

No. _____

In the
SUPREME COURT OF THE UNITED STATES
October Term, 2020

HARRY J. WILLIBY, an individual, on behalf of himself,
In Propria Persona,
Petitioner,

v.

Mark Zuckerberg, CEO,
Facebook, Inc.
Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 25 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HARRY J. WILLIBY,

Plaintiff-Appellant,

v.

MARK ZUCKERBERG, in his Official Capacity; et al.,

Defendants-Appellees.

No. 19-16306

D.C. No. 3:18-cv-06295-JD
Northern District of California,
San Francisco

ORDER

Before: BYBEE, IKUTA, and BADE, Circuit Judges.

Upon a review of the record and the response to the court's September 12, 2019 order, we conclude this appeal is frivolous. *See Manhattan Cnty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928-30 (2019) (with limited exceptions, a private entity is not a state actor subject to the First Amendment); *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991) (private parties generally do not act under color of state law). We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

DISMISSED.

1
2 HARRY J. WILLIBY,
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4 Plaintiff,
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6 v.
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8 MARK ZUCKERBERG, et al.,
9 Defendants.
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Case No. 18-cv-06295-JD

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**SECOND ORDER RE IFP
APPLICATION AND
TRO/INJUNCTION MOTIONS**

Re: Dkt. Nos. 11, 15, 16

The Court dismissed the original complaint with leave to amend, and denied the TRO application, in the course of reviewing plaintiff's request to proceed in forma pauperis. 28 U.S.C. § 1915(e)(2)(B); Dkt. No. 9. Plaintiff filed an amended complaint, which again tries to state a First Amendment claim against defendants under 42 U.S.C. § 1983 for blocking posts on Facebook that violated its hate speech standards, and related conduct. Dkt. No. 10.

The amended complaint is dismissed with prejudice with respect to the First Amendment and Section 1983 claim. The gravamen of the claim is that Facebook is a private entity that operates a public forum for speech and consequently is bound by the First Amendment's speech guarantees. *See, e.g., id.* ¶¶ 19-20. The problem that plaintiff cannot overcome is that the First Amendment applies only to governmental abridgements of speech, and not to alleged abridgements by private companies like Facebook. *Manhattan Community Access Corp. v. Halleck*, ___ S.Ct. ___, No. 17-1702, 2019 WL 2493920, at *4 (June 17, 2019). Plaintiff's effort to find a First Amendment hook in a state actor theory is not tenable. A private entity that provides a forum for speech does not engage in an activity that the government has traditionally and exclusively performed, and so does not qualify as a state actor subject to First Amendment constraints. *Id.* at *5-6. "The private entity may thus exercise editorial discretion over the speech and speakers in the forum." *Id.* at *5.

1 Because no further amendment could cure this problem, the amended complaint is
2 dismissed with prejudice with respect to the federal claim. Because only federal question
3 jurisdiction is alleged, Dkt. No. 10 ¶ 3, the Court declines to exercise supplemental jurisdiction
4 over the alleged state negligence claim, and so dismisses it without prejudice. 28 U.S.C. §
5 1367(c)(3). All other pending motions are terminated.

6 **IT IS SO ORDERED.**

7 Dated: June 18, 2019



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10 JAMES P. DONATO
11 United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARRY J. WILLIBY,
Plaintiff

Case No.: 18-cv-06295-JD

V.

MARK ZUCKERBERG, et al.,
Defendants.

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that:

(1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and

(2) On 6/18/2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Harry J. Williby
PO Box 990755
Redding, CA 96099

Dated: 6/18/2019

Susan Y. Soong
Clerk, United States District Court

By Lisa R. Clark
LISA R. CLARK, Deputy Clerk to
the Honorable James Donato

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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HARRY J. WILLIBY,
Plaintiff,

8

v.

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MARK ZUCKERBERG, et al.,
Defendants.

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13 The federal claim is dismissed with prejudice. Dkt. No. 19. The Court declines to exercise
14 jurisdiction over the state claims. *Id.*

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IT IS SO ORDERED.

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Dated: June 18, 2019

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Case No. 18-cv-06295-JD

JUDGMENT



JAMES DONATO
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARRY J. WILLIBY,

Plaintiff,

V.

MARK ZUCKERBERG, et al.,

Defendants.

Case No. 18-cv-06295-JD

CERTIFICATE OF SERVICE

Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 18, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Harry J. Williby
PO Box 990755
Redding, CA 96099

Dated: June 18, 2019

Susan Y. Soong
Clerk, United States District Court

By: Lisa A. Clark
LISA A. CLARK, Deputy Clerk to the
Honorable JAMES DONATO

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Harry Willby
Appellant(s),

9th Cir. Case No.

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FILED
PENDING
DATE

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS
OCT 15 2019

v.

MARK Zuckerberg, et. al.
Appellee(s).

STATEMENT THAT APPEAL SHOULD GO FORWARD
(attach additional sheets as necessary)

1. Date(s) of entry of judgment or order(s) you are challenging in this appeal:

June 18, 2019

2. What claims did you raise to the court below?

1. Violation of Plaintiff's First Amendment Rights under the U.S. Constitution, 42 USC § 1983.
2. Negligence under California State Law.

3. What do you think the court below did wrong? (You may, but need not, refer to cases and statutes.)

1. The district court failed to review or analyze the conduct of the defendant/Appellees in accordance with the law.

- A) The court arbitrarily declared Appellees as Private Actors under Manhattan Community Access Corp. v. Halleck – S. Ct. – No. 17-1702, 2019 WL 2493920, at (June 7, 2019). DKT. 19.
- b) The District Court erred in applying this case to the instant matter.
- C) The court failed to consider the fact(s) supporting Appellant's claims that Appellees are engaged in conduct typically performed by the U.S. Government, to wit: 1) Campaigning for President BARACK OBAMA (in 2008 & 2012); 2) Inviting U.S. Politicians to Campaign on Facebook; 3) Granting BARACK OBAMA total Access to the Facebook site to secure Votes and Campaign donations; And Removing content from Facebook at the request of U.S. Law Enforcement.

4. Why are these errors serious enough that this appeal should go forward?

Appellant and other litigants are being denied their Rights (1st Amend) and Rights to petition the Federal Courts. Judge Donato was Appointed to the Court by Obama. Appellees were extremely instrumental in securing Obama's election victory. From Campaign to 2016, Appellees were actively employed by the Obama Administration. Judge Donato's ARBITRARY dismissal of Appellant's Action, creates an "EGREGIOUS APPEARANCE" of bias and impropriety.

5. Additional Information:

PRICE v. HAWAII, 939 F.2d 702, 707-08 (9th Cir. 1991) holds that "conclusory allegations private parties are acting under color of state law, unsupported by facts, is insufficient to state a claim under Section 1983." The Allegations set forth in the Amended Complaint are supported by Facts, setting forth the conduct of Appellees, which remains governmental in nature.

Dated: Oct. 10, 2019

HARRY J. Williby

Print Name(s)

HARRY J. Williby
Signature(s)

Appellant(s) in Pro Se