

I. BACKGROUND

A. Twitter Verification

Since 2009, Twitter has employed a procedure to “verify” certain accounts.³ When an account is verified, a blue symbol with a white checkmark appears next to the username associated with the given account on its main page and on any tweets or responses to tweets. The verification badge “lets people know that an account of public interest is authentic.”⁴ Twitter states that it initiated this process after concerns arose that false accounts were impersonating high-profile users on the platform.⁵ Between 2009 and 2017, Twitter allowed any “notable and active” users to request verification if they met certain criteria.⁶

Twitter states that verification is “perceived as an endorsement,” which led to problems with its initial verification procedures.⁷ In 2017, Twitter began to review already verified accounts and remove verification badges from accounts that violated its rules.⁸ Twitter also enacted its Post-2017 Verification Policy, which states that users are ineligible for verified status if they were “associated with coordinated harmful activity, or hateful content as defined in Twitter’s Ads Policies.”⁹ Twitter’s Post-2017 Verification Policy also states that Twitter would consider both users’ online and offline conduct when making verification decisions.¹⁰ Referencing that change, the Policy stated that users may be ineligible for verification “even if their activity on Twitter doesn’t violate the Twitter Rules.”¹¹

³ Resp. at 4 (Dec. 14, 2020). Twitter describes this as a process to “confirm the authenticity” of notable accounts. *Id.* at 1.

⁴ Twitter Help Center: About Verified Accounts, Twitter.com, <https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts> (“Post-2017 Verification Policy”).

⁵ Resp. at 4. Twitter states that it wanted to prevent activities that “deceived its users and the general public.” *Id.* According to Twitter, unverified accounts “can sow confusion and lead users to a less-satisfying experience on the platform.” *Id.* at 5.

⁶ *Id.* at 4 (“Twitter places particular emphasis on the verification of accounts belonging to government officials, news organizations, notable athletes, prominent companies/brands, etc.”).

⁷ *Id.* at 5-6 (quoting a November 15, 2017 tweet by Twitter Customer Support announcing the upcoming 2017 Verification Policy, available at <https://twitter.com/TwitterSupport/status/930926124892168192>). According to Twitter, “concerns arose that Twitter was approvingly associating itself with accounts — such as those belonging to white supremacists — that were acting contrary to [the] platform’s rules.” *Id.*; *see also* Alex Castro, *Twitter Pauses Verification Process After Controversy Over Charlottesville Organizer*, THE VERGE (NOV. 9, 2017), <https://www.theverge.com/2017/11/9/16628290/twitter-jason-kessler-charlottesville-verification>.

⁸ Resp. at 6.

⁹ Post-2017 Verification Policy; *see* Resp. at 6.

¹⁰ Post-2017 Verification Policy.

¹¹ *Id.*

Twitter states that it implemented these changes to its verification policy because of “heightened outrage” from users over verifying certain controversial figures and pressure from advertisers to “minimize divisive content” or risk losing advertising revenue.¹² Twitter states that major advertisers insisted that Twitter and other tech companies do more to “minimize divisive content on their platforms,” and that hundreds of advertisers have pulled or temporarily paused ads that end up “running next to objectionable content that promoted racism or other controversial material.”¹³ Twitter asserts that its verification and conduct policies are not “motivated by a desire to influence any election,” and cites to sworn congressional testimony from its Chief Executive Officer, Jack Dorsey, stating that Twitter does not “consider political viewpoints, perspectives, or party affiliation in any of our policies or enforcement decisions, period.”¹⁴

Twitter states that while it was implementing and evaluating its Post-2017 Verification Policy, the company “froze nearly all new verifications while it worked on improving the verification process and solicited public comments on how it might improve the process,” but exempted political candidates and public health officials.¹⁵ During the 2018 election cycle, Twitter implemented a partnership with Ballotpedia to verify congressional and gubernatorial general election candidates.¹⁶

Twitter expanded its program of verifying political candidates in the 2020 election cycle. On December 12, 2019, it announced a new policy under which, in partnership with Ballotpedia, it would proactively verify federal and gubernatorial candidates in the primary and general elections (“2020 Candidate Verification Policy”).¹⁷ Twitter states that candidates were required to comply with the company’s policies — including compliance with Twitter’s Rules, Terms of Service, Coordinated Harmful Activity Policy, and Hateful Conduct Policy — in order to be verified.¹⁸ A February 28, 2020, update to the 2020 Candidate Verification Policy stated that, in order to be verified, a candidate must:

¹² Resp. at 6.

¹³ *Id.* (internal quotation marks omitted).

¹⁴ Resp. at 7 (citing *Twitter: Transparency and Accountability*, 115th Cong. (Sept. 5, 2018), Testimony of Jack Dorsey, Twitter CEO, before the House Comm. on Energy and Commerce at 3, <https://docs.house.gov/meetings/IF/IF00/20180905/108642/HHRG-115-IF00-Wstate-DorseyJ-20180905.pdf> (“Dorsey Testimony”).

¹⁵ Resp. at 7.

¹⁶ Nancy Scola, *Twitter to verify Election Candidates in the Midterms*, POLITICO (May 23, 2018), <https://www.politico.com/story/2018/05/23/twitter-verify-candidates-midterms-2018-1282802>.

¹⁷ Bridget Coyne, Public Policy Director, Twitter, *Helping Identify 2020 US Election Candidates on Twitter* (Dec. 12, 2019), https://blog.twitter.com/en_us/topics/company/2019/helping-identify-2020-us-election-candidates-on-twitter.html (“2020 Candidate Verification Policy”); *Ballotpedia Partners with Twitter to Identify 2020 Election Candidates*, BALLOTPEDIA (Dec. 12, 2019), https://ballotpedia.org/Ballotpedia_partners_with_Twitter_to_identify_2020_election_candidates (last visited Oct. 17, 2021).

¹⁸ Resp. at 7.

1. Meet Ballotpedia’s threshold for an official candidate requiring that they register with a federal or state campaign finance agency before the candidate filing deadline and appear on official candidate lists released by government election agencies after the candidate filing deadline (this may require gathering petition signatures and paying a filing fee);
2. Meet certain account requirements before becoming verified, which include having a profile photo, header photo, bio, and website that clearly identify them as a candidate; and
3. Comply with our Twitter Rules and Terms of Service as we have stated on our Help Center page.¹⁹

Further, Twitter’s 2020 Candidate Verification Policy states that: “If a Twitter account engages in, or has engaged in, activity that violates the Twitter Rules, it may be ineligible for verification or subject to enforcement action.”²⁰

B. Complaint

The Complaint states that by early February 2020, Luna was the only Republican primary candidate in Florida’s 13th Congressional District whose Twitter account was not verified.²¹ Between February and August 2020, Luna or representatives made four attempts to contact Twitter concerning verification.²² In response, Twitter sent several boilerplate messages, but did not provide any specific information about the status of Luna’s request.²³ Three of these responses enumerated the three requirements for verification as stated in Twitter’s 2020 Candidate Verification Policy.²⁴

The Complaint states that there was no further correspondence between Luna and Twitter regarding verification of her account after August 2020 and that as of the date of the Complaint, Twitter had not provided Luna with any explanation as to why her account was not verified

¹⁹ 2020 Candidate Verification Policy.

²⁰ *Id.*

²¹ Compl. at 3-4 (Oct. 26, 2020).

²² *Id.*, Attach. A (email from Luna to Katie Rosborough, Senior Manager of North America Policy Communications, Twitter (Feb. 7, 2020)); email from Luna to Twitter Government & Politics (Feb. 7, 2020)); Attach. B (email from Luna to Twitter Government & Politics (Mar. 3, 2020)); Attach. C (email from Luna to Twitter Government & Politics (June 11, 2020)); Attach. D (email from Derek Utley, Chairman, X Strategies LLC, to Twitter Government & Politics (Aug. 19, 2020)).

²³ Compl. at 4, Attach. A (email from Twitter Government & Politics to Luna (Feb. 7, 2020)); email from Twitter Government & Politics to Luna (Feb. 7, 2020)); Attach. B (email from Twitter Government & Politics to Luna (Mar. 6, 2020)); Attach. C (email from Twitter Government & Politics to Luna (June 11, 2020)); Attach. D (email from Twitter Government & Politics to Derek Utley, Chairman, X Strategies LLC (Aug. 19, 2020)).

²⁴ *Id.*; see 2020 Candidate Verification Policy.

during the 2020 election or why it remained unverified.²⁵ The Complaint maintains that “Luna has satisfied all requirements to be verified on Twitter, and has not engaged in any conduct that would prohibit her from being verified on the platform.”²⁶ The Complaint alleges that “by not verifying [Luna] . . . Twitter is providing something of value to Luna’s political opponents for the purpose of influencing the election in Florida’s 13th District.”²⁷

II. LEGAL ANALYSIS

The Act prohibits corporations from making contributions to federal candidates, and likewise bars candidates, political committees (other than independent expenditure-only political committees and committees with hybrid accounts), and other persons, from knowingly accepting or receiving corporate contributions.²⁸ 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.”²⁹ The term “anything of value” includes “all in-kind contributions.”³⁰ In-kind contributions 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.”³¹

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).³² This is true even if a candidate benefitted from the commercial activity.³³ In particular, the Commission has concluded that a commercial vendor

²⁵ Compl. at 4.

²⁶ *Id.*

²⁷ *Id.* at 1.

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

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

³⁰ 11 C.F.R. § 100.52(d)(1).

³¹ *Id.* (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

³² *See, e.g.*, Factual & Legal Analysis at 4, MUR 6586 (World Wrestling Entertainment, Inc.) (finding that the WWE acted with the “sole intent to defend its business reputation” and not for the purpose of influencing an election when the 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 the WWE); First Gen. Counsel’s Rpt. at 13, MUR 5474 (Dog Eat Dog Films, *et al.*) (determining that distributors and marketers of *Fahrenheit 9/11* film acted “in connection with bona fide commercial activity and not for the purpose of influencing an election”) (Commission voted to approve no reason to believe recommendations); Advisory Op. 2018-11 (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).

³³ *See, e.g.*, 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,

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 of a business relationship.”³⁴ Moreover, 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.”³⁵

The Complaint alleges that Twitter made prohibited in-kind corporate contributions to Luna’s primary and general election opponents when it declined to verify Luna’s account while verifying her opponents’ accounts.³⁶ In response, Twitter contends that the official reason for denying Luna’s verification was the fact that “she had previously violated Twitter’s User Agreement, including the Twitter Rules and incorporated policies.”³⁷ Twitter points to its 2020 Candidate Verification Policy and multiple emails to Luna, which stated that “if a Twitter account engaged in, *or has engaged in*, activity that violates the Twitter rules, it may be ineligible for verification.”³⁸

Regarding the more specific issue of Twitter’s denial of Luna’s verification request, Twitter has refuted the Complaint’s assertion that “Luna has satisfied all requirements to be verified on Twitter, and has not engaged in any conduct that would prohibit her from being verified on the platform” by providing information indicating that she had previously violated Twitter’s terms of service.³⁹ Twitter states that prior to her becoming a candidate, it “[had] taken disciplinary action against Ms. Luna for her actions on the platform” and that “internal logs reflect that Ms. Luna was disciplined for posting abusive content on August 4, 2019.”⁴⁰ Twitter also points to other activities by Luna outside of Twitter that have contributed to what it

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).

³⁴ See, e.g., Advisory Op. 2012-31 (AT&T) at 4.

³⁵ Advisory Op. 2017-06 (Stein and Gottlieb) at 6 (concluding that entity offering contribution processing services to contributors may limit the possible recipient committees to which users can make contributions to committees of one political party); see Advisory Op. 2012-28 (CTIA – The Wireless Association) at 8-9 (“A vendor may establish and apply eligibility criteria to political committees in order to protect the commercial viability of the vendor’s program.”); Advisory Op. 2012-26 (Cooper for Congress, *et al.*) at 10 (concluding that limiting political committees’ participation in a text message fundraising program “does not result in an in-kind contribution where the selection is subject to ‘objective and commercially reasonable’ criteria”); Advisory Op. 2006-34 (Working Assets) at 5 (concluding that a proposed affinity program between a wireless telephone services provider and select political committees did not result in a contribution to those political committees where selection into the program was based on “commercial viability determined by common commercial principles”).

³⁶ Compl. at 1, 6.

³⁷ Resp. at 1-2.

³⁸ *Id.* at 9.

³⁹ Compl. at 4.

⁴⁰ Resp. at 9.

characterizes as a “history of provocative statements” and “larger pattern of controversial social media posts.”⁴¹ These predicate Twitter Rules violations, including the suspension, pre-dated Luna’s candidacy, and therefore — even absent the compelling commercial interest Twitter explains as the basis for its verification policy — undercut the Complaint’s allegation of an electoral purpose behind Twitter’s determination that Luna violated its Rules prior to becoming a candidate.

By contrast, the Complaint lacks specific factual support for the assertion that Twitter’s decision to deny Luna’s verification was for the purpose of influencing Luna’s elections, and it does not appear that Twitter’s refusal to verify Luna differed in this case from similar decisions the company made as to other candidates and non-candidates with prior Twitter rules violations.

In conclusion, Twitter has supplied credible *bona fide* commercial explanations for both its verification program generally and its specific decision to deny Luna verification in light of her pre-candidacy violations of Twitter’s Rules. Twitter credibly asserts that it determined, in its business judgment, that Luna’s tweet and other activities violated its rules and that verification of her account and perceived endorsement thereof would have a detrimental effect on its brand and ability to maintain and attract advertisers. Furthermore, the Complaint does not provide a sufficient factual basis for its assertion that Twitter’s decision not to verify Luna’s account was made for the purpose of influencing a federal election. Therefore, we voted to find no reason to believe that Twitter violated 52 U.S.C. § 30118(a) by making prohibited in-kind corporate contributions.

Shana M. Broussard
Chair

October 26, 2021

Date

Allen Dickerson
Vice Chair

October 26, 2021

Date

James E. “Trey” Trainor, III
Commissioner

October 26, 2021

Date

⁴¹ *Id.*

MUR 7832 (Twitter, Inc.)
Statement of Reasons
Page 8 of 8



Steven T. Walther
Commissioner

October 26, 2021

Date



Ellen L. Weintraub
Commissioner

October 26, 2021

Date