August 16, 2021

DEar Mr. Kelner and Ms. Upton:

On October 22, 2020, October 23, 2020, and January 15, 2021, the Federal Election Commission notified your clients, Twitter, Inc., Jack Dorsey, and Brandon Borrman, of three Complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On August 10, 2021, the Commission, on the basis of the information provided in the complaint and information provided by your clients, found no reason to believe that Twitter, Inc., violated 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 109.21, 114.2(b) by making corporate in-kind contributions; and no reason to believe that Jack Dorsey and Brandon Borrman violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) by consenting to corporate contributions. 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 findings, is enclosed for your information.

If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov.

Sincerely,

Claudio J. Pavia  
Acting Assistant General Counsel

Enclosures:  
Factual and Legal Analysis
FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondents:  Twitter, Inc.  
  Jack Dorsey  
  Brandon Borrman  
  Biden for President and Andrea Wise  
  in her official capacity as treasurer

MURs: 7821, 7827, & 7868

I. INTRODUCTION

These matters were generated by Complaints filed with the Federal Election Commission alleging that, by suppressing negative information regarding 2020 presidential candidate Joseph R. Biden, Twitter, Inc. (“Twitter”), made a prohibited corporate in-kind contribution to Biden and his authorized committee, Biden for President and Andrea Wise in her official capacity as treasurer (the “Biden Committee”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Specifically, the Complaints allege that Twitter made an in-kind contribution when it blocked users from tweeting links to or certain information derived from a series of October 2020 New York Post articles that published materials discovered on a laptop allegedly belonging to Biden’s son, Hunter Biden.

The Complaint in MUR 7868 further alleges that Twitter made in-kind contributions to the Biden Committee by limiting the visibility of, or “shadow banning,” Republican users on its platform; suppressing distribution of an interview of an alleged former business associate of Hunter Biden; blocking coverage of post-2020 election lawsuits; and labeling pre- and post-election tweets from Biden’s general election opponent, Donald J. Trump, regarding supposed election fraud and the election results. The MUR 7868 Complaint also alleges that, by virtue of

1 Jack Dorsey and Brandon Borrman are Respondents only in MUR 7827; Biden for President and Andrea Wise in her official capacity as treasurer are Respondents only in MUR 7868.
an individual who worked for Twitter later joining the Biden team, the Biden Committee
coordinated with Twitter and therefore knowingly accepted the prohibited corporate
contributions.

Respondents deny the allegations. Twitter states that it (1) blocked users from sharing
links to and posting certain information from the New York Post articles relating to hacked and
personal information and (2) labeled Trump’s tweets regarding election fraud and election
results. It argues that it did not make a contribution because these actions were undertaken for
bona fide commercial reasons and not for the purpose of influencing a federal election. Twitter
denies the remaining allegations that it limited visibility of Republican users, suppressed
distribution of an interview, or limited coverage of election lawsuits, asserting that the Complaint
does not submit any reliable evidence that such actions occurred. The Biden Committee states
that it did not coordinate with Twitter.

As discussed below, Twitter has credibly explained that it acted with a commercial
motivation in response to the New York Post articles rather than with an electoral purpose. With
respect to its actions concerning Trump’s tweets, there is no evidence that Twitter coordinated its
actions with the Biden Committee, and as such, the actions did not constitute contributions.
Finally, the remaining allegations that Twitter limited the visibility of Republican users,
suppressed distribution of an interview, and limited coverage of election lawsuits are vague,
speculative, and unsupported by the available information. Therefore, the Commission finds no
reason to believe that Twitter violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) by making
prohibited in-kind corporate contributions; finds no reason to believe that Jack Dorsey, Twitter’s
CEO, and Brandon Borrman, Twitter’s Vice President, Global Communications, violated
52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by consenting to prohibited corporate
contributions; and finds no reason to believe that the Biden Committee knowingly accepted or
received and failed to report such contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A),
30118(a) and 11 C.F.R. §§ 104.3(a), 114.2(d).

I. FACTUAL BACKGROUND

Twitter is a social media platform and public Delaware corporation; it states that it
derives the majority of its revenue from advertising. The platform allows users to publish
tweets, which are 280-character-or-less posts, which may include pictures, videos, or links.
Jack Dorsey is Twitter’s CEO, and Brandon Borrman is Twitter’s Vice President of Global
Communications. Biden for President is 2020 presidential candidate Joe Biden’s authorized
committee, and Andrea Wise is its treasurer. The Complaints allege that Twitter, by
suppressing negative information regarding Biden and taking certain actions directed against
Trump and his supporters, all of which are detailed below, did so “for the clear purpose of
supporting the Biden campaign.”

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2 Resp. at 2 (Dec. 21, 2020), MUR 7821 [hereinafter MUR 7821 Twitter Resp.].
3 See generally TWITTER, https://twitter.com (last visited June 2, 2021); About, TWITTER, https://about.twi
   twitter.com/en/who-we-are/our-company (last visited June 2, 2021) (“Twitter is an open service that’s home to a
   world of diverse people, perspectives, ideas, and information.”).
4 Compl. at 1 (Oct. 21, 2020), MUR 7827 [hereinafter MUR 7827 Compl.]; MUR 7821 Twitter Resp. at 2; About,
   TWITTER, https://about.twitter.com/en/who-we-are/our-company (last visited June 2, 2021). Borrman and
   MUR 7827 Twitter Resp.].
5 Biden for President, Statement of Organization (Jan. 12, 2021), https://docquery.fec.gov/pdf/224/20210112
   9398457224/202101129398457224.pdf.
6 Compl. at 1 (Oct. 16, 2020), MUR 7821 [hereinafter MUR 7821 Compl.]; accord MUR 7827 Compl. at 2; Compl.
   at 1 (Jan. 12, 2021), MUR 7868 [hereinafter MUR 7868 Compl.].
A. Twitter’s Content Policies

Twitter asserts that it has enacted a number of content policies, which are enforced by its Site Integrity Team, part of Twitter’s larger Trust & Safety Team. Twitter states that, “as a core commercial objective,” it enacted these policies as part of its efforts to concentrate on the “reduction of abuse, harassment, spam, manipulation and malicious automation on the platform.” In its public securities filings, Twitter has identified that “a decrease in the perceived quality, usefulness, trustworthiness or relevance of the content generated by people on Twitter or content partners” may have a “potentially negative” effect on its business.

As relevant here, Twitter’s policies include the following:

- **Distribution of Hacked Materials Policy.** Prohibits users from distributing hacked materials, including by posting hacked content directly or by linking to hacked content hosted on other websites, but provides that users “can discuss a hack that has taken place.”

- **Private Information Policy.** Prohibits Twitter users from sharing certain information about others without permission, including contact information.

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7 MUR 7821 Twitter Resp. at 3; id., Ex. A (Decl. of Yoel Roth, Head of Site Integrity, Twitter) [hereinafter Roth Decl.]; Twitter Resp. at 4 (Mar. 5, 2021), MUR 7868 [hereinafter MUR 7868 Twitter Resp.]. Twitter’s Terms of Service specify that Twitter has the authority to “remove or refuse to distribute any Content, . . . limit distribution or visibility of any Content, . . . suspend or terminate users, and reclaim usernames.” Twitter Terms of Service, TWITTER (June 18, 2020), https://twitter.com/en/tos; MUR 7821 Twitter Resp. at 2.

8 MUR 7821 Twitter Resp. at 3 (quoting TWITTER, INC., 2020 OCTOBER QUARTERLY REPORT at 46 (Oct. 30, 2020)).


10 TWITTER, DISTRIBUTION OF HACKED MATERIALS POLICY (Mar. 2019) [hereinafter Twitter Hacked Materials Policy], https://help.twitter.com/en/rules-and-policies/hacked-materials [https://web.archive.org/web/20200930214928/https://help.twitter.com/en/rules-and-policies/hacked-materials]. Twitter has subsequently revised its policy to limit blocking hacked materials shared directly by the hacker; with respect to hacked materials shared by others, it may append labels providing context regarding the source of the material. See TWITTER, DISTRIBUTION OF HACKED MATERIALS POLICY (Oct. 2020), https://help.twitter.com/en/rules-and-policies/hacked-materials (“As such, we don’t permit the use of our services to directly distribute content obtained through hacking by the people or groups associated with a hack. In addition, we may label Tweets containing or linking to hacked materials to help people understand the authenticity or source of these materials and provide additional context.”). References to the policy throughout this Report are to the version in effect at the time Twitter took the actions at issue in these matters, dated March 2019.
information; physical location; identity documents; financial account
information; and medical records.\textsuperscript{11}

- **Civic Integrity Policy.** Prohibits users from using Twitter to
“manipulat[e] or interfer[e] in elections or other civic processes.”\textsuperscript{12}
Twitter enforces this policy by labeling or removing information deemed
false or misleading and “intended to undermine public confidence in an
election.”\textsuperscript{13} Prior to the 2020 election, Twitter publicly announced that
candidates would not be permitted to “claim an election win before it is
authoritatively called” by either one of a list of state election officials or
two or more national news outlets.\textsuperscript{14} Twitter states that it enacted the Civil
Integrity Policy to protect “the integrity of the election conversation.”\textsuperscript{15}

**B. Twitter’s Response to the October 2020 New York Post Articles**

On October 14 and 15, 2020, the *New York Post* published three articles relating to
emails purportedly obtained from a laptop belonging to Joe Biden’s son, Hunter.\textsuperscript{16} The emails
allegedly suggested that Hunter Biden used his relationship with his father to further his business

\textsuperscript{11} TWITTER, PRIVATE INFORMATION POLICY (Mar. 2019) [hereinafter Twitter Private Information Policy],

\textsuperscript{12} TWITTER, CIVIC INTEGRITY POLICY (Oct. 2020) [hereinafter Twitter Civic Integrity Policy], https://help.
help.twitter.com/en/rules-and-policies/election-integrity-policy]. Twitter has since amended its policy. TWITTER,
References to the policy throughout this report are to the prior version dated October 2020. The relevant portions of
the Policy are substantively identical to that currently in effect.

\textsuperscript{13} MUR 7868 Twitter Resp. at 4.

\textsuperscript{14} Vijaya Gadde & Kayvon Beykpour, *Additional Steps We’re Taking Ahead of the 2020 US Election*,

\textsuperscript{15} MUR 7868 Twitter Resp. at 4 & n.14; Twitter Safety, *Expanding Our Policies to Further Protect the Civic
Conversation*, BLOG.TWITTER (Sept. 10, 2020), https://blog.twitter.com/en_us/topics/company/2020/civic-integrity-
policy-update.html.

\textsuperscript{16} Emma-Jo Morris & Gabrielle Fonrouge, *Smoking-Gun Email Reveals How Hunter Biden Introduced
Ukrainian Businessman to VP Dad*, N.Y. POST (Oct. 14, 2020), https://nypost.com/2020/10/14/email-reveals-how-
hunter-biden-introduced-ukrainian-biz-man-to-dad/ (cited in Compls., passim); Emma-Jo Morris & Gabrielle
Fonrouge, *Hunter Biden Emails Show Leveraging Connections with his Father to Boost Burisma Pay*, N.Y. POST
boost-burisma-pay/ (cited in Compls., passim); Emma-Jo Morris & Gabrielle Fonrouge, *Emails Reveal How Hunter
(collectively, the “New York Post articles”).
dealings in Ukraine, and other materials included a video appearing to show Hunter Biden engaging in illegal activity. The New York Post articles republished some of these materials.

Twitter states that, on October 14, its Site Integrity Team, part of its Trust & Safety department, reviewed the first of the New York Post articles for compliance with Twitter’s policies and determined that the materials were potentially obtained through hacking and that the materials contained private email addresses and phone numbers. Twitter states that the Site Integrity Team escalated the issues to leadership within Twitter’s Trust & Safety department, and that, pursuant to its Hacked Materials and Private Information policies, Twitter’s Trust & Safety leadership team determined to block users from sharing links to the New York Post articles and prevent users who had previously shared the articles from sending new tweets until they deleted their previous tweets sharing the articles. Twitter states that all users were permitted to discuss the content of the New York Post articles so long as they did not link to or share the articles containing the hacked and private information. In a declaration submitted with Twitter’s Response, the head of Twitter’s Site Integrity Team attests that Twitter received official warnings throughout 2020 from federal law enforcement that “malign state actors” might hack and release materials associated with political campaigns and that Hunter Biden might be a target of one such operation.

See MUR 7821 Compl. at 2; MUR 7821 Compl. at 2-3; MUR 7868 Compl. at 1.

New York Post articles, supra note 16

MUR 7821 Twitter Resp. at 6; Roth Decl. at 3.

MUR 7821 Twitter Resp. at 5-7; Roth Decl. at 3. Twitter states that it does not delete users’ tweets, but instead restricts them from posting additional content until they delete any tweets in violation of Twitter’s policies. MUR 7821 Twitter Resp. at 7.

MUR 7821 Twitter Resp. at 7.

Id. at 5-6; Roth Decl. at 2-3. The head of Twitter’s Site Integrity Team, Yoel Roth, attests that: “[F]ederal law enforcement agencies communicated that they expected ‘hack-and-leak operations’ by state actors might occur...
C. Other Alleged Twitter Actions

Aside from the main allegation among the three Complaints that Twitter made an in-kind contribution to the Biden campaign through its response to the *New York Post* articles, the MUR 7868 Complaint alleges that Twitter made contributions to the Biden Committee in several other ways. First, the MUR 7868 Complaint points to labels that Twitter placed on certain of Donald Trump’s tweets leading up to and following the 2020 election concerning alleged voter fraud and that he had won the 2020 presidential election, which stated that “claims about election fraud are disputed,” and that “the [Associated Press] has called the race differently.”

Neither the MUR 7868 Complaint nor the Responses provide examples of Trump’s tweets, which are currently unavailable on the Twitter platform, or of the labels applied to these tweets. Twitter states that, in addition to Trump, it similarly labeled approximately 300,000 tweets, and 456 tweets also received warning messages, including a number of tweets by Trump. Twitter asserts that it labeled tweets and issued warning messages to enforce its Civic Integrity Policy. As discussed above, prior to the election, Twitter publicly announced that candidates would not be permitted in the period shortly before the 2020 presidential election.

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23 MUR 7868 Compl. at 2.


25 MUR 7868 Compl. at 2. Neither the Complaint nor the Response indicate how many of Trump’s tweets were so labeled.

26 MUR 7868 Twitter Resp. at 12.
to “claim an election win before it is authoritatively called” by either state election officials or two or more national news outlets.27

Second, the MUR 7868 Complaint alleges that Twitter “filter[ed] out, and limit[ed] the reach and visibility of conservative, [R]epublican, and pro-Trump voices,”28 a practice known as “shadow banning.” The Complaint points to a news article covering an issue on Twitter’s platform regarding auto-population of the search field, which appeared to exclude prominent conservative accounts from appearing as suggested results to user searches.29 Twitter spokespersons contended at the time that the issue occurred due to a technological error that was “not limited to a certain political affiliation or geography.”30 News reports reflect that the issue was resolved within a day of media outlets reporting on it.31 Twitter argues that the Complaint has failed to present any evidence to support the allegation that it shadow banned Republican accounts.32

Third, the MUR 7868 Complaint alleges that Twitter suppressed coverage of an October 2020 Tucker Carlson interview of Tony Bobulinski, an alleged former business associate of

27 Gadde & Beykpour, supra note 14.
28 MUR 7868 Compl. at 2.
29 Alex Thompson, Twitter Appears to Have Fixed “Shadow Ban” of Prominent Republicans Like the RNC Chair and Trump Jr.’s Spokesman, VICE NEWS (July 25, 2018), https://www.vice.com/en/article/43paqg/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman (cited in MUR 7868 Comp. at 2 n.4) (“Twitter is limiting the visibility of prominent Republicans in search results — a technique known as “shadow banning” — in what it says is a side effect of its attempts to improve the quality of discourse on the platform.”).
30 Vijaya Gadde & Kayvon Beykpour, Setting the Record Straight on Shadow Banning, BLOG.TWITTER (July 26, 2018), https://blog.twitter.com/en_us/topics/company/2018/Setting-the-record-straight-on-shadow-banning.html; see also MUR 7868 Twitter Resp. at 8.
31 Thompson, supra note 29 (“UPDATE: July 26, 10:00 AM: Twitter appears to have adjusted its platform overnight to no longer limit the visibility of some prominent Republicans in its search results.” (emphasis in original)).
32 MUR 7868 Twitter Resp. at 7-8.
Hunter Biden, who claimed that Joe Biden had been involved in his son’s foreign business

ventures. According to a news report cited by the Complaint, Twitter users shared the video
over 65,000 times and the video collected “more than 115,000 likes.” However, the interview
did not “trend” — i.e., appear on Twitter’s list of most active topics. The Complaint appears to
allege that, given the video’s popularity, Twitter must have taken action to prevent it from
trending on the platform. Twitter denies that it in any way “undertook to suppress the
Bobulinski story” and asserts that the interview was viewed over 2.5 million times on Twitter as
support for its contention that it did not suppress the story.

Fourth, the MUR 7868 Complaint further alleges that Twitter suppressed coverage of
lawsuits regarding election fraud in the 2020 election, pointing to the fact that, in November
2020, Twitter blocked users from linking to a lawsuit filed in Georgia challenging the state’s
election results, marking the link as “unsafe.” Twitter states that this was an error, and that the
issue was “quickly resolved upon discovery.”


35 Id.

36 MUR 7868 Compl. at 2 & n.2.

37 MUR 7868 Twitter Resp. at 9.

38 MUR 7868 Compl. at 2 & n.3.


40 MUR 7868 Twitter Resp. at 9; see also Garber, supra note 39 (quoting Twitter spokesperson as stating, “The URL referenced was mistakenly marked under our unsafe links policy — this action has now been reversed”).
Finally, the MUR 7868 Complaint also alleges that Twitter coordinated its activities with the Biden Committee, based on the fact that Twitter’s former director of public policy joined the Biden transition team. Twitter and the Biden Committee both deny that they ever discussed Twitter’s enforcement of its policies, both generally and with respect to the actions at issue here. In a sworn declaration, Twitter’s Head of U.S. Public Policy states that neither she nor any Twitter employees of which she is aware were contacted by the Biden Committee prior to Twitter’s policy enforcement determinations. The Biden Committee states that the Biden transition team, which hired a former Twitter Public Policy Director, and which the Complaint alleges shows a relationship between Twitter and the Biden Committee, is a separate entity from the Biden Committee.

II. LEGAL ANALYSIS

A. Relevant Law Concerning Contributions

The Act prohibits corporations from making contributions to federal candidates, and likewise bars candidates, political committees (other than independent expenditure-only political

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41 MUR 7868 Compl. at 2; see also MUR 7821 Compl. at 3 (observing that “there appears to be a revolving door between the Biden campaign and the company” and pointing to the same director of public policy mentioned in the MUR 7868 Complaint as well as the fact that the former press secretary for Kamala Harris, Biden’s running-mate, now works for Twitter). The MUR 7821 Complaint does not explicitly allege that Biden or the Biden Committee coordinated with Twitter.

42 MUR 7821 Twitter Resp. at 1, 11-12; MUR 7827 Twitter Resp. at 3, 7, 17-18; MUR 7868 Twitter Resp. at 1, 13-14; MUR 7868 Biden Committee Resp. at 3-5.

43 MUR 7821 Resp, Ex. B (Decl. of Lauren Culbertson, Head of U.S. Public Policy, Twitter) [hereinafter Culbertson Decl.] (identifying her team as the point of contact for political campaigns).

44 MUR 7868 Biden Committee Resp. at 4 (“Mr. Monje and Ms. Hertz are not now, and were not at the time of their hiring, employees of the Committee.”)
committees and committees with hybrid accounts), and other persons from knowingly accepting
or receiving corporate contributions.45

Under the Act, a “contribution” includes “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.46 The term “anything of value” includes “all in-kind contributions.”47 In-kind
ccontributions include “coordinated expenditures,” that is, expenditures “made by any person in
cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate, his
[or her] authorized committees, or their agents.”48 Under Commission regulations, a
communication is considered coordinated and thus treated as an in-kind contribution when it is:
(1) paid for by a third-party; (2) satisfies one of five content standards; and (3) satisfies one of
five conduct standards.49 All three prongs are required in order for the communication to be
considered a coordinated communication and treated as an in-kind contribution under these
regulations.50 In-kind contributions also include “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.”51

The Commission has concluded that a commercial vendor providing services to political
committees will not make a contribution for the purpose of influencing an election when its
business activity “reflects commercial considerations and does not reflect considerations outside

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45 52 U.S.C. § 30118(a); accord 11 C.F.R. § 114.2(a), (d).
46 52 U.S.C. § 30101(8)(A); accord 11 C.F.R. § 100.52.
47 11 C.F.R. § 100.52(d).
49 11 C.F.R. § 109.21(a).
50 See id.
51 Id. § 100.52(d) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).
of a business relationship.” 52 A commercial vendor need not make its services available to committees representing all political ideologies, but rather may establish objective business criteria to protect commercial viability of its business without making contributions to the committees that meet those criteria.53

The Commission has long considered activity engaged in for bona fide commercial reasons not to be “for the purpose of influencing an election,” and thus, not a contribution or expenditure under section 30118(a). 54 This is true even if a candidate benefitted from the commercial activity.55

52 Advisory Opinion 2012-31 at 4 (AT&T).
53 Advisory Opinion 2017-06 (Stein & Gottlieb) at 6 (“[A] commercial vendor, providing services to political committees . . . need not make its services available to committees representing all political ideologies, but rather may establish objective business criteria to protect the commercial viability of its business without making contributions to the committees that meet those criteria.”); Advisory Opinion 2004-06 at 1 (Meetup) (explaining that a corporation may provide goods and services to political committees without being considered to have made an in-kind contribution so long as it does so “on the same terms and conditions available to all similarly situated persons in the general public”); Advisory Opinion 2012-26 at 10 (Cooper for Congress, et al.) (concluding that no contribution to committee resulted where its participation in a text message fundraising program was subject to “objective and . . . commercially reasonable” criteria).

54 See, e.g., Factual & Legal Analysis at 4, MUR 6586 (World Wrestling Entertainment, Inc.) (finding that WWE acted with the “sole intent to defend its business reputation” and not for the purpose of influencing an election when WWE’s senior vice president sent a letter to a newspaper seeking a retraction of a negative article about Senate candidate Linda McMahon, who owned and served as CEO of WWE); First Gen. Counsel’s Rpt. at 13 & Cert. ¶ 1 (June 7, 2005), MUR 5474 (Dog Eat Dog Films, et al.) (approving no reason to believe recommendation) (determining that distributors and marketers of Fahrenheit 9/11 film did so “in connection with bona fide commercial activity and not for the purpose of influencing an election”); Advisory Opinion 2018-11 at 4 (Microsoft Corp.) (concluding that commercially reasonable efforts “to protect [Microsoft’s] brand reputation” by providing election-sensitive customers with free account security services are not an in-kind contribution).

55 See First Gen. Counsel’s Rpt. at 16 & Cert. ¶ 5 (June 6, 1994), MUR 3622 (The Clinton/Gore ‘92 Committee) (approving no reason to believe recommendation); First Gen. Counsel’s Rpt. at 16, MUR 3622 (The Clinton/Gore ‘92 Committee) (“[T]he fact that any of these candidates . . . may have received an indirect benefit (dissemination of their political positions) as a result of the sale of these tapes does not convert commercial activity into a corporate contribution.”); Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, et al.) (opining that the “question under the Act is whether the legal services were provided for the purpose of influencing a federal election, not whether they provided a benefit to Van Hollen’s campaign,” and concluding there was no contribution given the “absence of any objective or subjective indication” respondents acted for the purpose of influencing the election).
B. The Commission Finds No Reason to Believe That Twitter Made and the Biden Committee Knowingly Accepted and Failed to Report Prohibited In-Kind Corporate Contributions

As explained below, the actions taken by Twitter in response to the October 2020 *New York Post* articles, i.e., blocking users from tweeting hacked or personal information, and in response to Trump’s tweets regarding alleged voter fraud and the election results, i.e., labeling these tweets as disputed, appear to reflect *bona fide* commercial considerations rather than an effort to influence a federal election. It appears that both of these actions were in accordance with Twitter’s pre-existing content policies, and that Twitter enacted these policies for commercial reasons ultimately relating to the protection of its brand and its ability to attract advertisers — i.e., its “commercial viability.”

The remaining actions alleged by the MUR 7868 Complaint, relating to “shadow banning,” suppressing video of the Bobulinski interview, and limiting coverage of post-election lawsuits, are vague, speculative, and otherwise not supported by the available information. Finally, there is no information in the current record to suggest that Twitter coordinated any of its activities with the Biden Committee.

1. Blocking Sharing of the *New York Post* Articles

Twitter acknowledges that, following the October 2020 publication of the *New York Post* articles at issue, Twitter blocked users from sharing links to the articles. But Twitter states that this was because its Site Integrity Team assessed that the *New York Post* articles likely contained hacked and personal information, the sharing of which violated both Twitter’s Distribution of Hacked Materials and Private Information Policies. Twitter points out that although sharing

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56 MUR 7821 Twitter Resp. at 2-3; see also MUR 7827 Twitter Resp. at 1 (“Twitter blocked potentially hacked content that contained private information such as email addresses, phone numbers, and personal photographs for *bona fide* commercial reasons and to enforce preexisting Rules and policies intended to protect the safety, integrity, and commercial viability of its social media platform.”).
links to the articles was blocked, users were still permitted to otherwise discuss the content of the
*New York Post* articles because doing so did not directly involve spreading any hacked or
personal information.\(^{57}\) Based on the information available to Twitter at the time, these actions
appear to reflect Twitter’s stated commercial purpose of removing misinformation and other
abusive content from its platform, not a purpose of influencing an election.\(^{58}\) Federal law
enforcement agencies apparently communicated to Twitter that they expected hack-and-leak
operations by state actors might occur in the period shortly before the 2020 presidential election
and warned that such a hack-and-leak operation might involve Hunter Biden.\(^{59}\) Moreover,
images of the materials plainly show unredacted email addresses and phone numbers.\(^{60}\) These
circumstances appear to reflect a commercial, not electoral, basis for Twitter to have blocked
users from sharing this information on its platform.

Two of the Complaints argue that the materials at issue were not “hacked” and therefore
were not in violation of Twitter’s Distribution of Hacked Materials policy.\(^{61}\) It remains unclear
whether the materials were hacked under the meaning of Twitter’s policy, but what is relevant
here is that Twitter’s contemporaneous assessment that these materials were hacked, based on
warnings from federal intelligence agencies, was done in accordance with its existing content
policies, which were adopted for commercial reasons.\(^{62}\) In any event, because the materials

\(^{57}\) MUR 7821 Twitter Resp. at 2-7; Roth Decl. at 3; MUR 7827 Twitter Resp. at 1-3; MUR 7868 Twitter
Resp. at 11-12; Twitter Hacked Materials Policy; Twitter Private Information Policy.

\(^{58}\) Twitter has identified that “a decrease in the perceived quality, usefulness, trustworthiness or relevance of
the content generated by people on Twitter or content partners” may have a “potentially negative” effect on its
business. *See supra* note 9 and accompanying text.

\(^{59}\) Roth Decl. ¶¶ 10-11.

\(^{60}\) *New York Post* articles, *supra* note 16.

\(^{61}\) MUR 7821 Compl. at 3; MUR 7827 Compl. at 3-4.

\(^{62}\) Roth Decl. ¶¶ 10-11 (“I have had regular meetings with the Office of the Director of National Intelligence,
the Department of Homeland Security, the FBI, and industry peers regarding election security. . . . During these
contained personal information, which was apparent on their face, Twitter could have separately blocked users from sharing the materials, given the apparent violation of Twitter’s Private Information Policy.63

Two of the Complaints allege that, even if Twitter did follow its policies, Twitter has been inconsistent in the enforcement of its policies, reflecting an ideological bias.64 However, the Complaints do not provide convincing information to support their claim. Their main argument is to present a contrast between Twitter’s treatment of the New York Post articles and its treatment of a New York Times story on Trump’s leaked tax returns that Twitter did not block or suppress. However, as Twitter’s Response points out, unlike the New York Post articles, the New York Times article only discussed but did not republish the tax returns at issue, and thus did not contain any hacked or private information.65 Accordingly, it does not appear there was a basis for Twitter to have identified a violation of its rules that would have justified blocking users from sharing the New York Times articles. In short, the allegedly differing treatment

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weekly meetings, the federal law enforcement agencies communicated that they expected ‘hack-and-leak’ operations by state actors might occur in the period shortly before the 2020 presidential election . . . [and] that there were rumors that a hack-and-leak operation would involve Hunter Biden.”). 63 Twitter Private Information Policy (“Under this policy, you can’t share the following types of private information, without the permission of the person who it belongs to: . . . contact information, including non-public personal phone numbers or email addresses . . . ”).

64 MUR 7821 Compl. at 3-4; MUR 7827 Compl. at 5-6.

65 MUR 7821 Twitter Resp. at 10 n.51; MUR 7827 Twitter Resp. at 3; see Twitter Hacked Materials Policy (“[T]his policy only addresses instances in which the materials themselves are being distributed — not discussions of or reporting about hacking which refer to but do not embed or link to the materials themselves. Tweets referring to a hack or discussing hacked materials would not be considered a violation of this policy unless materials associated with the hack are directly distributed in the text of a Tweet, in an image shared on Twitter, or in links to hacked content hosted on other websites.”); Twitter Private Information Policy (listing only categories of personal information such as “home address or physical location information,” “identity documents, including . . . social security or other national identity numbers,” and “biometric data or medical records” as “in violation of this policy”).
identified by the MUR 7821 and 7827 Complaints does not show that Twitter’s actions were inconsistent.

In sum, Twitter has credibly explained that its actions to block uses from sharing links to the *New York Post* articles were undertaken for commercial reasons and thus did not constitute a contribution within the meaning of the Act.

2. **Labeling Trump’s Tweets**

Leading up to and following the 2020 election, Twitter placed labels on certain of Trump’s tweets concerning alleged voter fraud (informing readers that his claims of voters fraud were disputed) and tweets in which Trump claimed that he had won the election (informing readers that the Associated Press had called the race for Joe Biden). The MUR 7868 Complaint alleges that these labels constituted “an in-kind contribution, and [were] equivalent to offering free advertising [to] the Biden campaign.”

Although the available information suggests that Twitter may have met the payment prong of the coordinated communications test by expending corporate resources to add the labels to Trump’s tweets, neither the “content” or the “conduct” prongs appear to be satisfied.

First, the content standards in the regulation all require a communication to be either an “electioneering communication” or a “public communication,” neither of which appears to apply to Twitter’s activities. An electioneering communication is “any broadcast, cable, or satellite communication” that refers to a “clearly identified candidate for Federal office,” is publicly distributed within a certain time before the election, depending on the office, and meets certain

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66 MUR 7868 Compl. at 2.
67 *Id.*
68 *See* 11 C.F.R. § 109.21(c) (content standards).
requirements regarding the audience, depending on the office.\textsuperscript{69} Twitter’s labeling of Trump’s
tweets was published on the internet, not distributed on broadcast, cable, or satellite, and
therefore does not legally qualify as an electioneering communication. Alternatively, a public
communication is “a communication by means of any broadcast, cable, or satellite
communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone
bank to the general public, or any other form of general public political advertising.”\textsuperscript{70} The
Commission’s implementing regulation provides that public communications “shall not include
communications over the Internet, except for communications placed for a fee on another
person’s Web site.”\textsuperscript{71} While Twitter’s labels are internet communications, the available
information indicates that Twitter did not place them for a fee on another person’s website, but
rather on its own. As such, these posts do not appear to be public communications.

Second, each of the conduct standards requires some interaction with the allegedly
coordinating candidate or campaign regarding the communication, such as a request or
suggestion, substantial discussions, or use of a common vendor, but there is no indication of any
such interaction between Twitter and the Biden Committee.\textsuperscript{72} The MUR 7868 Complaint does
not allege, and there is no other information to suggest, that Twitter added the labels to Trump’s
tweets in coordination with the Biden Committee. In sum, the content and conduct prongs of the
three-part test are not satisfied, and thus no basis to conclude that there was a coordinated
communication.

\textsuperscript{69} 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 100.29 (same).
\textsuperscript{70} 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).
\textsuperscript{71} 11 C.F.R. § 100.26.
\textsuperscript{72} See id. § 109.21(d) (conduct standards); see also id. 109.21(e) (stating that an agreement or formal
collaboration “is not required for a communication to be a coordinated communication”).
The available information likewise does not indicate that Twitter’s costs in labeling

Trump’s tweets satisfy the definition of coordinated expenditure — the analysis here focuses on any payments by Twitter that were “not made for communications.” To the extent that Twitter incurred any costs unrelated to communications, there is still nothing to suggest that Twitter made the payments “in cooperation, consultation or concert with, or at the request or suggestion of” any candidate, for the reasons stated above with respect to the conduct prong of the coordinated communication test. Again, there is no information from which to infer that Twitter had such contact with the Biden Committee. Accordingly, there is no basis to infer that any payments by Twitter were coordinated expenditures.

In conclusion, there is no information to suggest that Twitter and the Biden Committee coordinated Twitter’s labeling of Trump’s tweets concerning alleged voter fraud and claims that he had won the 2020 election. Moreover, Twitter has presented information to suggest that its actions were undertaken to advance its commercial interest and not made for the purpose of influencing a federal election. Therefore, it does not appear that Twitter’s labeling of Trump’s tweets resulted in an in-kind contribution from Twitter to the Trump campaign.

3. Alleged Shadow Banning, Suppression of the Bobulinski Interview, and Limiting of Coverage of Lawsuits Regarding Election Fraud

With respect to Twitter’s other alleged activities, including “shadow banning” prominent Republican Twitter users, suppressing Tucker Carlson’s interview of Tony Bobulinski, and

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75 The available information does not suggest any direct or indirect contact between Twitter and the Biden Committee about the labeling of Trump’s tweets, such that Twitter might have provided anything of value to the Biden Committee.
suppressing coverage of election fraud lawsuits, Twitter has credibly denied that the alleged
activity occurred, or explained that the events alleged were the result of inadvertent technological
ersors rather than intentional determinations.76

First, the MUR 7868 Complaint claims that Twitter took actions to limit the “reach and
visibility” of conservative voices on its platform.77 But the very news article cited by the
Complaint does not support the Complaint’s conclusion that suppression occurred: The article
instead describes an error regarding Twitter’s search feature that was “not limited to a certain
political affiliation” and which was quickly remedied after it was identified.78

Second, the MUR 7868 Complaint provides statistics about the popularity of a video
showing a Tucker Carlson interview and claims that it should have “trended” on Twitter but did
not, arguing that Twitter must have “suppressed” the interview to prevent it from doing so.79
However, the Complaint does not provide any specific allegations as to how Twitter may have
suppressed the interview, or why it would have allowed it to be shared but not allow it to trend.80
Twitter denies that it took any action to manipulate whether the interview would trend, but it also
does not explain why the apparently popular video did not trend despite users sharing it 2.5
million times.81 Nonetheless, the Commission is aware of no information that contradicts
Twitter’s denial, and the MUR 7868 Complaint itself presents only a theory that the popularity of

76 See Part II.C, supra.
77 MUR 7868 Compl. at 2.
78 Thompson, supra note 29 (“UPDATE: July 26, 10:00 AM: Twitter appears to have adjusted its platform
overnight to no longer limit the visibility of some prominent Republicans in its search results.” (emphasis in
original)).
79 MUR 7868 Compl. at 2 & n.2.
80 See id. at 2.
81 MUR 7868 Twitter Resp. at 8-9.
the video should have made it trend in the way that was apparently expected without any supporting information or statistics.

Third, the MUR 7868 Complaint claims that Twitter suppressed coverage of lawsuits filed regarding the 2020 election.82 The Complaint again cites to information that does not appear to support its claim. It points to a news article that reported how Twitter blocked users from linking to a lawsuit filed in Georgia, but which also quotes a Twitter spokesperson as stating that this was an error and that it was quickly resolved.83 The Complaint does not identify any other instances of alleged suppression of election lawsuits other than this apparently isolated and inadvertent instance. The MUR 7868 Complaint presents no information contradicting Twitter’s explanations, and cites only to press articles, many of which in fact support Twitter’s claims that the alleged activity was done in error and quickly remedied.84

4. Alleged Coordination

Finally, there is no basis to conclude that Twitter coordinated any of its actions with Biden or his campaign — i.e., that Twitter undertook these actions “in cooperation, consultation or concert with, or at the request or suggestion of” Biden or the Biden Committee.85 The Complaint relies upon the fact that a former Twitter employee was hired by the Biden transition team following the 2020 election.86 Without more, this fact does not plausibly suggest that, during the election, prior to this individual’s hiring by the transition team, Twitter coordinated its response to the New York Post articles or labeling of Trump’s tweets with Biden or the Biden

82 MUR 7868 Compl. at 2.
83 Garber, supra note 39 (quoting Twitter spokesperson as stating, “The URL referenced was mistakenly marked under our unsafe links policy—this action has now been reversed”).
84 See, e.g., id.; Thompson, supra note 29.
85 11 C.F.R. § 109.20 (definition of coordinated expenditure).
86 MUR 7868 Compl. at 2.
Committee. Both Twitter and the Biden Committee expressly deny that Twitter’s policy enforcement determinations were ever discussed with or influenced by the Biden Committee.87 Twitter submitted a sworn declaration by its Head of U.S. Public Policy attesting that neither she nor any other Twitter employee “received any communications from or had any communications with representatives of [the Biden Committee] . . . before Twitter implemented the enforcement actions on October 14, 2020.”88

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As discussed above, the information before the Commission indicates that Twitter’s actions in response to the New York Post articles (blocking apparently hacked and personal information) were undertaken for commercial reasons and not for the purpose of influencing an election. Consequently, because Twitter’s actions reflect a commercial, rather than electoral, purpose, they were not contributions. Further, the information available indicates that Twitter’s actions regarding Trump’s tweets (labeling apparent misinformation about the election) were not coordinated with the Biden Committee, and as such also did not constitute contributions. Regarding Twitter’s alleged shadow banning, limiting the visibility of the Bobulinski interview, and suppression of election lawsuits, the allegations as a whole are vague, speculative, and unsupported.89 Finally, not only does the available information indicate that Twitter acted with a bona fide commercial purpose and not an electoral one, but there is also no information indicating that Twitter coordinated its activities with the Biden Committee.

87 MUR 7868 Twitter Resp. at 13-14; MUR 7868 Biden Committee Resp. at 4.
88 Culbertson Decl. at ¶ 9.
89 Statement of Reasons at 1, Comm’rs Mason, Sandstrom, Smith & Thomas, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Comm., et al.).
Therefore, the Commission finds no reason to believe that Twitter made prohibited in-kind corporate contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 109.21, 114.2(b); finds no reason to believe that Biden for President knowingly accepted or received and failed to report contributions in violation of 52 U.S.C. § 30104(b)(3)(A), 30118(a) and 11 C.F.R. §§ 104.3(a), 114.2(d); and finds no reason to believe that Jack Dorsey, Twitter’s CEO, and Brandon Borrman, Twitter’s Vice President, Global Communications, violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by consenting to prohibited corporate contributions.