

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR: 7829**

6 DATE COMPLAINT FILED: 10/21/2020

7 DATE OF NOTIFICATIONS: 10/27/2020

8 LAST RESPONSE RECEIVED: 12/14/2020

9 DATE ACTIVATED: 5/20/2021

10
11 ELECTION CYCLE: 2020

12 EXPIRATION OF SOL: 10/9/2025

13
14 **COMPLAINANT:** Matthew Rafat

15
16 **RESPONDENT:** Twitter, Inc.

17
18 **RELEVANT STATUTE**
19 **AND REGULATION:** 52 U.S.C. § 30118(a)
20 11 C.F.R. § 114.2(b)

21
22 **INTERNAL REPORTS CHECKED:** None

23
24 **FEDERAL AGENCIES CHECKED:** None

25 **I. INTRODUCTION**

26 The Complaint alleges that Twitter, Inc. (“Twitter”) made a prohibited in-kind corporate
27 contribution to the presidential campaigns of Joseph Biden and Donald Trump during the 2020
28 election, by locking Complainant’s account in violation of the Federal Election Campaign Act of
29 1971, as amended (the “Act”). Complainant Matthew Rafat is a self-described “amateur
30 journalist . . . promoting the attempts of any minor party to gain at least 5% of the national
31 vote.”¹ On October 9, 2020, Twitter temporarily suspended his account and required him to
32 input verifying personal information following his use of the term “Uncle Tom” in the context of

¹ Compl. at 1-2 (Oct. 21, 2020); *id.*, Attach. at 6-11, 14-15.

1 what Rafat describes as an academic conversation with another Twitter user.² Rafat asserts that
2 Twitter intentionally mislabeled his language as hate speech to justify a “pretextual suspension,”
3 in an attempt to shield both Biden and Trump “from negative news coverage by muzzling
4 independent voices.”³

5 Twitter denies the allegations, arguing that its actions to suspend Rafat’s account were in
6 accordance with its widespread efforts to combat malicious activity and not for the purpose of
7 influencing a federal election.⁴ More specifically, Twitter asserts that it determined Rafat’s use
8 of the term “Uncle Tom” was a violation of its Hateful Conduct Policy and initiated a 12-hour
9 suspension of his account, requiring him to remove the offending tweet, which Rafat has not
10 done.⁵ Twitter asserts that it undertook these actions to “protect the overall quality of the
11 discourse on its platform.”⁶ Twitter states that, “[i]f Mr. Rafat removes that Tweet, Twitter will
12 unlock his account and he can resume communicating on the platform.”⁷

13 As discussed below, while there might be a question whether Twitter correctly interpreted
14 Rafat’s language as hate speech, in context, there is nothing to suggest that Twitter otherwise
15 acted for the purpose of influencing a federal election. Twitter has credibly stated that its actions
16 were motivated by commercial interests, and there is no suggestion that Twitter coordinated with

² Compl. at 1-2; *id.*, Attach. at 3-4 (Screenshot of Twitter restriction of @matthewrafat: “Your account, @matthewrafat has been locked for violating the Twitter Rules”); *id.* at 5 (Screenshot of Twitter restriction of @matthewrafat: “An update regarding your account”); *id.* at 8-9 (Screenshot of @davidminpdx Oct. 6, 2020 tweet, showing @matthewrafat’s reply deleted by Twitter: “This Tweet violated the Twitter Rules.”).

³ Compl. at 3-4.

⁴ Resp. at 1 (Dec. 14, 2020).

⁵ *Id.* at 1-2, 8.

⁶ *Id.* at 11.

⁷ *Id.* at 2.

1 any candidate or campaign. Accordingly, we recommend that the Commission find no reason to
2 believe Twitter violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).

3 **II. FACTUAL BACKGROUND**

4 Incorporated in Delaware in April 2007, Twitter is a web-based social networking
5 platform, and describes itself as “a free service that allows users to publicly communicate in
6 messages of up to 280 characters – regardless of the substantive content of the communication.”⁸
7 Twitter asserts that its purpose is to “bolster the public conversation,” and that it stands for
8 “freedom of expression,” and the principal that “every voice has the power to impact the
9 world.”⁹ According to Twitter, all 100 senators, 50 governors, and nearly every member of
10 congress reach their constituents through Twitter accounts, and that “conservatives, in particular
11 hav[e] a strong presence on Twitter,” and that [t]hird parties are also prominent on the platform
12 and often turn to Twitter to get their message out when other means are not available.”¹⁰

13 Matthew Rafat is a Twitter user, @matthewrafat, and describes himself as “an
14 unaffiliated individual and amateur journalist” and “long-time active commentator on local and
15 national politics” and states that he “writes from the perspective of a third party supporter, *i.e.*,
16 promoting the attempts of any minor party to gain at least 5% of the national vote.”¹¹ Rafat also

⁸ *Id.*

⁹ *Id.* at 3, nn.10-12 (citing Twitter, *The Twitter Rules*, <https://help.twitter.com/en/rules-and-policies/twitter-rules/>; Bridget Coyne, *Empowering Freedom of Expression for National Voter Registration Day*, TWITTER: BLOG, Sept. 27, 2017, https://blog.twitter.com/official/en_us/topics/events/2017/national-voter-reg-day-2017.html/; Twitter, *Our Values*, https://about.twitter.com/en_us/values.html/).

¹⁰ *Id.* at 2-3, nn.7-9 (citing *Twitter: Transparency and Accountability: Hearing before the H. Comm. on Energy and Commerce*, 115th Cong. (2018) (Testimony of Jack Dorsey, Chief Executive Officer, Twitter, Inc. at 2, 6), <https://docs.house.gov/meetings/IF/IF00/20180905/108642/HHRG-115-IF00-Wstate-DorseyJ-20180905.pdf/>; Jessica Gregory, *Third-party Candidates Voice Disapproval as They're Excluded from Televised Debates*, WSUM.ORG, Sept. 28, 2020, <https://wsum.org/2020/09/28/third-party-candidatesvoice-disapproval-as-theyre-excluded-from-televised-debates/>).

¹¹ Compl. at 2.

1 states that he is hearing-impaired since birth and uses Twitter on his laptop, not a mobile app,
2 and is “wary” of giving out his mobile number due to “not having a mobile amplifier.”¹²

3 On October 6, 2020, Rafat tweeted the following response to another user’s tweet asking
4 for suggestions on terms to describe sympathizers with foreign colonizers: “@davidminpdx
5 Uncle Tom. In one of Malcolm X’s speeches, he calls the Chinese Revolution a Revolution
6 against Uncle Tom Chinese.”¹³ On October 7, Rafat live blogged the 2020 U.S. Vice-
7 Presidential debate on his Twitter page, and states that around the same time he posted a link on
8 the Twitter page of the *Christian Science Monitor* to a blog post he wrote that was critical of
9 Biden.¹⁴ On October 9, Twitter alerted Rafat via email that his use of the term “Uncle Tom” in
10 his October 6 tweet violated Twitter’s Hateful Conduct Policy and suspended Rafat’s account for
11 12 hours.¹⁵

12 By letter dated October 9, Rafat appealed the temporary suspension stating that the
13 timing of the suspension after he live-blogged the vice presidential debate indicated that
14 Twitter’s actions were a pretext to “prevent independent political commentary” and “mitigate

¹² *Id.* at 3, Attach. at 2 (Ltr. from Matthew Rafat, to Vijaya Venkata Gadde, Twitter, Inc., appealing Twitter locking him out of his account) (Oct. 9, 2020)).

¹³ Compl. at 1-2, Attach. at 8-9 (Screenshot of @davidminpdx Oct. 6, 2020 tweet, showing @matthewrafat’s reply deleted by Twitter: “This Tweet violated the Twitter Rules.”). The Response asserts that Rafat’s “Uncle Tom” reply tweet occurred on October 8. Resp. at 8. However, the Complaint attached a screen shot of the reply tweet with the date October 6, 2020. Compl. at Attach. at 3-4 (Screenshot of Twitter restriction of @matthewrafat: “Your account, @matthewrafat has been locked for violating the Twitter Rules”).

¹⁴ Compl. at 3; *see also* Matthew Rafat, *Joe Biden: America’s Golden Retriever*, WILLWORKFORJUSTICE.BLOGSPOT.COM (June 3, 2020), (<https://willworkforjustice.blogspot.com/2020/06/joe-biden-americas-goldenretriever.html>) (blog post written by Rafat).

¹⁵ Compl. at 2, Attach. at 3-4 (Screenshot of Twitter restriction of @matthewrafat: “Your account, @matthewrafat has been locked for violating the Twitter Rules.”); Attach. at 8-9 (Screenshot of @davidminpdx Oct. 6, 2020 tweet, showing @matthewrafat’s reply deleted by Twitter: “This Tweet violated the Twitter Rules.”); Resp. at 8 & n.58 (citing Twitter, *Hateful Conduct Policy*, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>).

1 competition from independent sources.”¹⁶ In response to Rafat’s letter, Twitter issued a decision
2 stating that it reviewed his appeal, and that its support team confirmed that he violated Twitter’s
3 rules against hateful conduct.¹⁷ The decision further informed Rafat that he could resolve the
4 violations by logging into his account and completing online instructions.¹⁸ Rafat states that one
5 of these instructions was a requirement to enter his mobile telephone number to receive a text
6 message with a confirmation code, but that he refused to comply.¹⁹ He states: “Until October 9,
7 2020, I was never required to enter or submit a mobile number in order to reach my followers or
8 the public. . . . I have been severely hearing impaired since birth and am wary of giving out a
9 mobile number to anyone due to not having a mobile amplifier.”²⁰

10 The Complaint alleges that Twitter’s actions in suspending Rafat’s account and asking
11 him to provide a mobile phone number constituted a prohibited in-kind corporate contribution to
12 the Biden and Trump campaigns.²¹ The Complaint argues that Twitter prevents third party
13 supporters from using social media platforms “to promote independent political commentary”
14 and “substantially harms the ability of third party supporters... to reach an audience[,]” thus
15 benefitting both Democratic and Republican candidates.²²

16 Twitter asserts that its actions in response to Rafat’s tweet were undertaken for business
17 reasons to regulate the quality of the content on its platform, and not to influence a federal

¹⁶ *Id.* at 1,3, Attach. at 2 (Ltr. from Matthew Rafat, to Vijaya Venkata Gadde, Twitter, Inc. (appealing Twitter locking him out of his account) (Oct. 9, 2020)).

¹⁷ Compl., Attach. at 5 (Screenshot Twitter restriction of @matthewrafat: “An update regarding your account”).

¹⁸ *Id.*; Resp. at 8.

¹⁹ Compl. at 1.

²⁰ *Id.* at 1, 3.

²¹ *Id.* at 2.

²² *Id.* at 2-4.

1 election.²³ Twitter asserts that it has a commercial interest in detecting and minimizing abusive
2 and manipulative behavior on its platform.²⁴ Twitter's Hateful Conduct Policy states in pertinent
3 part: "Repeated and/or non-consensual slurs, epithets, racist and sexist tropes, or other content
4 that degrades someone. We prohibit targeting individuals with repeated slurs, tropes or other
5 content that intends to dehumanize, degrade or reinforce negative or harmful stereotypes about a
6 protected category."²⁵ Twitter states that compliance with its Hateful Conduct Policy is
7 "critical" to its commercial success because corporations and advertisers have indicated that they
8 will only work with companies like Twitter if they permit "responsible content" to improve
9 consumer ad experiences.²⁶ Twitter also asserts that on other occasions it has taken action
10 against other users on its platform for use of the same term for which is suspended Rafat's
11 account.²⁷ Twitter states that Rafat could immediately regain his account by complying with
12 Twitter's instructions and entering the required information.²⁸

²³ Resp. at 5.

²⁴ *Id.* at 4.

²⁵ *Id.* at 5, n.29 (citing Twitter, *Hateful Conduct Policy*, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>). The factors that Twitter states it takes into account when determining a penalty for violating this policy include, the severity of the violation and the individual's previous record on rule violations). *Id.* at 5.

²⁶ *Id.* at 5-6, nn.30-40.

²⁷ *Id.* at 8, n.57 (citing Elie Mystal, *That Time I Got Suspended on Twitter For Calling Kanye West an 'Uncle Tom' and Other Things*, ABOVEthELAW.COM, May 2, 2018, <https://abovethelaw.com/2018/05/that-time-i-gotsuspended-on-twitter-for-calling-kanye-west-an-uncle-tom-and-other-things/>; Tanasia Kenney, *Sportscaster Who Called Sen. Tim Scott 'Uncle Tom' Is Out of a Job, CT Station Says*, THE STATE, Oct. 2, 2020, <https://www.thestate.com/news/nation-world/national/article246172055.html> (explaining that an Emmy-winning sportscaster was fired for an "Uncle Tom" Tweet critical of Senator Tim Scott)).

²⁸ *Id.* at 8. Twitter states that it previously suspended Rafat's account from September 21 through 23, 2020, for "spam-like behavior" detected by its algorithm, and required Rafat to supply "information sufficient enough for Twitter to authenticate his account and restore access." *Id.* Twitter asserts that it has a commercial interest in determining which accounts are engaging in spam-like behavior and which accounts might be controlled by bots, rather than humans. *Id.* at 4 (citing Yoel Roth and Del Harvey, *How Twitter Is Fighting Spam and Malicious Automation*, Twitter: Blog (June 26, 2018), https://blog.twitter.com/official/en_us/topics/company/2018/how-twitter-is-fighting-spamand-malicious-automation.html; Jack Dorsey (@jack), Twitter (Mar. 1, 2018, 10:33 A.M.), <https://twitter.com/jack/status/969234279321419776> (explaining that "harassment, troll armies, manipulation

1 **III. LEGAL ANALYSIS**

2 The Act prohibits corporations from making contributions to federal candidates, and
3 likewise bars candidates, political committees (other than independent expenditure-only political
4 committees and committees with hybrid accounts), and other persons, from knowingly accepting
5 or receiving corporate contributions.²⁹

6 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit
7 of money or anything of value made by any person for the purpose of influencing any election
8 for Federal office.³⁰ The term “anything of value” includes “all in-kind contributions.”³¹ In-
9 kind contributions include “coordinated expenditures,” that is, expenditures “made by any person
10 in cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate,
11 his [or her] authorized committees, or their agents.”³² A communication is coordinated and thus
12 treated as an in-kind contribution when it is: (1) paid for by a third-party; (2) satisfies one of five
13 content standards; and (3) satisfies one of five conduct standards.³³ In-kind contributions also
14 include “provision of any goods or services without charge or at a charge that is less than the
15 usual and normal charge for such goods or services.”³⁴

16 The Commission has concluded that a commercial vendor providing services to political
17 committees will not make a contribution for the purpose of influencing an election when its

through bots and human-coordination, misinformation campaigns, and increasingly divisive echo chambers” are receiving particular attention at Twitter)).

²⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (d).

³⁰ 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52.

³¹ 11 C.F.R. § 100.52(d).

³² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

³³ 11 C.F.R. § 109.21(a).

³⁴ *Id.* § 100.52(d) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

1 business activity “reflects commercial considerations and does not reflect considerations outside
2 of a business relationship.”³⁵ A commercial vendor need not make its services available to
3 committees representing all political ideologies, but rather may establish objective business
4 criteria to protect commercial viability of its business without making contributions to the
5 committees that meet those criteria.³⁶ The Commission has long considered activity engaged in
6 for *bona fide* commercial reasons not to be “for the purpose of influencing an election,” and thus,
7 not a contribution or expenditure under section 30118(a).³⁷ This is true even if a candidate
8 benefitted from the commercial activity.³⁸

³⁵ Advisory Opinion 2012-31 at 4 (AT&T).

³⁶ 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).

³⁷ *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).

³⁸ *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); *See Supra* discussion page 5 line 16 through page 6 line 13.

1 Here, Twitter has credibly asserted that the actions it undertook against Rafat, that is,
2 suspending his account for 12 hours and requiring him to enter verifying information, reflect
3 *bona fide* commercial interests and were not undertaken for the purpose of influencing any
4 federal election. Specifically, Twitter asserts that malicious content, spam, and inauthentic
5 accounts disrupt the user experience on its platform and that such abusive behavior can harm
6 advertising revenue.³⁹ Twitter states that it implemented policies to combat such activities, *e.g.*,
7 hate speech, for business reasons.⁴⁰ While Twitter's application of its Hateful Conduct Policy
8 seems somewhat questionable here, given that Rafat was apparently using the term in the context
9 of a legitimate discussion and did not "direct" the term at anyone, other than the person seeking
10 responses to an academic question, there is still no information to suggest that Twitter's actions
11 were for the purpose of influencing an election.

12 Indeed, there is no specific factual information in the Complaint or elsewhere to support
13 the Complaint's assertion that Twitter's decision to suspend Rafat's account was "pretext" to
14 shield Biden or Trump from negative news coverage or that the suspension was related to his
15 coverage of the vice presidential debate the day before.⁴¹ The Complaint asserts that "someone
16 partial to either the Biden or Trump campaign went hunting for a reason to suspend my account
17 in order to prevent independent political commentary," but does not provide any support other
18 than his claim that the suspension was unwarranted and the existence of an allegation in another
19 matter that Twitter has suppressed news articles critical of Biden.⁴² Without more, the claim that

³⁹ Resp. at 5, 8; *see supra* notes 24-28 and accompanying text.

⁴⁰ Resp. at 8.

⁴¹ *See* Compl. at 2.

⁴² *Id.* at 3 (referring to allegations made by the Republican National Committee that Twitter suppressed articles from the *New York Post* regarding Biden's son from being shared on its platform).

1 Twitter acted to silence Rafat's political commentary rather than enforce its content policies is
2 speculative. In any event, the fact that Twitter's suspension of Rafat's account was for 12 hours
3 undercuts the Complaint's assertion that Twitter's actions equated to "muzzling independent
4 voices," since Rafat would have been permitted to quickly resume his coverage of the election.⁴³
5 Although the Complaint argues that, given Rafat's accessibility issues, this resulted in a *de facto*
6 permanent suspension, it does not appear that Twitter was aware of his situation or the effects of
7 the verification requirement.⁴⁴ Furthermore, the Complaint does not allege, and there is no other
8 information to reasonably suggest, that Twitter's actions against Rafat were coordinated with any
9 candidate or committee. Absent coordination, there does not appear to be any basis to conclude
10 that Twitter's actions, even if they had been for the purpose of influencing a federal election,
11 constituted in-kind contributions to Biden or Trump.

12 In conclusion, because the available information does not reasonably suggest Twitter
13 engaged in any activities for the purpose of influencing a federal election or coordinated with
14 any candidate or committee, we recommend that the Commission find no reason to believe that
15 Twitter violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 1142(b) by making prohibited in-kind
16 corporate contributions.

17 **IV. RECOMMENDATIONS**

18 1. Find no reason to believe that Twitter violated 52 U.S.C. § 30118(a) and
19 11 C.F.R. § 114.2(b);
20

⁴³ See Resp. at 8; Compl. at 4.

⁴⁴ See Compl. at 1; Resp. at 8; see also *supra* note 28 (indicating that, in response to a prior suspension for "spam-like behavior," Rafat supplied "information sufficient enough for Twitter to authenticate his account"). As noted above, Rafat does not state that his accessibility issues prevent him from supplying a mobile phone number for the purposes of receiving a text message with a confirmation code, which is the purpose for which Twitter requires that Rafat submit a mobile number to access his account, but rather that he is "wary of giving out a mobile number to anyone due to not having a mobile amplifier." Compl. at 3. As of the date of this Report, Rafat apparently has not complied with Twitter's requirements given there is no activity on his account since before the suspension. Mateo (@matthewrafat), TWITTER, <https://twitter.com/matthewrafat> (last visited Aug. 12, 2021).

- 1 2. Approve the attached Factual and Legal Analysis;
- 2
- 3 3. Approve the appropriate letters; and
- 4
- 5 4. Close the file.

6

7

Lisa J. Stevenson
Acting General Counsel

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Charles Kitcher
Associate General Counsel for Enforcement

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08.24.21

Stephen Gura

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Date

Stephen Gura
Deputy General Counsel for Enforcement

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Claudio Pavia

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Claudio J. Pavia
Acting Assistant General Counsel

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Christine C. Gallagher

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Christine C. Gallagher
Attorney

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Attachment:

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Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Twitter, Inc.

MUR: 7829

5
6 **I. INTRODUCTION**

7 This matter was generated by a Complaint filed with the Federal Election Commission by
8 Matthew Rafat, a Twitter user, alleging that Twitter, Inc. (“Twitter”) violated the Federal
9 Election Campaign Act of 1971, as amended (the “Act”), by making a prohibited in-kind
10 corporate contribution to the presidential campaigns of Joseph Biden and Donald Trump during
11 the 2020 election when it locked his account. Rafat is a self-described “amateur journalist . . .
12 promoting the attempts of any minor party to gain at least 5% of the national vote.”¹ On October
13 9, 2020, Twitter temporarily suspended his account and required him to input verifying personal
14 information following his use of the term “Uncle Tom” in the context of what Rafat describes as
15 an academic conversation with another Twitter user.² Rafat asserts that Twitter intentionally
16 mislabeled his language as hate speech to justify a “pretextual suspension,” in an attempt to
17 shield both Biden and Trump “from negative news coverage by muzzling independent voices.”³

18 Twitter denies the allegations, arguing that its actions to suspend Rafat’s account were in
19 accordance with its widespread efforts to combat malicious activity and not for the purpose of
20 influencing a federal election.⁴ More specifically, Twitter asserts that it determined Rafat’s use
21 of the term “Uncle Tom” was a violation of its Hateful Conduct Policy and initiated a 12-hour

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1 suspension of his account, requiring him to remove the offending tweet, which Rafat has not
2 done.⁵ Twitter asserts that it undertook these actions to “protect the overall quality of the
3 discourse on its platform.”⁶ Twitter states that, “[i]f Mr. Rafat removes that Tweet, Twitter will
4 unlock his account and he can resume communicating on the platform.”⁷

5 As discussed below, while there might be a question whether Twitter correctly interpreted
6 Rafat’s language as hate speech, in context, there is nothing to suggest that Twitter otherwise
7 acted for the purpose of influencing a federal election. Twitter has credibly stated that its actions
8 were motivated by commercial interests, and there is no suggestion that Twitter coordinated with
9 any candidate or campaign. Accordingly, there is no reason to believe Twitter violated
10 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).

11 **II. FACTUAL BACKGROUND**

12 Incorporated in Delaware in April 2007, Twitter is a web-based social networking
13 platform, and describes itself as “a free service that allows users to publicly communicate in
14 messages of up to 280 characters – regardless of the substantive content of the communication.”⁸
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16 “freedom of expression,” and the principal that “every voice has the power to impact the
17 world.”⁹ According to Twitter, all 100 senators, 50 governors, and nearly every member of

⁵ *Id.* at 1-2, 8.

⁶ *Id.* at 11.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 3, nn.10-12 (citing Twitter, *The Twitter Rules*, <https://help.twitter.com/en/rules-and-policies/twitter-rules/>; Bridget Coyne, *Empowering Freedom of Expression for National Voter Registration Day*, TWITTER: BLOG, Sept. 27, 2017, https://blog.twitter.com/official/en_us/topics/events/2017/national-voter-reg-day-2017.html/; Twitter, *Our Values*, https://about.twitter.com/en_us/values.html/).

1 congress reach their constituents through Twitter accounts, and that “conservatives, in particular
 2 hav[e] a strong presence on Twitter,” and that [t]hird parties are also prominent on the platform
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4 Matthew Rafat is a Twitter user, @matthewrafat, and describes himself as “an
 5 unaffiliated individual and amateur journalist” and “long-time active commentator on local and
 6 national politics” and states that he “writes from the perspective of a third party supporter, *i.e.*,
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 15 the Twitter page of the *Christian Science Monitor* to a blog post he wrote that was critical of

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¹¹ Compl. at 2.

¹² *Id.* at 3, Attach. at 2 (Ltr. from Matthew Rafat, to Vijaya Venkata Gadde, Twitter, Inc., appealing Twitter locking him out of his account) (Oct. 9, 2020)).

¹³ Compl. at 1-2, Attach. at 8-9 (Screenshot of @davidminpdx Oct. 6, 2020 tweet, showing @matthewrafat’s reply deleted by Twitter: “This Tweet violated the Twitter Rules.”). The Response asserts that Rafat’s “Uncle Tom” reply tweet occurred on October 8. Resp. at 8. However, the Complaint attached a screen shot of the reply tweet with the date October 6, 2020. Compl. at Attach. at 3-4 (Screenshot of Twitter restriction of @matthewrafat: “Your account, @matthewrafat has been locked for violating the Twitter Rules”).

1 Biden.¹⁴ On October 9, Twitter alerted Rafat via email that his use of the term “Uncle Tom” in
2 his October 6 tweet violated Twitter’s Hateful Conduct Policy and suspended Rafat’s account for
3 12 hours.¹⁵

4 By letter dated October 9, Rafat appealed the temporary suspension stating that the
5 timing of the suspension after he live-blogged the vice presidential debate indicated that
6 Twitter’s actions were a pretext to “prevent independent political commentary” and “mitigate
7 competition from independent sources.”¹⁶ In response to Rafat’s letter, Twitter issued a decision
8 stating that it reviewed his appeal, and that its support team confirmed that he violated Twitter’s
9 rules against hateful conduct.¹⁷ The decision further informed Rafat that he could resolve the
10 violations by logging into his account and completing online instructions.¹⁸ Rafat states that one
11 of these instructions was a requirement to enter his mobile telephone number to receive a text
12 message with a confirmation code, but that he refused to comply.¹⁹ He states: “Until October 9,
13 2020, I was never required to enter or submit a mobile number in order to reach my followers or

¹⁴ Compl. at 3; *see also* Matthew Rafat, *Joe Biden: America’s Golden Retriever*, WILLWORKFORJUSTICE.BLOGSPOT.COM (June 3, 2020) (<https://willworkforjustice.blogspot.com/2020/06/joe-biden-americas-golden-retriever.html>) (blog post written by Rafat).

¹⁵ Compl. at 2, Attach. at 3-4 (Screenshot of Twitter restriction of @matthewrafat: “Your account, @matthewrafat has been locked for violating the Twitter Rules”); Attach. at 8-9 (Screenshot of @davidminpdx Oct. 6, 2020 tweet, showing @matthewrafat’s reply deleted by Twitter: “This Tweet violated the Twitter Rules”); Resp. at 8 & n.58 (citing Twitter, *Hateful Conduct Policy*, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>).

¹⁶ *Id.* at 1,3, Attach. at 2 (Ltr. from Matthew Rafat, to Vijaya Venkata Gadde, Twitter, Inc. (appealing Twitter locking him out of his account) (Oct. 9, 2020)).

¹⁷ Compl., Attach. at 5 (Screenshot Twitter restriction of @matthewrafat: “An update regarding your account”).

¹⁸ *Id.*; Resp. at 8.

¹⁹ Compl. at 1.

1 the public..... I have been severely hearing impaired since birth and am wary of giving out a
2 mobile number to anyone due to not having a mobile amplifier.”²⁰

3 The Complaint alleges that Twitter’s actions in suspending Rafat’s account and asking
4 him to provide a mobile phone number constituted a prohibited in-kind corporate contribution to
5 the Biden and Trump campaigns.²¹ The Complaint argues that Twitter prevents third party
6 supporters from using social media platforms “to promote independent political commentary”
7 and “substantially harms the ability of third party supporters... to reach an audience[,]” thus
8 benefitting both Democratic and Republican candidates.²²

9 Twitter asserts that its actions in response to Rafat’s tweet were undertaken for business
10 reasons to regulate the quality of the content on its platform, and not to influence a federal
11 election.²³ Twitter asserts that it has a commercial interest in detecting and minimizing abusive
12 and manipulative behavior on its platform.²⁴ Twitter’s Hateful Conduct Policy states in pertinent
13 part: “Repeated and/or non-consensual slurs, epithets, racist and sexist tropes, or other content
14 that degrades someone. We prohibit targeting individuals with repeated slurs, tropes or other
15 content that intends to dehumanize, degrade or reinforce negative or harmful stereotypes about a
16 protected category.”²⁵ Twitter states that compliance with its Hateful Conduct Policy is
17 “critical” to its commercial success because corporations and advertisers have indicated that they

²⁰ *Id.* at 1, 3.

²¹ *Id.* at 2.

²² *Id.* at 2-4.

²³ Resp. at 5.

²⁴ *Id.* at 4.

²⁵ *Id.* at 5, n.29 (citing Twitter, *Hateful Conduct Policy*, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>). The factors that Twitter states it takes into account when determining a penalty for violating this policy include, the severity of the violation and the individual’s previous record on rule violations). *Id.* at 5.

1 will only work with companies like Twitter if they permit “responsible content” to improve
2 consumer ad experiences.²⁶ Twitter also asserts that on other occasions it has taken action
3 against other users on its platform for use of the same term for which is suspended Rafat’s
4 account.²⁷ Twitter states that Rafat could immediately regain his account by complying with
5 Twitter’s instructions and entering the required information.²⁸

6 III. LEGAL ANALYSIS

7 The Act prohibits corporations from making contributions to federal candidates, and
8 likewise bars candidates, political committees (other than independent expenditure-only political
9 committees and committees with hybrid accounts), and other persons, from knowingly accepting
10 or receiving corporate contributions.²⁹

11 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit
12 of money or anything of value made by any person for the purpose of influencing any election

²⁶ *Id.* at 5-6, nn.30-40.

²⁷ *Id.* at 8, n.57 (citing Elie Mystal, *That Time I Got Suspended on Twitter For Calling Kanye West an ‘Uncle Tom’ and Other Things*, ABOVETHELAW.COM, May 2, 2018, <https://abovethelaw.com/2018/05/that-time-i-got-suspended-on-twitter-for-calling-kanye-west-an-uncle-tom-and-other-things/>; Tanasia Kenney, *Sportscaster Who Called Sen. Tim Scott ‘Uncle Tom’ Is Out of a Job, CT Station Says*, THE STATE, Oct. 2, 2020, <https://www.thestate.com/news/nation-world/national/article246172055.html> (explaining that an Emmy-winning sportscaster was fired for an “Uncle Tom” Tweet critical of Senator Tim Scott)).

²⁸ *Id.* at 8. Twitter states that it previously suspended Rafat’s account from September 21 through 23, 2020, for “spam-like behavior” detected by its algorithm, and required Rafat to supply “information sufficient enough for Twitter to authenticate his account and restore access.” *Id.* Twitter asserts that it has a commercial interest in determining which accounts are engaging in spam-like behavior and which accounts might be controlled by bots, rather than humans. *Id.* at 4 (citing Yoel Roth and Del Harvey, *How Twitter Is Fighting Spam and Malicious Automation*, Twitter: Blog (June 26, 2018), https://blog.twitter.com/en_us/topics/company/2018/how-twitter-is-fighting-spam-and-malicious-automation.html; Jack Dorsey (@jack), Twitter (Mar. 1, 2018, 10:33 A.M.), <https://twitter.com/jack/status/969234279321419776> (explaining that “harassment, troll armies, manipulation through bots and human-coordination, misinformation campaigns, and increasingly divisive echo chambers” are receiving particular attention at Twitter)).

²⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (d).

1 for Federal office.³⁰ The term “anything of value” includes “all in-kind contributions.”³¹ In-
2 kind contributions include “coordinated expenditures,” that is, expenditures “made by any person
3 in cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate,
4 his [or her] authorized committees, or their agents.”³² A communication is coordinated and thus
5 treated as an in-kind contribution when it is: (1) paid for by a third-party; (2) satisfies one of five
6 content standards; and (3) satisfies one of five conduct standards.³³ In-kind contributions also
7 include “provision of any goods or services without charge or at a charge that is less than the
8 usual and normal charge for such goods or services.”³⁴

9 The Commission has concluded that a commercial vendor providing services to political
10 committees will not make a contribution for the purpose of influencing an election when its
11 business activity “reflects commercial considerations and does not reflect considerations outside
12 of a business relationship.”³⁵ A commercial vendor need not make its services available to
13 committees representing all political ideologies, but rather may establish objective business
14 criteria to protect commercial viability of its business without making contributions to the
15 committees that meet those criteria.³⁶ The Commission has long considered activity engaged in

³⁰ 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52.

³¹ 11 C.F.R. § 100.52(d).

³² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

³³ 11 C.F.R. § 109.21(a).

³⁴ *Id.* § 100.52(d) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

³⁵ Advisory Opinion 2012-31 at 4 (AT&T).

³⁶ 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

1 for *bona fide* commercial reasons not to be “for the purpose of influencing an election,” and thus,
 2 not a contribution or expenditure under section 30118(a).³⁷ This is true even if a candidate
 3 benefitted from the commercial activity.³⁸

4 Here, Twitter has credibly asserted that the actions it undertook against Rafat, that is,
 5 suspending his account for 12 hours and requiring him to enter verifying information, reflect
 6 *bona fide* commercial interests and were not undertaken for the purpose of influencing any
 7 federal election. Specifically, Twitter asserts that malicious content, spam, and inauthentic
 8 accounts disrupt the user experience on its platform and that such abusive behavior can harm
 9 advertising revenue.³⁹ Twitter states that it implemented policies to combat such activities, *e.g.*,
 10 hate speech, for business reasons.⁴⁰ While Twitter’s application of its Hateful Conduct Policy
 11 seems somewhat questionable here, given that Rafat was apparently using the term in the context

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).

³⁷ 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).

³⁸ 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); See *Supra* discussion page 5 line 16 through page 6 line 13.

³⁹ Resp. at 5, 8; see *supra* notes 24-28 and accompanying text.

⁴⁰ Resp. at 8.

1 of a legitimate discussion and did not “direct” the term at anyone, other than the person seeking
2 responses to an academic question, there is still no information to suggest that Twitter’s actions
3 were for the purpose of influencing an election.

4 Indeed, there is no specific factual information in the Complaint or elsewhere to support
5 the Complaint’s assertion that Twitter’s decision to suspend Rafat’s account was “pretext” to
6 shield Biden or Trump from negative news coverage or that the suspension was related to his
7 coverage of the vice presidential debate the day before.⁴¹ The Complaint asserts that “someone
8 partial to either the Biden or Trump campaign went hunting for a reason to suspend my account
9 in order to prevent independent political commentary,” but does not provide any support other
10 than his claim that the suspension was unwarranted and the existence of an allegation in another
11 matter that Twitter has suppressed news articles critical of Biden.⁴² Without more, the claim that
12 Twitter acted to silence Rafat’s political commentary rather than enforce its content policies is
13 speculative. In any event, the fact that Twitter’s suspension of Rafat’s account was for 12 hours
14 undercuts the Complaint’s assertion that Twitter’s actions equated to “muzzling independent
15 voices,” since Rafat would have been permitted to quickly resume his coverage of the election.⁴³
16 Although the Complaint argues that, given Rafat’s accessibility issues, this resulted in a *de facto*
17 permanent suspension, it does not appear that Twitter was aware of his situation or the effects of
18 the verification requirement.⁴⁴ Furthermore, the Complaint does not allege, and there is no other

⁴¹ See Compl. at 2.

⁴² *Id.* at 3 (referring to allegations made by the Republican National Committee that Twitter suppressed articles from the *New York Post* regarding Biden’s son from being shared on its platform).

⁴³ See Resp. at 8; Compl. at 4.

⁴⁴ See Compl. at 1; Resp. at 8; *see also supra* note 28 (indicating that, in response to a prior suspension for “spam-like behavior,” Rafat supplied “information sufficient enough for Twitter to authenticate his account”). As noted above, Rafat does not state that his accessibility issues prevent him from supplying a mobile phone number for

1 information to reasonably suggest, that Twitter’s actions against Rafat were coordinated with any
2 candidate or committee. Absent coordination, there does not appear to be any basis to conclude
3 that Twitter’s actions, even if they had been for the purpose of influencing a federal election,
4 constituted in-kind contributions to Biden or Trump.

5 In conclusion, the available information does not reasonably suggest Twitter engaged in
6 any activities for the purpose of influencing a federal election or coordinated with any candidate
7 or committee. Accordingly, there is no reason to believe that Twitter, Inc. violated 52 U.S.C.
8 § 30118(a) and 11 C.F.R. § 114.2(b) by making prohibited in-kind corporate contributions.

the purposes of receiving a text message with a confirmation code, which is the purpose for which Twitter requires that Rafat submit a mobile number to access his account, but rather that he is “wary of giving out a mobile number to anyone due to not having a mobile amplifier.” Compl. at 3. As of the date of this Report, Rafat apparently has not complied with Twitter’s requirements given there is no activity on his account since before the suspension. Mateo (@matthewrafat), TWITTER, <https://twitter.com/matthewrafat> (last visited Aug. 12, 2021).