate debates, a staging organization for a candidate debate can be either a nonprofit OR a broadcaster, which includes publications acting as press entities.

91. Pursuant to 11 C.F.R. § 110.13(b), the structure of debates staged in accordance with this section and 11 C.F.R. § 114.4(f) is left to the discretion of the staging organizations(s), provided that:

(b)(2) **Debate Structure.** The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) **Criteria for candidate selection.** For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate.

(Emphasis added).

92. *La Botz v. FEC*, 889 F. Supp. 2d 51 (D.D.C. 2012) is instructive on debate criteria and structure issues:

- (a) "Pre-established" and "objective" criteria are two distinct components.
- (b) Staging organizations are well advised to reduce their objective criteria to writing and to make the criteria available to all candidates before the debate.
- (c) Staging organizations must be able to show their objective criteria were used to pick the participants, and were not designed to result in the selection of certain pre-chosen participants.



**CAUSES OF ACTION**

**COUNT I**

**Prohibited Contributions by Corporations**

93. Nehlen restates and realleges the foregoing paragraphs as if fully set forth herein.

94. Given that candidates for Federal office likely cannot win elections in the modern era without having a Twitter account, Twitter accounts are of great value to candidates for Federal office.

95. When Twitter banned Republican Candidate Paul Nehlen from Twitter, it gave something of value, and in turn made an in-kind contribution, to Paul Nehlen's opponents because Nehlen is unable to debate his campaign platform on Twitter, the *de facto* public square.

96. Based on publically available information about Twitter's liberal bias, Twitter likely banned Nehlen's twitter account for the purpose of influencing the 2018 mid-term elections and Twitter's ban amounts to an in-kind contribution to Nehlen's opponents.

97. Twitter is a corporation and is prohibited from making contributions to candidates for federal office.

98. Twitter is making in-kind campaign contributions by giving favored candidates Twitter accounts because it is a popular platform for the purposes of campaigning and taking disfavored candidates accounts away.

99. Twitter's actions of banning Republican candidate Paul Nehlen was for the purpose of influencing the 2018 mid-term elections.

100. Twitter's actions of banning Republican candidate Paul Nehlen was not for any legitimate press function, as contemplated by *Reader's Digest supra*, given that by publically banning a Republican candidate from its interactive news website prior to an election is equivalent to a partisan newspaper covertly

denouncing a candidate—not through editorial criticism—but instead, by removing the views it does not approve so that the public streets of Twitter appear to only reflect the views that it does approve.

101. The press exemption does not apply to Twitter because banning Nehlen's account does not amount to a legitimate press function.

102. Accordingly, the costs involved in banning or shadow-banning Nehlen's Twitter account are prohibited in-kind contributions and are not protected by the press exemption.

## COUNT II

### Failure to Disclose Independent Expenditures

103. Nehlen restates and realleged the foregoing paragraphs as if fully set forth herein.

104. Based on the publically available information analyzed above, by banning Republican candidate Paul Nehlen from its news-coverage website, Twitter is "expressly advocating" against the election of Paul Nehlen and/or for the election of Nehlen's political opponents, within the meaning of 11 C.F.R. § 110.22

105. Based on the publically available information analyzed above, by banning Republican candidate Paul Nehlen from its news-coverage website, Twitter has engaged in express advocacy against Nehlen and for Nehlen's opponents which constitutes independent expenditures under 11 C.F.R. § 100.16.

106. By banning Republican candidate Paul Nehlen from its news-coverage website, Twitter contributed more than \$250 worth of in-kind contributions during 2018.

107. Upon information and belief, there is a sufficient basis for the FEC to investigate whether Twitter spent more than \$10,000 on these independent expenditures during 2018.

108. Respondent Twitter has failed to file any FEC disclosure reports regarding the above cited independent expenditures.

109. Respondent Twitter has violated 11 C.F.R. §§ 109.10(b) and (c) by failing to report independent expenditures.

### COUNT III

#### Improper Candidate Promotion and Use of Criteria by a Debate Sponsor

110. Nehlen repeats and realleges the foregoing paragraphs as if fully set forth herein.

111. Twitter is the modern public square opined upon in *Packingham, supra*, because it is a place where political candidates gather to debate their platforms.

112. Based on publically available information, Twitter understands its role as a debate platform for candidates for public office because as discussed above Twitter is unrolling a new way to verify political candidates so that they may continue to debate their platforms.

113. Twitter, as a self-identified news organization, and as a recognized debate platform, is a staging organization for candidate debates, as regulated by 11 C.F.R. § 110.13.

114. When Twitter excluded Nehlen, and other similarly situated Republicans, from participating in public debates on Twitter without excluding Democratic candidates, it violated 11 C.F.R. § 110.13 because it structured the debates to promote or advance Democratic candidates and it improperly promoted and advanced Nehlen's political opponents.

115. When Twitter banned Nehlen from participating in debates on Twitter, without citing any specific objective reason to do so, it failed to provide any pre-established objective criteria to determine which candidates may participate in debates on Twitter as required by 11 C.F.R. § 110.13, and Nehlen

was unable to review the pre-established objective criteria to determine why he had been banned.

116. Based upon publically available information, Twitter uses subjective criteria to ban accounts it disfavors, and quickly bans or shadowbans accounts it disfavors, including accounts Republican candidates like Nehlen who are running for public office.

117. Upon information and belief, Twitter will be unable to show what objective criteria it used to pick the participants in its debate and will not be able to show that it did not select certain pre-chosen participants because the only participants Twitter has banned from the debate are Republican candidates with disfavored views.

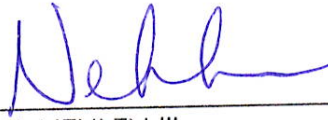
**PRAYER FOR RELIEF**

118. Wherefore, the Commission should find reason to believe that the Respondent Twitter violated 52 U.S.C. § 301011, *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).

119. Further, the Commission 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: July 27, 2018.

Respectfully submitted,



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Counsel to Complainant Paul Nehlen

**RANDAZZA** | LEGAL GROUP

**VERIFICATION**

Complainant Paul Nehlen hereby verifies that the statements made in the attached complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

  
\_\_\_\_\_  
Paul Nehlen

Subscribed to and sworn to before me this 28 day of July 2018.

**ASHLEY BENAVIDES**  
NOTARY PUBLIC  
STATE OF WISCONSIN

  
\_\_\_\_\_  
Notary Public

Commission expiration date  
04/08/2022