No.

In the Supreme Court of the United States

DANIEL E. HALL, PETITIONER

v.

TWITTER, INC., RESPONDENT

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

ATTACHED APPENDIX I- COURT ORDERS

Daniel E. Hall
Petitioner, Pro Se
Aka. Sensa Verogna
393 Merrimack Street
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September 15, 2024

United States Court of Appeals
For the First Circuit

No. 23-1555

DANIEL E. HALL, a/k/a Sensa Verogna,

Plaintiff - Appellant,

v.

TWITTER, INC.,

Defendant - Appellee.

Before

Kayatta, Gelpí and Montecalvo,
Circuit Judges.

JUDGMENT

Entered: May 28, 2024

Plaintiff appeals the dismissal of his complaint against Twitter, Inc. (now X Corp.). We have carefully considered the filings of the parties and the district court record.

Plaintiff's multiple motions to take judicial notice are resolved as follows: we have reviewed the submitted documents and have taken judicial notice of any proffered materials to the extent they are relevant and appropriate for consideration for purposes of this appeal.

We review the dismissal of plaintiff's complaint de novo. See, e.g., Cardigan Mountain Sch. v. New Hampshire Ins. Co., 787 F.3d 82, 84 (1st Cir. 2015). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) ("[f]actual allegations must be enough to raise a right to relief above the speculative level ....").

After thorough review, we agree with the district court that plaintiff failed to plead facts sufficient to make out a plausible claim that Twitter suspended his account on the basis of race or that Twitter is a state actor for constitutional purposes under the circumstances of this case. See Doe v. Brown Univ., 43 F.4th 195, 208 (1st Cir. 2022) (explaining that a § 1981 claim requires

PETITIONER HALL'S
EXHIBIT A

proof of an intent to discriminate on the basis of race); Manhattan Comm. Access Corp. v. Halleck, 587 U.S. 802 (2019) (explaining requirements for a private entity to be deemed a state actor). Plaintiff's other arguments are rejected as meritless.

To the extent not mooted by the foregoing, all remaining motions are denied. See 1st Cir. L. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:
Daniel E. Hall
Demetrio F. Aspiras III
Kenneth Michael Trujillo-Jamison
David M. Lieberman

PETITIONER HALL'S
EXHIBIT A

United States Court of Appeals
For the First Circuit

No. 23-1555

DANIEL E. HALL, a/k/a Sensa Verogna,

Plaintiff - Appellant,

v.

TWITTER, INC.,

Defendant - Appellee.

Before

Barron, Chief Judge,
Kayatta, Gelpí, Montecalvo
Rikelman and Aframe*, Circuit Judges.

ORDER OF COURT

Entered: July 10, 2024

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Daniel E. Hall, Demetrio F. Aspiras III, Kenneth Michael Trujillo-Jamison, David M. Lieberman

* Judge Aframe is recused and did not participate in the determination of this matter.

PETITIONER HALL'S
EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Daniel E. Hall

v.

Twitter, Inc.

Case No. 20-cv-536-SE
Opinion No. 2023 DNH 054

O R D E R

Title II of the Civil Rights Act of 1964, 42 U.S.C. § 1981, prohibits discrimination on the basis of race. But it does not protect against discrimination based on a person's political beliefs, even when those political beliefs are purportedly favored by a particular race. At bottom, that is what plaintiff Daniel Hall's complaint alleges: that defendant Twitter, Inc. suspended his account because of his conservative viewpoints, and that Twitter's action constitutes racial discrimination because he and the majority of conservatives are white. Case law directly contradicts that theory and, as such, Hall's § 1981 claim fails. So, too, do his other theories of liability against Twitter and the court therefore grants Twitter's motion to dismiss. Doc. no. 3.

Standard of Review

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to

PETITIONER HALL'S
EXHIBIT C

relief that is plausible on its face."[1] Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotation omitted). Under this plausibility standard, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. This pleading requirement demands "more than a sheer possibility that [the] defendant has acted unlawfully," or "facts that are merely consistent with [the] defendant's liability." Id. (quotation omitted). Although the complaint need not set forth detailed factual allegations, it must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Id.

In deciding a motion to dismiss, the court takes the non-conclusory factual allegations in the complaint as true and resolves reasonable inferences in favor of the nonmoving party. Doe v. Stonehill College, Inc., 55 F.4th 302, 316 (1st Cir. 2022). The court "may also consider facts subject to judicial notice, implications from documents incorporated into the complaint, and concessions in the complainant's response to the motion to dismiss." Breiding v. Eversource Energy, 939 F.3d 47,

[1] Hall's complaint is 57 pages long and is accompanied by 429 pages of exhibits. Although a motion to dismiss is ordinarily based on the properly pleaded allegations in the complaint, exhibits attached to the complaint are considered part of the complaint for the purposes of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 321 (1st Cir. 2008).

49 (1st Cir. 2019) (quotation omitted). When the plaintiff is a pro se litigant, the court construes his complaint liberally. Boivin v. Black, 225 F. 3d 36, 43 (1st Cir. 2000).

Background

Hall's relationship with Twitter began in March 2019 when he signed a Twitter user agreement for services through the website Twitter.com, under the pseudonym "Senza Vergogna."[2] Hall alleges that on December 5, 2019, Twitter banned him from using many of the services offered at Twitter.com. He states that he is still able to log into his Twitter.com account, @Basta_Lies, but his cover photograph is blocked out and his posted materials and followers are missing. Hall has learned that his account does not exist except to him.

The problems between Hall and Twitter began with a Tweet he posted in late 2019:

> If I had special powers I would reach through that video and Bitch slap that commie Bitch who is yelling like a 3-year old!!!

[2] In the exhibits submitted with his complaint, Hall's pseudonym is "Senza Vergogna" and his Twitter account is identified as "Senza Vergogna @ Basta_Lies." Hall identified himself as "Sensa Verogna" in his complaint filed in this case and in subsequent filings. The correct spelling of Hall's pseudonym is not material, however, because the court denied Hall's request to proceed under his pseudonym. Doc. no. 54.

Doc. no. 1, ¶ 18(a). In response, Twitter locked Hall's account on November 7, 2019, for seven days for violating Twitter's rules against hateful conduct and stated that:

> You may not promote violence against, threaten, or harass other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.

Id. Twitter notified Hall "that repeated violations may lead to a permanent suspension of [his] account." Doc. no. 1-2 at 72.

Undeterred by Twitter's warning, Hall posted a Tweet, apparently aimed at a woman who was the subject of a Washington Post article about how President Trump had belittled her. Doc. no. 1-2 at 74. Hall wrote:

> Ya, let's all get all cutesy with a fkcn #Traitor who should be hung if found guilty!!

Doc. no. 1, ¶ 18(b). On December 5, 2019, Twitter permanently suspended Hall's account because he violated Twitter's rules against abuse and harassment and provided the following notice:

> You may not engage in the targeted harassment of someone, or incite other people to do so. This includes wishing or hoping that someone experiences physical harm.

Doc. no. 1-2 at 73. Twitter also notified Hall that "if you attempt to evade a permanent suspension by creating new accounts, we will suspend your new accounts." Id.

PETITIONER HALL'S EXHIBIT C

Hall appealed Twitter's decision to suspend his account, asserting that the cited Tweet did not violate Twitter's rules because it only recited the United States Code that a traitor who is found guilty of treason would or could be hung. Doc. no. 1-2 at 76. On December 7, 2019, Twitter notified Hall that his account would not be restored because his Tweets were in violation of the Twitter rules against targeted abuse. Doc. no. 1-2 at 79.

Hall filed the instant suit against Twitter in May 2020. Doc. no. 1. He alleges claims that Twitter's decision to suspend his account violated 42 U.S.C. § 1981 (Count I); Title II of the Civil Rights Act, 42 U.S.C. § 2000a, and RSA 354-A:17 (Count II); and his state and federal constitutional rights (Count III). Hall filed a series of motions for legal determinations about Twitter's status, requesting to be allowed to proceed anonymously, and other matters. The court largely denied Hall's motions. Doc. no. 54 & endorsed orders July 8, 2020, through September 28, 2020.

Hall then filed several interlocutory appeals. Doc. nos. 57, 63, 64, & 69. While Hall's appeals were pending, this court denied Twitter's motion to dismiss (doc. no. 3), along with other pending motions, without prejudice to the parties' right to renew the motions after the First Circuit Court of Appeals resolved Hall's interlocutory appeals. Endorsed Order March 8,

2021. Despite his pending appeals, Hall continued to file motions, which the court denied. Hall filed another interlocutory appeal on April 19, 2021, and an amended notice of interlocutory appeal on April 26, 2021. Doc. nos. 78 & 81. The First Circuit Court of Appeals affirmed the court's orders and dismissed Hall's remaining appeals, but Hall moved for rehearing. Doc. no. 87 & endorsed order Sept. 15, 2022. The First Circuit issued its mandate on Hall's interlocutory appeals on September 29, 2022, which allowed the case to proceed.[3]

As permitted, the parties then renewed several of their motions that the court had denied without prejudice pending resolution of the interlocutory appeals. Hall also moved for the recusal of the undersigned judge and to transfer the case to a different district. The court denied both motions. Endorsed Order Nov. 23, 2022. Hall filed an interlocutory appeal of the order denying those motions. Doc. no. 125. Hall then withdrew his appeal, and the First Circuit issued its mandate on January 5, 2023.

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[3] Because of the possibility of the appearance of partiality after the merger of the law firm representing Twitter with another firm with whom the sitting judge, Judge McAuliffe, has a relationship, he recused himself from the case on October 11, 2022. See doc. no. 98. The case was then reassigned to the undersigned judge.

The court has ruled on all pending motions other than Twitter's renewed motion to dismiss. With Hall's most recent interlocutory appeal now resolved, the court turns to that motion.

Discussion

In support of dismissal, Twitter argues that each Count fails to allege at least one necessary element. Twitter also contends that it is immune from Hall's claims under the Communications Decency Act ("CDA"), 47 U.S.C. § 230.[4] Hall disputes Twitter's arguments and contends that the court should permit his claims to proceed.

I. Count I - Racial Discrimination in Violation of § 1981

In Count I, Hall alleges that Twitter violated the provisions of 42 U.S.C. § 1981 by discriminating against him on the basis of race, that is, "because he was white." Doc. no. 1, ¶¶ 141, 147. Twitter argues that Hall fails to allege any basis for racial discrimination.

Section 1981 provides that "[a]ll persons within the jurisdiction of the United States shall have the same right in

[4] Alternatively, Twitter asks that the court transfer the case, or any part that remains after the court decides the motion to dismiss, to the Northern District of California.

every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens."[5] An essential element of a viable claim of racial discrimination under § 1981 is that the defendant discriminated against the plaintiff on the basis of his or her race. See, e.g., Hammond v. Kmart Corp., 733 F.3d 360, 362 (1st Cir. 2013); Garrett v. Tandy Corp., 295 F.3d 94, 98 (1st Cir. 2002).

Although Hall acknowledges that he operated his Twitter account pseudonymously, he alleges that Twitter was aware that he was white because he espoused Republican and conservative viewpoints in his Tweets. His complaint cites a research study stating that "Republican and Republican-leaning voters continue to be overwhelmingly white: 83% of Republican registered voters are white non-Hispanics with conservative beliefs, similar to" his beliefs. Doc. no. 1, ¶ 23. He contends that because Republicans and conservative voters are largely white, the court can infer that Twitter was aware that Hall was white.[6] The court disagrees.

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[5] The Supreme Court has held that § 1981 protects white persons, in addition to non-white persons, from discrimination. McDonald v. Santa Fe Trail Trans. Co., 427 U.S. 273, 287 (1976).

[6] In his objection, Hall notes that his Twitter account displayed a picture of a white man. Doc. no. 13-2, ¶ 28. It is unclear if Hall himself is displayed in the picture.

Moreover, even assuming that Hall's allegations supported the inference that Twitter knew he was white when it suspended his account, he has not alleged any facts to show that Twitter suspended his account because he is white. At best, Hall alleges that Twitter discriminated against him because of his political beliefs, and that those beliefs are overwhelmingly held by white individuals. Section "1981, however generously construed, does not prohibit discrimination on the basis of political affiliation." Keating v. Carey, 706 F.2d 377, 384 (2d Cir. 1983); see Dartmouth Rev. v. Dartmouth Coll., 709 F. Supp. 32, 37 (D.N.H. 1989), aff'd, 889 F.2d 13 (1st Cir. 1989). Instead, "to sufficiently state a claim under § 1981, plaintiffs must allege some facts that demonstrate that their race was the reason for defendants' actions." Dartmouth Rev., 709 F. Supp. at 36 (quotation and alterations omitted). Viewing Hall's complaint generously, he has not done so.

In sum, Hall has failed to allege that Twitter discriminated against him on the basis of his race. Therefore, the court dismisses his claim in Count I.

II. Count II - Racial Discrimination in Violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, and RSA 354-A:17

In Count II, Hall alleges that Twitter discriminated against him by suspending his account because he is white in

v. Meta, Inc., No. 21-5325, 2022 WL 4635860, at *3 (E.D. Pa. Sept. 30, 2022); Martillo v. Twitter Inc., No. 21-11119-RGS, 2021 WL 8999587, at *1 (D. Mass. Oct. 15, 2021).

The New Hampshire Supreme Court has not had occasion to address the meaning of public accommodation in this context. But when construing RSA 354-A, the New Hampshire Supreme Court has looked to the way federal courts interpret the Civil Rights Act of 1964. See Burnap v. Somersworth Sch. Dist., 172 N.H. 632, 636-37 (2019) ("In interpreting RSA chapter 354-A, we are aided by the experience of the federal courts in construing the similar provisions of Title VII of the 1964 Civil Rights Act." (citation omitted)). Therefore, the court also looks to federal guidance as to the proper interpretation of RSA 354-A and concludes that Twitter is not a place of public accommodation under that statute.

Because Twitter is not a place of public accommodation, and because Hall does not allege facts sufficient to establish that Twitter was motivated by his race, Hall cannot show that Twitter violated § 2000a or RSA 354-A:17. The court therefore dismisses Count II.

III. Count III - Violation of State and Federal Constitutional Rights

Hall alleges that Twitter suspended his account because of

the content of his Tweets in violation of his right to free speech, expression, and assembly under the First Amendment of the United States Constitution and Part I, Articles 22 and 32 of the New Hampshire Constitution. He also asserts violation of his rights to due process and equal protection under both constitutions.

The First Amendment protections, along with the Fourteenth Amendment protections for due process and equal protection, apply only against governmental action, that is, restrictions or discrimination imposed by state actors. 42 U.S.C. § 1983; Goldstein v. Galvin, 719 F.3d 16, 24 (1st Cir. 2013); see also Jarvis v. Village Gun Shop, Inc, 805 F.3d 1, 8 (1st Cir. 2015). Governmental action is also a required element of a claim under the New Hampshire Constitution. HippoPress, LLC v. SMG, 150 N.H. 304, 308 (2003). As Twitter argues, it is a private company, not a government or state actor, and Hall has not shown that the state action doctrine would apply in the circumstances of this case. See, e.g., O'Handley v. Weber, No. 22-15071, 2023 WL 2443073, at *4-5 (9th Cir. Mar. 10, 2023); Berenson v. Twitter, Inc., No. C 21-09818 WHA, 2022 WL 1289049, at *3 (N.D. Cal. Apr. 29, 2022); Freedom Watch, Inc. v. Google, Inc., 368 F. Supp. 3d 30, 40-41 (D.D.C. 2019), aff'd, 816 F. App'x 497 (D.C. Cir. 2020).

Because Twitter is not a state actor, Hall does not state viable claims for constitutional violations as alleged in Count III. Therefore, the court dismisses that Count.

IV. Result

For the reasons stated above, the court dismisses Hall's claims on the merits. Therefore, there is no need to address Twitter's defense based on immunity under § 230 or the other defenses raised. Also, because the case is dismissed, the court will not address that part of the motion seeking to transfer the case to the Norther District of California.

Conclusion

For the foregoing reasons, Twitter's motion to dismiss (document no. 3) is granted. The clerk of court shall enter judgment accordingly and close the case.

SO ORDERED.

Samantha D. Elliott
United States District Judge

May 9, 2023

cc: Daniel E. Hall, pro se.
Counsel of record.

PETITIONER HALL'S
EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Daniel E. Hall

v. Civil No. 20-cv-536-SE

Twitter, Inc.

O R D E R

Daniel Hall, proceeding pro se, brings suit against Twitter, Inc., alleging violations of state and federal law arising out of his suspension from Twitter's social media platform. There are several motions pending before the court: 1) Twitter's motion to renew its motion to dismiss and stay other briefing (doc. no. 99); 2) Hall's motion to strike Twitter's motion to dismiss (doc. no. 100); 3) Hall's motion for default (doc. no. 101); 4) Hall's motion for default judgment (doc. no. 102); 5) Hall's motion for leave to amend his motion for default judgment (doc. no. 111); 6) Hall's motion to take judicial notice (doc. no. 122); and 7) Hall's motion for hearing regarding judicial notice (doc. no. 123). The court addresses each motion in turn.

I. Hall's Motion for Leave to Amend Motion for Default Judgment (doc. no. 111)

Hall's motion seeking leave to amend his motion for default judgment states that his request is for "reasons of clarity as Plaintiff got the verbiage correct but confused and misplaced

PETITIONER HALL'S
EXHIBIT D

the rules of the Court." Doc. no. 111 at 1. Hall included as an exhibit to his motion a proposed amended version of his motion for default judgment. Doc. no. 111-1. The proposed amended version makes a minor, clerical change from the original version. Therefore, the court grants the motion to amend and has considered the amended version of Hall's motion for default judgment when ruling on that motion in this order.

II. Hall's Remaining Pending Motions

As has been the case with several of Hall's prior motions in this litigation, Hall's five other pending motions involve his belief that he is entitled to judgment because Twitter's motion to dismiss includes on its signature line the name of Julie E. Schwartz, a California-barred attorney, with the notation "(*motion for pro hac vice admission to be filed*)." See doc. no. 3 at 2. Although Attorney Jonathan Eck, a New Hampshire-barred attorney who is admitted to practice before this court, filed the motion on Twitter's behalf and is listed on the motion's signature line, Hall believes that the inclusion of Attorney Schwartz's name on the signature line invalidates the filing.[1] Further, he contends that he is entitled to judgment

[1] Attorney Eck subsequently moved for the admission of Attorney Schwartz *pro hac vice*. Doc. no. 9. Magistrate Judge Johnstone granted that motion. See August 19, 2020 Endorsed Order.

because Magistrate Judge Johnstone purportedly adopted "unwritten, illegal pro hac vice policies" by allowing the names of other attorneys from Attorney Schwartz's law firm to appear on the signature line of filings in other cases even though they were not yet admitted *pro hac vice* at the time of the filings.

Hall's complaints about Attorney Schwartz and Magistrate Judge Johnstone's purported *pro hac vice* policies provide the basis for Hall's pending motions as follows:

- Motion to Strike Twitter's Motion to Dismiss (doc. no. 100): Hall argues that the court should strike Twitter's motion to dismiss (doc. no. 3) because Attorney Schwartz was not admitted to practice before the court when Twitter filed the motion, and Attorney Schwartz's name on the filing is an example of Magistrate Judge Johnstone's purported illegal *pro hac vice* policies.
- Motion for Default (doc. no. 101): Hall argues that because Twitter's motion to dismiss is invalid and should be stricken from the record for the reasons discussed above, Twitter therefore failed to respond to his complaint properly and in a timely fashion, necessitating the entry of a default.
- Motion for Default Judgment (doc. no. 102): Hall argues that he is entitled to a default judgment for the reasons

PETITIONER HALL'S EXHIBIT D

stated in his motion to strike Twitter's motion to dismiss and in his motion for default.

- Motion to Take Judicial Notice (doc. no. 122): Hall requests that the court take judicial notice of the existence of Twitter's motion to dismiss in this case, as well as filings in three other cases in this district in which the name of an attorney from Attorney Schwartz's law firm similarly appeared on signature lines without prior admission *pro hac vice*.[2]
- Motion for Hearing Regarding Judicial Notice (doc. no. 123): Hall requests a hearing on his motion to take judicial notice.

A. Hall's Motions Regarding Judicial Notice (doc. nos. 122 and 123)

Hall's motion to take judicial notice requests that the court "take judicial notice of the District Court for the District of New Hampshire's court records and information contained within the New Hampshire Law Library." Doc. no. 122 at 1. Specifically, he requests that the court take judicial notice of filings in other cases in which the name of another attorney from Attorney Schwartz's firm, Ryan Mrazik, was included in a filing's signature line even though he was not admitted to

[2] Hall was not a party to these other litigations.

practice before this court *pro hac vice* at the time of the filing.[3]

To the extent that document no. 122 requests that the court take judicial notice of the existence of these court records, the court grants the motion. Hall does not appear to seek any relief other than that the court takes judicial notice of the existence of the filings referenced in the motion. In light of Hall's pro se status, however, the court clarifies that the motion is denied to the extent that he seeks additional relief.

Hall's motion requesting a hearing on his motion for judicial notice (doc. no. 123) is denied as moot.

B. Hall's Remaining Motions

The court denies Hall's motions to strike, for default, and for default judgment. To begin, the court has already denied Hall's prior motion for default, which was based on similar, if not identical, grounds. See July 8, 2020 Endorsed Order. The court also denied Hall's motion to reconsider that order. See August 13, 2020 Endorsed Order.

Even if the court had not previously ruled on the issues raised, Hall offers no legally cognizable basis for his motions.

[3] Hall's motion also requests that the court take judicial notice that Attorney Schwartz's name is included in Twitter's motion to dismiss in this case.

He provides no support for his theory that the court must strike a filing signed by a New Hampshire-barred attorney who is admitted to practice before this court (here, Attorney Eck) merely because it includes the name of an out-of-state attorney who was not yet admitted *pro hac vice*.

Further, even if Attorney Schwartz, and not Attorney Eck, had filed the motion to dismiss on Twitter's behalf, the court would deny Hall's motions. The court agrees with the reasoning of the many courts that have rejected similar motions based on identical grounds. See Wolford v. Budd Co., 149 F.R.D. 127, 130 (W.D. Va. 1993) (denying motion to dismiss complaint based on argument that the complaint was signed by an attorney not admitted to practice in the state or before the court and noting that its "decision is in accordance with decisions of numerous other federal courts which have refused to dismiss pleadings or motions filed by attorneys not admitted to practice before the court" (collecting cases)); see also Powe v. Boykins, 810 F. App'x 331, 331-32 (5th Cir. 2020) (noting in the context of affirming a district court's order granting a motion to dismiss filed by the defendant's out-of-state attorney who had not yet been granted leave to appear *pro hac vice* that, as in this case, "the district court granted the *pro hac vice* motion before ruling on the motion to dismiss" and that, regardless, "a district court has broad discretion to control its own docket

and permit the filing of pleadings" (quotation omitted)); Copeland v. D & Constr. LLC, No. 3:13-CV-4432-N-BH, 2014 WL 12780049, at *1 (N.D. Tex. Mar. 4, 2014) (Plaintiff "provides no authority for striking the defendants' answer solely on grounds that counsel had not yet been admitted to practice in this Court *pro hac vice* at the time that he filed it. Counsel had filed his motion to appear *pro hac vice* and ultimately received permission to so appear."); Santander Sec. LLC v. Gamache, No. CV 17-317, 2017 WL 1208066, at *6 (E.D. Pa. Apr. 3, 2017) (permitting attorneys to continue to represent their clients despite not being members of the bar of the court or moving for *pro hac vice* admission, concluding "that the firm's active participation in this litigation subjects it to my inherent authority to supervise the professional conduct of attorneys appearing before me" (quotation omitted)).

III. Twitter's motion to renew its motion to dismiss and stay other briefing (doc. no. 99)

Twitter filed its motion to dismiss in June 2020, less than a month after Hall initiated this action. See doc. no. 3. The motion to dismiss has been fully briefed by the parties. On March 8, 2021, after Hall filed the first of multiple interlocutory appeals of certain of the court's orders, the court denied Twitter's motion to dismiss "without prejudice to

In accordance with the March 8 order, the court grants Twitter's request to renew its motion to dismiss (doc. no. 3). The court will consider the parties' briefings on the motion and issue an order in due course. Further, Hall's filings since the resolution of his interlocutory appeals underscore the necessity of reinstating a stay of these proceedings as described in the concluding paragraph below and consistent with the terms delineated in the court's prior order.

Conclusion

For the foregoing reasons, the plaintiff's motion for leave to amend his motion for default judgment (doc. no. 111) is granted and his motion to take judicial notice (doc. no. 122) is granted to the extent that it requests that the court take judicial notice of the existence of certain court records filed in other cases and in this case and is otherwise denied.

The plaintiff's motion for a hearing on his motion for judicial notice (doc. no. 123) is denied as moot, and his motion to strike Twitter's motion to dismiss (doc. no. 100), motion for default (doc. no. 101), and motion for default judgment (doc. no. 102) are denied.

The defendant's motion to renew its motion to dismiss and stay other briefing (doc. no. 99) is granted. The court shall

consider the defendant's motion to dismiss and the parties' briefing on that motion in due course.

In accordance with the parameters of the court's previous order, until the court: (a) issues its order on the defendant's pending motion to dismiss, or (b) solicits briefing from the parties, or (c) authorizes additional filings, neither party shall file any additional papers, pleadings, notices, or motions with the court, except as necessary on an emergency basis and only with prior leave of the court (that is, by way of first seeking, and obtaining, leave to file). Failure to comply with this order may expose the violator to an order imposing costs and legal fees.

SO ORDERED.

Samantha D. Elliott
United States District Judge

November 30, 2022

cc: Daniel E. Hall, pro se
Counsel of Record

PETITIONER HALL'S EXHIBIT D

No.

In the Supreme Court of the United States

DANIEL E. HALL, PETITIONER

v.

TWITTER, INC., RESPONDENT

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
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ATTACHED APPENDIX II- APPELLANT BRIEFS

Daniel E. Hall
Petitioner, Pro Se
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September 15, 2024

UNITED STATES COURT OF APPEALS

for the

FOR THE FIRST CIRCUIT

Case No. 23-1555

DANIEL E. HALL,

PLAINTIFF - APPELLANT,

- v. -

TWITTER, INC.,

DEFENDANT - APPELLEE.

Appeal from the United States District Court

For the District of New Hampshire

Case No. 1:20-cv-00536-SE

Judge Samantha D. Elliott

APPELLANT'S BRIEF

Daniel E. Hall, PRO SE

Aka. Sensa Verogna

SensaVerogna@gmail.com

Dated: August 28, 2023

PETITIONER HALL'S
EXHIBIT E

TABLE OF CONTENTS

PETITIONER HALL'S EXHIBIT E

PETITIONER HALL'S
EXHIBIT E

U.S. SUPREME COURT

PETITIONER HALL'S EXHIBIT E

FIRST CIRCUIT

PETITIONER HALL'S EXHIBIT E

OTHER CIRCUITS

PETITIONER HALL'S EXHIBIT E

PETITIONER HALL'S EXHIBIT E

DISTRICT COURTS

PETITIONER HALL'S EXHIBIT E

PETITIONER HALL'S EXHIBIT E

PETITIONER HALL'S EXHIBIT E

iii. ISSUES PRESENTED IN THE PETITION

The following issues are presented for review by this Court:

Did the District Court Judge error in fact or law by;

(1) not providing a constitutional proceeding;
(2) not recusing herself;
(3) refusing to strike Twitter's Motion to Dismiss and MOL;
(4) not defaulting Twitter;
(5) renewing Twitter's Motion to Dismiss;
(6) dismissing Hall's claims under 42 U.S.C. § 1981 for failure to state a claim;
(7) dismissing Hall's public accommodation under 42 U.S.C. § 2000a, et seq., in determining that Twitter was not a place of public accommodation;
(8) dismissing Hall's Constitutional claim and determining that Twitter was not a federal actor and that Section 230 is Constitutional.

PETITIONER HALL'S
EXHIBIT E

APPELLANT'S BRIEF

I. INTRODUCTION

1. Appellant, Plaintiff, Daniel E. "Hall", respectfully appeals *each substantive* order of the District "Court" and the District Court's 6/7/2023 order, denying Hall's [D. 141] motion for reconsideration, Hall's [D. 142] motion to vacate on the basis that the District Court failed to provide a constitutional and unbiased tribunal, and Hall's [D.143] motion to vacate, because of the fraud or misrepresentations performed by the Defendant, "Twitter" throughout the proceedings. Hall also appeals the District Courts' "11/23/2022 Order" denying Hall's [D. 104] motion to recuse "Judge Elliott"; the "[D. 124 Order]" denying Hall's [D. 100] strike motion and [D. 101] default motion; the [D. 124 Order] denying Hall's [D. 122] judicial notice motion, and [D. 123] hearing motion; the [D. 124 Order] granting Twitter's [D. 99] motion to renew; the [D. 139 Order] (Hall v. Twitter Inc. 20-cv-536-SE (D.N.H. May. 9, 2023)) and [D. 140] judgement, granting Twitter's [D. 3] motion to Dismiss, and dismissing Hall's [D. 1] "Complaint" and Exhibits, (collectively as "Complaint"), and on the grounds the District Court has patently misunderstood Hall's claims. . . or has made an error not of reasoning but apprehension, **[1]** errors that are plain and indisputable, which amounts to a complete disregard of the controlling law, **[2]** as the Order is against the law, against the weight of the credible evidence, or tantamount to a miscarriage of justice, and on grounds as stated throughout, resulting in manifest errors of law and fact. **[3]**

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[1] *Ruiz Rivera v. Pfizer Pharm., LLC*, 521 F.3d 76, 82 (1st Cir. 2008).
[2] *Venegas–Hernandez v. Sonolux Records,*370 F.3d 183, 195 (1st Cir.2004).
[3] *Crowe v. Marchand,* 506 F.3d 13, 19 (1st Cir. 2007); *Marie v. Allied Home Mortg. Corp.,* 402 F.3d 1, 7, fn. 2 (1st Cir. 2005). See 11 Charles A. Wright et al., Fed. Prac. Proc. § 2804, at 53 (2d ed. 1995).

PETITIONER HALL'S
EXHIBIT E

2. The Court abused its discretion when it made many errors of law through its "Orders". Koon v. United States, 518 U.S. 81, 100, 116 S.Ct. 2035, 135 .Ed.2d 392 (1996); Golas v. HomeView, Inc., 106 F.3d 1, 3 (1st Cir.1997).

3. Here the District Court reached factual conclusions that are inconsistent with the Complaint and failed to accept as true Hall's well-pleaded factual allegations set forth in the Complaint that is the standard under *Parker v. Hurley*, 514 F.3d 87, 90 (1st Cir. 2008) and *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007); *Scandinavian Satellite Sys. v. Prime TV Ltd.*, 291 F.3d 839, 844 (D.C. Cir. 2002), and abused its discretion in making factual findings while determining a motion to dismiss. *Workgroup Tech. Corp. v. MGM Grand Hotel, LLC,* 246 F. Supp. 2d 102, 118 (D. Mass. 2003).

4. Hall's Complaint contains more than just a "short and plain statement of the claims showing that he is entitled to relief required by Fed. R. Civ. P. 8(a)(2). "[D]etailed factual allegations" are not required under *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009), and Hall's Complaint contains sufficient factual matter which, taken as true, states a claim to survive a Rule 12(b)(6) motion, "that is plausible on its face." E.g., *Twombly*, at 544, 556, 570. "Asking for plausible grounds to infer [unlawful conduct] does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [such conduct]." Id. at 556. At the motion-to-dismiss stage, moreover, the Court failed to "construe the Complaint in the light most favorable to Hall and draw all reasonable inferences in [his] favor." *Fitzgerald v. Barnstable Sch. Comm.,* 555 U.S. 246, 129 S.Ct. 788, 172 L.Ed.2d 582 (2009); *Clean Water Action v. Searles Auto Recycling, Corp.,* 288 F. Supp. 3d 477, 480 (D. Mass. 2018). A plaintiff need not "submit evidence . . . at the pleading stage." and "are not required to submit evidence to defeat a Rule 12(b)(6) motion, but need only sufficiently allege in their complaint a plausible claim." *Watterson v. Page,* 987 F.2d 1, 3 (1st Cir. 1993).

PETITIONER HALL'S
EXHIBIT E

5. The District Court's decisions were made without regard for the Constitution, case law, or supreme court rules which address who can fill such a position of public trust. A court that changes its mind every time there is a new justice or different set of facts undermines the very concept of the rule of law and creates uncertainty for citizens, businesses and elected officials trying to go about their lives while following the laws of the land.

II. JURISDICTION

6. The Court had jurisdiction as a substantial part of this action arose under the laws of the United States, 28 U.S.C. §§ 1331, 1343(a) and 42 U.S.C. § 1988, and through Article III § 2 which extends the jurisdiction to cases arising under the U.S. Constitution. Since the district court's order [D. 13], and judgment [D. 14] dismisses all of the underlying claims fully and disposed of the Appellants' claims, this court of appeals has jurisdiction under 28 U.S.C. § 1291.

III. LEGAL STANDARDS OF REVIEW

7. A district court's dismissal of a claim under Rule 12(b)(6) is reviewed de novo by the appeals court. *Cordero Jimenez v. University of Puerto* Rico 371 F. Supp. 2d 71 (D.P.R. 2005). *Artuso v. Vertex Pharm., Inc.,* 637 F.3d 1, 5 (1st Cir.2011); *Santiago v. Puerto Rico,* 655 F.3d 61, 72 (1st Cir. 2011); *Garita Hotel Ltd. P'ship v. Ponce Fed. Bank, F.S.B.*, 958 F.2d 15, 17 (1st Cir. 1992).

8. When "determining whether a judge's impartiality might reasonably be questioned," the First Circuit follows the standard set forth in *United States v. Cowden*, 545 F.2d 257, 265 (1st Cir.1976), cert. denied, 430 U.S. 909, 97 S.Ct. 1181, 51 L.Ed.2d 585 (1977), to objectively determine ""if there is a reasonable factual basis for doubting the judge's impartiality . . . ." H. Rep. No. 1453, 93d Cong., 2d Sess., 1974; U.S. Code Cong. Admin. News p. 6355.

PETITIONER HALL'S
EXHIBIT E

IV. THE CERTIFIED RECORD

9. Hall has motioned this Court to certify the record as he believes it to be incomplete and not a true reflection or representation of the certified record. Although Hall is not required to attach and appendix under Local Rule 30.0(d)(1), the current certified record consisting of only some of the Court's Orders and not including documents past [D. 146] is woefully incomplete and would make the process of this appeal hollow and unfair to Hall, to say the least.

10. In this brief, Hall temporarily refers to the July 10, 2023 document (00118028485) in this case no. 23-1555, when referring to docket entries and ask this court to allow him to supplement any pleadings or orders on the record when the certified record is complete, and when directed to do so by this Court.

V. CLAIM I- 42 U.S.C. "§ 1981" VIOLATIONS OF CONTRACT

A. Standards of a § 1981 Claim

11. The essential element of a § 1981 claim is that the defendant discriminated against the plaintiff on the basis of his or her race. *e.g., Hammond v. Kmart Corp.,* 733 F.3d 360, 362 (1st Cir. 2013); *Garrett v. Tandy Corp.,* 295 F.3d 94, 98 (1st Cir. 2002). Under Garrett, "to satisfy the foundational pleading requirement for a [§ 1981] suit ..., a retail customer must allege that he was actually denied the ability either to make, perform, enforce, modify, or terminate a contract, or to enjoy the fruits of a contractual relationship, by reason of a race-based animus." Id. at 100-01

12. The Court errored in fact when granting [D. 139] Twitter's Motion to Dismiss [D. 3], and finding that; (1) no alleged facts show that Twitter suspended his account because he is white, (2) Hall was banned because he violated Twitter's rules, (3) Hall alleges that Twitter discriminated against him because of his political beliefs and because he was white, 4) the court can't infer that Twitter was aware that Hall was white just because Republicans and conservative voters are largely white, and because he espoused republican and conservative viewpoints.

PETITIONER HALL'S
EXHIBIT E

B. Halls Complaint and Exhibits

13. Hall's Complaint alleges that he is a natural white person, and a member of the white or non-Hispanic, "white" race. [D.1, ¶ 2], who signed a contract with Twitter, [D.1, ¶ 3], in March 2019, [D.1, ¶ 12], stating that he was user and customer of their website and potential buyer of Twitter products. [D.1, ¶ 15]. In November 2019 Twitter locked Hall's account, and on December 5, 2019, banned or terminated his account. [D.1, ¶ 18] Hall Appealed each of Twitter's decisions, [D.1, ¶ 18], denying any violation of Twitter's policies, [D.1, ¶ 21] which Twitter denied stating; "Your account has been suspended and will not be restored because it was found to be violating the Twitter Terms of Service, specifically the Twitter Rules against participating in targeted abuse." [D.1, ¶ 14, 20]. Hall claims that because Twitter has banned his Hall's contract, he is no longer able to use Twitter's services or utilize Twitter live feed, receiving or sending messages, profile editor, analytics, promote mode, or analytics services, including the purchase of any advertising or run ads to reach a larger audience or the use of various marketing, business, software & advertising products & services to help build and grow "his" brand. [D.1, ¶ 17]

14. Hall's allegations don't stop at "because he was white". Hall also alleges that he was discriminated against because he tweeted, posted, communicated, acted, represented, displayed, behaved and portrayed himself to be a white person and a member of the white race when using Twitter's services, [D.1, ¶ 139, 155], and that Twitter banned Hall, in part, for his white behaviors. [D. 1-1 Exhibit Q-2 P. 174]. Additionally, it is public knowledge that Twitter's "Advertisers are able to build criteria that include and exclude folks," [D. 1-1 Exhibit Q-2 P. 97], and exclude certain categories of users on a discriminatory basis., [D. 1-1 Exhibit Q-2 P. 96], with the meaning that Twitter can and does identify its users on race based information for its advertisers. Hall also alleges Twitter used their new Health Policy initiative

PETITIONER HALL'S
EXHIBIT E

as a pretext to discriminately remove or ban for life the contracts, of perceived or actual white owned accounts like Hall's. [D.1, ¶ 140, 158];

C. Get Whitey

15. Hall also alleges that in the time leading up to his termination in December 2019, white hate was on the rise and that by July 2018 the media were openly calling Trump supporters "Nazis" [D.1, ¶ 184], to which Breitbart News then chronicled a "Rap Sheet: ***639*** Acts of Media-Approved Violence and Harassment Against Trump Supporters." [Id, ¶ 184]. **[4]** which was supported by Maxine Waters (D-CA) because she threatens Trump supporters "all the time." [ID. ¶ 183]. By November Antifa was vandalizing Tucker Carlson's home. [ID. ¶ 180], and in March 2019 it was "reported" that White nationalist "groups" surged nearly 50 percent. [ID. ¶ 79], which prompted the Southern Poverty Law Center to ask "How many nazis are there in America really". [ID. ¶ 80]. At a Twitter all-hands meeting on an employee states algorithms the next great hope for platforms to … remove white supremist content. [ID. ¶ 81]. By April 2019, the House Judiciary held a Hearing on hate crimes and the rise of white nationalism and addressed some of what social media companies can do to stem white nationalist propaganda and hate speech online and what the public forums are doing to police their public forums. [ID. ¶ 82] [EXHIBIT C]; Researcher, JM Berger, pointed out that since so many white nationalists are supporters of President Trump, removing those accounts could lead conservatives to accuse the platform of anti-Republican bias. [ID. ¶ 83]; Jack "Dorsey" while speaking of white nationalists, told Rolling Stone that people constantly tweet at him asking him to "get the Nazis off Twitter," [ID. ¶ 84], also a Twitter employee who works on machine learning told Motherboard that he believes that a proactive, algorithmic solution to white supremacy would also catch Republican politicians. [ID. ¶ 85]. In May 2019 the House Civil Rights and Civil Liberties Subcommittee held a public hearing titled [Confronting White Supremacy **(Part VII).** [ID. ¶ 86].

PETITIONER HALL'S
EXHIBIT E

In June 2019- the House Judiciary held a Hearing "Confronting White Supremacy" and the "Adequacy of the Federal Response" [ID. ¶ 87]. In August 2019- Headlines read Liberals are now willing to target any Trump supporter for ruination." The message to anyone who dares not march in lockstep with liberalism." "You don't matter, and we will target you for ruination whenever we feel like it." [ID. ¶ 182]. Members of the US Congress were "Outing" donors to Donald Trump inviting abuse from the public. [ID. ¶ 185]; Fortune Magazine' headline states "When Will Twitter Ban White Nationalists? "Civil Rights Leaders Urge the Site to Take Action." [ID. ¶ 88]. In September 2019- House Oversight Joint Subcommittee held a Hearing on Confronting White Supremacy in which Mr. Raskin stated, in part; "We are here today to determine if existing counter terrorist tools can be mobilized to address the problem of white supremacy. [ID. ¶ 89]. By October 2019- MN State Rep was Among Antifa Mob Harassing Trump Supporters After Rally. [ID. ¶ 186]; November 2019- Facebook said it was banning white nationalist and white supremacist content from its platform, putting pressure on Twitter to do the same. [ID. ¶ 90].

D. Twitters "Get Whitey" Workforce

16. Twitter's workforce" during this same period, consisted of CEO, Jack "Dorsey", officers, directors, managers, agents, employee's or other partners, journalists, contractors, subcontractors or actors, [D.1, ¶ 5]) who are.. mostly non-white or anti-white. [D.1, ¶ 91], and have a strong bias and strong negative views about white people in general, [D.1, ¶ 70], who actively use Twitters public forum

[4] See [D.55-1], January 5, 2017: Left-wing thugs kidnap, beat, and torture an 18-year-old with schizophrenia while shouting "fuck Trump" and "fuck white people; "October 19, 2017: Left-wing thugs arrested for disrupting College Republican meeting, shouting "fascists," "racists" and "white supremacists"; September 28, 2017: Education Secretary Betsy DeVos heckled as "white supremacist" during speech; September 30, 2018: Georgetown prof: WHITE GOP senators in Kavanaugh hearing 'deserve miserable deaths'.

PETITIONER HALL'S
EXHIBIT E

to endorse and promote the many agendas of the Democratic Party, (See Exhibit P-Twitter Facilities.) [D.1, ¶ 68], who Dorsey himself admits "are biased" and are left-leaning employees who are so liberal, in fact, that conservative employees "don't feel safe to express their opinions" within the company. [D.1, ¶ 69]. 96 percent of Journalists, who are part of this "workforce" contributed to the Hillary Clinton campaign in 2016. [D.1, ¶ 76]. Also there were numerous former employees such as Olinda Hassan, a policy manager of Twitter trust and safety who made statements such as "Safety "Yeah, that's something we're working on" .... "we're trying to get the shitty people to not show up. It's a product thing we're working on", when commenting on white males like Michael Cernovich an American right-wing social media personality [D.1, ¶ 66]; people like Mo Norai, a former content review agent of Twitter who was recorded as stating; "..a user end services person would deem it pro-Trump and take tweets down, and let left leaning or liberal stuff go through unchecked and further stating "Twitter was probably about 90% anti-Trump, maybe 99% anti-Trump." [D.1, ¶ 49]; Conrado Miranda, a former engineer for Twitter was recorded as stating; "That's a thing" when asked if rumors where true that [Twitter] likes to ban Trump supporters or conservatives. [D.1, ¶ 29]; Pranay Singh, direct messaging engineer for Twitter acknowledges that a majority of algorithms are against Conservatives. [D.1, ¶ 30]; Abhinav Vadrevu, a former software engineer for Twitter acknowledged that Twitter has shadow banned users without their knowledge. [D.1, ¶ 31]; Vijaya Gadde, legal counsel for Twitter, who stated that "Twitter does not shadow ban." [D.1, ¶ 33]; In July 26, 2018, Nick Pickles, again reiterated to the public that shadow banning claims were unfounded and false," [D.1, ¶ 53], aligning with Twitter's public narrative that the "rules apply to everyone using our service," [D.1, ¶ 48], and],

PETITIONER HALL'S
EXHIBIT E

17. Despite public perception that Twitter shows bias against Republicans, Conservatives, [D.1, ¶ 26, Exhibit K] (who continue to be 83% white), [D.1, ¶ 23] "Twitter's public response within this period, had always been "We do not shadow ban." Mr. Pallone [D. 1-1 Exhibit Q-2 P. 28]. When Dorsey testified before Congress in September 2018, he was evasive, [D.1, ¶ 93,94], and he tweaked Twitter's public response to "We do not shadowban *anyone based on political ideology*" [D.1, ¶ 34], or *prominent* Republicans, [D. 1-1 Exhibit Q-2 P. 56], only after Twitter was caught lying about its shadow banning policies and Dorsey was forced to admit that that Twitter has bias in their algorithms [D. 1-1 Exhibit Q-2 P. 154], and regulated and shadow banned 600,000 users for "certain behaviors," [D. 1-1 Exhibit Q-2 P. 57]. Users who were mostly Republicans and Conservatives, who are mostly white. [D.1, ¶ 91]. Dorsey went on to state that Twitter undertook no behavior to selectively censor conservative Republicans or conservative voices on your platform," [D. 1-1 Exhibit Q-2 P. 58], and does not "consider political viewpoints, perspectives, or party affiliation in any of our policies or enforcement decisions, period." [D. 1-1 Exhibit Q-2 P. 23]. Also that their behavioral ranking does not consider in any way political views or ideology and focuses solely behavior [D. 1-1 Exhibit Q-1, P. 6], policies and algorithms don't take into consideration any affiliation philosophy or viewpoint." [D. 1-1 Exhibit Q-2 P. 63]. In January 2019 Dorsey finally came clean to the public regarding Twitters shadow banning practices in stating "we (Twitter) haven't been as forthright as we need to, we certainly haven't been as transparent when asked about racists getting verified status. [D.1, ¶ 72]. In November 2019 Twitter again denies shadow banning claims. [D.1, ¶ 37], and then acknowledges a month later that it had "shadow banned" Sean Davis, a white man. [D.1, ¶ 38]. In January 2020 Twitter ended the fraud of shadow banning users and changed its contract to allow Twitter to shadow ban its users. [D.1, ¶ 39].

PETITIONER HALL'S
EXHIBIT E

18. And lastly, during this time period, between Jan-June 2018, 6,229,323 accounts were reported for possible violations where actions were taken against 605,794 accounts, [D.1, ¶ 24], and between July-Dec 2018, 11,000,257 accounts were reported for possible violations where actions were taken against 612,563 accounts. [D.1, ¶ 24]. By Jan-June 2019, Twitter through its Health Policy, knowingly focused its efforts, wrote and trained its algorithms, set its agenda's, formulated and implemented policies to track, police and regulate on the basis of going after and removing white supremacists, white separatists and white nationalists. [D.1, ¶ 91]. Twitter was aggressively taking action by limiting, locking or suspending users' contracts for reasons such as abuse, hate and white nationalism. [D.1, ¶ 24], resulting in 15,638,349 unique accounts were reported for possible violations where actions were taken against 1,254,226 accounts. An increase of 105% over last reporting period. [D.1, ¶ 24, 63]. By July 2019 Twitter's stopped reporting MAU entirely. [D.1, ¶ 61, 97]. In October 2019, Twitter stated that "more than 50% of Tweets we take action on for abuse are now being surfaced using technology." [D.1, ¶ 62], and that it had banned over 2 million users in those past 10 months alone for either abuse, hate or violent tweets under their Health Policies. (See Exhibit 1-4, Twitter's 15th Transparency Report, October 31 , 2019.) [D.1, ¶ 63]

E. Argument

19. Hall has alleged that Twitter devised this new Health Policy not only to remove abusers, but to target WHITE users for removal. Ban their contracts because they are WHITE and have a WHITE way of talking or behaving. Twitter promulgated its policies for the specific reason of removing WHITES' and "WHITE nationalists'" tweets and accounts and severed services within its ongoing User Agreement ("contract") with Hall and suspended for life most, if not all, of Hall's @BastaLies account services and access into its public accommodation for life (collectively referred to as ("banned"), because Hall is WHITE and tweeted, posted,

PETITIONER HALL'S
EXHIBIT E

communicated, acted, displayed, behaved and portrayed himself to be a white person. [D.1, ¶ 1]

20. Hall has established that (1) he is a member of a protected class; (2) Twitter had an intent to discriminate on the basis of race; and (3) the discrimination concerned one or more of the activities enumerated in the statute, (4) he was actually denied the ability either to make, perform, enforce, modify his contract, or enjoy the fruits of the contractual relationship under the standards set forth in *Hammond* at, 360, 362; *Alston v. Spiegel*, 988 F.3d 564, 572 (1st Cir. 2021); Garrett at, 98; *Arguello v. Conoco,* 330 F.3d 355, 358 (5th Cir. 2003).

21. The Court errored in law in finding that Hall failed to state a claim under § 1981 as Hall has alleged a prima facia claim for racial discrimination under the standards of *Bright v. GB Bioscience Inc.,* 305 Fed. Appx. 197, 201 n.3 (5th Cir. 2008); *Patterson v. McLean Credit Union*, 491 U.S. 164, 186 (1989), with the direct evidence that Twitter created its Health Policies for the specific reason of banning WHITE nationalists, [D.1, ¶ 64], or with the mountain of circumstantial evidence described herein. *Pratt v. City of Houston*, 247 F.3d 601, 606 n.1. (5th Cir. 2001).

22. Hall's direct evidence that Twitter banned over 2 million users in 10 months in 2019 with its new Health Policy supports Hall's contention that Twitters Health Policy was just a pretext. **[5]** The fact that Twitter openly went after WHITE Nationalists yields and unavoidable inference that Hall's race impacted the discipline determination and was pertinent to the discipline decisions made because Twitter itself injected race as one of the main reasons for updating and changing its Health

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[5] Pretext can be shown by "weaknesses, implausibility's, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons' such that a factfinder could infer that the employer did not act for the asserted non-discriminatory reasons." *Straughn v. Delta Air Lines, Inc.* , 250 F.3d 23, 42 (1st Cir. 2001).

PETITIONER HALL'S
EXHIBIT E

Policy specifically to track and discipline **WHITE** socialists, **WHITE** separatists and **WHITE** nationalists, with being white being the common denominator, and thus, race had something to do with the decision-making process. *e.g., Williams v. Lindenwood Univ.,* 288 F.3d 349,356 (8th Cir. 441 2002) ("[I]njecting racial language at all into the decision-making process created the inference that race at something to do with the decision-making process. ").[D.1, ¶ 47]. *Williams v. Tobener*, 2016 WL 5235039, at *2 (N.D. Cal. Sept. 22, 2016); *Newman v. Google LLC*, Case No. 20-CV-04011-LHK, 3 (N.D. Cal. Jun. 25, 2021), (race was the reason for defendant's actions). This direct evidence supports the allegation that Twitter racial discrimination was a "motivating factor" of banning Hall's contract, *Comcast Corp. v. National Association of African-American Owned Media,* 589 U.S. ___ (2020) and intentionally and purposefully discrimination against Hall due to his race. *Newman at,* 3*; Brignac v. Yelp Inc.*, 2019 WL 2372251, at *5 (N.D. Cal. June 5, 2019). Direct evidence of discriminatory intent is evidence that, "if believed, proves the fact [of discriminatory intent] without inference or presumption." *Coghlan v. Am. Seafoods Co.,* 413 F.3d 1090, 1095 (9th Cir. 2005).

23. Hall's circumstantial evidence that Twitter's Health Policy was just a pretext includes facts that Twitter: (1) deployed an anti-white Workforce, who hated WHITES, (2) had a secret policy of shadow banning Republicans and Conservatives who are mostly white, for years, (3) lied repeatedly to the public to cover it's actions of shadow banning, [D.1, ¶ 72]; (4) treated "similarly situated" non-white users with less severity than Hall for who similar conduct to Hall's, [D.1, ¶ 102, 169]. **[6]** (5)

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[6] allows ("Blue Check 'ers"), with combined 50 million followers, to post racist divisive words such as "I hate white people" [D.1, ¶ 40, Exhibit L]; continues to allow non-whites to post racist divisive hashtags such as #KillWhites and #Whitegenocide and to promote hate against the race of white people. [D.1, ¶ 41, Exhibit M];

PETITIONER HALL'S
EXHIBIT E

treated Hall more severely; [D.1, ¶ 14, 141, 158]; [7] (6) required additional conditions of Hall, such as walking talking, acting, displaying, behaving or portraying himself to be a non-white. [D.1, ¶ 144];[D.1, ¶ 43, 46] Exhibit N and O. [D.1, ¶ 44, 45]; (7) has shown discriminatory animus towards whites. [D.1, ¶ 25]; [D.1-1, Exhibit J]. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464, 99 S.Ct. 2941, 2950, 61 L.Ed.2d 666 (1979).

24. Twitter knew Hall used Twitters services on a daily basis and it was Twitters intent to prevent Hall from doing so on any meaningful basis because he was white and/or behaving white. But for Hall being white, he would not have been banned or injured and would not have suffered the loss of legally protected rights, and that if he were non-white, he would be enjoying the benefits of his contract with Twitter. [D.1, ¶ 143]; Twitter impaired the 'contractual relationship, denied services. similarly situated users outside Hall's protected class, who had signed identical contracts similar to Hall, were not denied the same services. [D.1, ¶ 142]; As a result of the above-described discrimination, Hall suffered equitable and other losses. [D.1, ¶ 150, 151];

25. Because Hall sufficiently alleges that he suffered discrimination on the basis of his race and identifies facts: (1) of a nation under siege by anti-whites; (2) the anti-white culture of Twitter's workforce and it's intent on getting rid of all the white nationalists and facts that demonstrate Hall's race was the reason for defendants' actions, and the "but for" cause and the motivation for the above-described conduct by defendant Twitter' Workforce, was because Hall is white and a member of the white race. [D.1, ¶ 153]. He also identifies several instances of this workforce

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[7] should never be ejecting people." Dorsey Testimony, [D. 1-1 Exhibit Q-2 P. 72]; "I don't believe a permanent ban promotes health" Dorsey [D.1, ¶ 56]

PETITIONER HALL'S
EXHIBIT E

engaged in the targeting of people behaving or speaking white through shadow banning while allowing other non-whites the same privilege of services for acting non-white, and statistical data which demonstrates that thousands of white nationalists were removed from the site in 2019. He identifies several instances in which decisionmakers allowed non-white behaviors, while condoning the very same behavior of Hall. The Court's determination of facts are in error and its order is not within the law and should be reversed.

VI. CLAIM II- 42 U.S.C. "§ 2000a" & N.H. Rev Stat "§ 354-A"- PUBLIC ACCOMMODATION

26. The Court errored in fact when finding that; (1) Hall's Complaint only alleges that Twitter discriminated against him by suspending his account (only) because he is white." (2) Hall "fails to allege that Twitter suspended his account because he is white." (3) that Twitter only provides online services, and are not places of public accommodation for the purposes of Title II of the Civil Rights Act of 1964, § 2000a.

27. Twitter formed opinions about and then treated Hall not based on his individual merits, but rather on his skin color and membership or perceived membership in groups with assumed behavioral characteristics of being white and failed to offer full and equal services to Hall at a covered establishment in violation of 42 U.S.C. §2000a and NH Rev Stat § 354-A. [D.1, ¶ 103].

28. Title II of the Civil Rights Act provides that "[a]ll persons should be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination or segregation on the ground of race, color, religion, or national origin." 42 U.S.C. § 2000a(a); *Manning v. Whole Foods Mkt. Grp., Inc.,* No. 21-CV-10833-ADB, 2022 WL 194999, at *5 (D. Mass. Jan. 21, 2022).

29. To state a prima facie claim under § 2000a, a plaintiff must plausibly allege that: 1) he is a member of a protected class; 2) he attempted to exercise the right to

full benefits and enjoyment of a place of public accommodation; 3) he was denied those benefits and enjoyment; and 4) he was treated less favorably than similarly situated persons who are not members of the protected class. See Id. *Manning;*).

30. The Court errored in law in finding that Hall failed to state a claim under 42 U.S.C. §2000a and NH Rev Stat § 354-A as Hall has alleged a prima facia case for racial discrimination under the standards of *Folly-Notsron v. 180 Broadway Liquor Inc.,* Civil Action 1:22-cv-11983-WGY, 8 (D. Mass. Apr. 27, 2023), in that Hall alleges that Twitter facilities at all times material, offered food to eat, beverages to drink on-premises, and provided entertainment - and therefore, was a place of public accommodation for the purposes of § 2000a and NH Rev Stat § 354-A.

31. Hall's direct evidence that Twitter's business model is based on advertising, [D. 1-1 Exhibit Q-2 P. 84]; (most) revenue comes from selling advertising, [D. 1-1 Exhibit Q-2 P. 166]; has Nationwide facilities, [D.1, ¶ 5]; and a "data" business. [D. 1-1 Exhibit Q-2 P. 65], contradicts the Court's finding that Twitter is just a "website". More direct evidence shows that Twitter housed Non-Party, "Bon Appétit" who operated an on-site food services company, which at all times material herein, operated on-site, and within Twitter's San Francisco facility which was open to the public and is principally engaged in selling food for consumption on the premises. [D.1, ¶ 7]

32. Other direct evidence shows that Twitter supplied food and beverages for its guests and even houses an on-site bakery and sandwich shop at its San Francisco facility. [D.1, ¶ 98] Twitter's operation of cafeteria's, lunchrooms, lunch counters, soda fountains, motion picture houses, theaters, concert halls or other places of exhibition or entertainment within its many facilities or establishments affect commerce as a substantial portion of the food which it serves or other products which it sells, has moved in commerce. Provides sources of entertainment. [D.1, ¶ 99]; Hosts many public events. [D.1, ¶ 100]. Hall has established a nexus between the

PETITIONER HALL'S
EXHIBIT E

website and the physical premises of a public accommodation. Gil v. Winn Dixie Stores, Inc., 242 F. Supp. 3d 1315, 1320 (S.D. Fla. 2017); *U.S. v. Three Juveniles* 886 F. Supp. 934 (D. Mass. 1995). See also, *Traylor v. Parker* Civil No. 3:13cv01828 (AWT) (D. Conn. Mar. 19, 2015). (Services of a place of public accommodation, and not services in a place of public accommodation).

33. Because Twitter is a place of public accommodation under § 2000a and RSA 354-A:17, and because Hall alleges facts sufficient to establish that he is a member of a protected class and that Twitter's workforce was motivated by his race. See [D.1, ¶ 158], the Orders of the Court should be reversed.

VII. CLAIM III- VIOLATION OF CONSTITUTIONAL RIGHTS

A. Section 47 U.S.C. § 230

34. 47 U.S.C. §230(c)(2)(A), states, in pertinent part;

> "any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected"

35. The Court errored in law in finding that Twitter is not a state actor and that §230 is not unconstitutional.

(1) Unconstitutionally Vague, Overbroad and Discriminatory on its Face

36. "Congress shall make no law * * * abridging the freedom of speech * * *." U.S. Const., Amend. I. The First Amendment is made applicable to the states by the Fourteenth Amendment, *Lovell v. Griffin,* 303 U.S. 444, 450, 58 S.Ct. 666, 668, 82 L.Ed. 949, 952, (1938).

37. In any forum, §230 is unconstitutionally vague, overbroad and viewpoint discriminatory on its face under Part I, Article 22 of the New Hampshire Constitution and the First Amendment of the United States Constitution as it authorizes and

encourages arbitrary and discriminatory enforcement, enabling Federal Actors (Congress) to administer a policy on the basis of impermissible factors. [D.1, ¶ 133]

38. §230 is also unconstitutionally vague and overbroad because no one can decipher its meaning, [D.1, ¶ 133], and because a substantial number of its applications such as removing speech "taken in good faith" and speech "otherwise objectionable" are unconstitutional and viewpoint discriminatory on their face because it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits and it authorizes or even encourages arbitrary and discriminatory enforcement. [D.1, ¶ 134]. Twitter's mere invocation of federal power through §230 suppresses speech. [D.1, ¶ 119]

39. §230 is duplicative of the sweeping language of the Sedition Act which made it illegal, among other actions, to "write, print, utter or publish...any false, scandalous and malicious writing...with intent to defame the...government" or "to stir up sedition within the United States." Today, the Sedition Act of 1798 is generally remembered as a violation of fundamental First Amendment principles. *New York Times Co. v. Sullivan* (1964).

40. Even assuming §230 has a plainly legitimate sweep that targets obscene, lewd, lascivious, filthy, excessively violent, harassing, the regulation can be used to censor any expression or word that is critical, negative, or controversial or is capable of a critical, negative, or controversial interpretation regardless of whether it constitutes an accusation of moral turpitude or whether the speech is "constitutionally protected or not". [D.1, ¶ 135, 136]

(2) Sovereign Powers

41. Twitter assumed powers to regulate speech which is traditionally and exclusively reserved to the Congress. *Rockwell v. Cape Cod Hospital*, 26 F.3d. 258 (1st Cir. 1994); "[T]he Supreme Court has explicitly left open the question of whether, and in what context, 'private police forces' may be considered state actors."

Lindsey v. Detroit Entertainment. LLC, 484 F.3d 824 (6th Cir. 2007); *Wade v. Byles,* 83 F.3d 902,906 n.5 (7th Cir. 1996), (same). In passing § 230, Congress place power of regulating speech outside of constitutional controls. *Metzger, Gillian* (2003-01-01). "Privatization as Delegation". Colum. L. Rev. 103 (6): 1367–1502.

42. Hall contends that Congress conferred upon Twitter such sovereign power and therefore that under the "government function" strand of the state action doctrine Twitter must be held accountable as a federal actor." *United Auto Workers v. Gaston Festivals, Inc.*, 43 F.3d 902, 906 (4th Cir. 1995); *Lebron v. National Railroad Passenger Corp.,*513 U.S. 374, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995); *Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. 43, 54-55 (2015) (agency or instrumentality of the United States). When Congress permits Twitter to sensor speech, Congress cedes to Twitter the sovereign power to regulate speech in a public/private forum. *United Auto Workers*, at 902, 910, (citing *Cox v. New Hampshire*,312 U.S. 569, 574, 61 S.Ct. 762, 765, 85 L.Ed. 1049 (1941)).

43. "Time and again our cases have recognized that the Government has a much freer hand in dealing 'with citizen employees than it does when it brings its sovereign power to bear on citizens at large.' *Engquist v. Or. Dep't of Agric.* , 553 U.S. 591, 598, 128 S.Ct. 2146, 170 L.Ed.2d 975 (2008) (stating that "there is a crucial difference, with respect to constitutional analysis, between the government exercising the power to regulate" and "the government acting ... to manage [its] internal operation" (internal quotation marks and quotation omitted)); *Toledo v. Pu[e]blo De Jemez*, 119 F. Supp. 429, 432 (D.N.M. 1954) (arms of the sovereign).

44. In passing §230, the legislature overrode the entrenchment clause under Part I, Article 22 of the New Hampshire Constitution and the due process rights that accompany it without any type of strict scrutiny which would have examined restrictions or regulations with regard to content of speech prior to it passing into law. [D.1, ¶ 132]

PETITIONER HALL'S
EXHIBIT E

(3) Policing Powers

45. Congress, under any Commerce act or regulation, lacks the authority to regulate and/or suppress noneconomic speech or criminal conduct under §230 based solely on that conduct's aggregate effect on interstate commerce as police powers lie within the States and not with the Federal Government. [D.1, ¶ 126]. Congress has exceeded its constitutional bounds in passing §230 as policing powers of speech are possessed by the States. [D.1, ¶ 127, 128]. Congress is intertwined with Twitter when it relegates it's duties to protect, police and regulate free speech. §230 saves the government millions while trampling state and personal interests in free speech. [D.1, ¶ 114]. True threats or inciteful crimes of speech are not economic activity and are more apt to be governed by State or local Criminal laws. [D.1, ¶ 125]

46. §230 deputizes computer networks such as Twitter "to ensure vigorous enforcement of Federal and State criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer in return for legal protections for third-party content and for Twitters filtering decisions. [D.1, ¶ 115]. §230 converts a private entity like Twitter into a state actor or is equivalent to state action—because the private entity [Twitter] is voluntarily performing a traditional, exclusive public functions such as regulating criminal and non-criminal speech and behaviors at a local and State level. [D.1, ¶ 117]

47. Additionally, in a role traditionally left exclusively to local governments and under the color and authority of Congress, Twitter violated Hall's Free Speech Rights by censoring and regulating Hall's tweets and behaviors and then in retaliation for the tweet, violated Hall's Rights of Assembly when it banned him from a Public Forum and other Designated Public Forums, ("DPF'(s)"). [D.1, ¶ 1]. Hall's speech in his tweet were not in violation of any state or federal law. [D.1, ¶ 111].

(4) Conclusion

48. Twitter cannot use § 230 as a defense for its actions because § 230, is unconstitutional on its face, cedes (1) sovereign powers of Congress of regulating speech, (2) powers of States to enforce speech, to a private entity requiring the Court's to be reversed.

B. Federal Actor

(1) Government "Partners"

48. Twitter is described as having an extensive partnership and collaboration with "our government partners", [D. 1-1 Exhibit Q-1, P. 6, 9], working on investigations with "our law enforcement partners", [D. 1-1 Exhibit Q-1, P. 10]; working together with *our government elected officials*, [D. 1-1 Exhibit Q-1, P. 9]; Dorsey, [D. 1-1 Exhibit Q-2 P. 121-122]; has a strong partnership with local law enforcement and federal law enforcement and attend a regular "cadence" of meetings. [D. 1-1 Exhibit Q-2 P. 166]; Dorsey [D. 1-1 Exhibit Q-2 P. 182]; Willing to work with their "partners" to consider what more Twitter can be doing to protect our kids. [D. 1-1 Exhibit Q-2 P. 121-122]; maintained private portals to allow partners and journalists to report anything suspicious that they see so that [Twitter] can take much faster action." [D. 1-1 Exhibit Q-2 P. 166].

(2) Congressional Demands and Coercion

50. Congress induced, encouraged, and promoted private persons and companies to accomplish what it is constitutionally forbidden to accomplish, ban speech, when it passed 47 U.S.C. § 230 and with its threatening of § 230 sanctions in public or through congressional hearings if certain speech is not removed from their sites. *Norwood v. Harrison,* 413 U.S. 455, 465 (1973); *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).

51. In September 2019, Congress held a hearing out of "public safety" concerns. Mrs. Brooks. [D. 1-1 Exhibit Q-2 P. 184] "We hope you can help us better understand how Twitter decides when to suspend a user or ban them from the service

and what you do to ensure that such decisions are made without undue bias. Hon. Greg Walden [D. 1-1 Exhibit Q-2 P. 17].;"Can you talk to me then just about what are your current policies? What are the current policies for prioritizing timely take downs and enforcement?" Mrs. McMorris Rodgers. [D. 1-1 Exhibit Q-2 P. 87]; "what are you going to do to make sure that the election is not in some way influenced by foreign governments in an inappropriate way?" Ms. Schakowsky. [D. 1-1 Exhibit Q-2 P. 165]; "Far too many Twitter users still face bullying and trolling attacks." Mr. Pallone [D. 1-1 Exhibit Q-2 P. 19]; false rumors are dangerous. Mr. Pallone [D. 1-1 Exhibit Q-2 P. 20]; The actions of President Trump have made the situation worse when he uses Twitter to bully and belittle people, calling them names like dog, clown, spoiled brat, son of a bitch, enemies, and loser." Mr. Pallone [D. 1-1 Exhibit Q-2 P. 20], which "foster discord, within our society." Mr. Pallone [D. 1-1 Exhibit Q-2 P. 20].

52. Although Mr. Flores states that "This is an oversight hearing. We are not trying to legislate." [D. 1-1 Exhibit Q-2 P. 174]; Congress takes an authoritive tone versus someone who is overseeing when its Members make statements such as Twitter "**must do more** to regain and maintain the public trust" to stop "bullying, the spread of disinformation and malicious foreign influence." Mr. Pallone [D. 1-1 Exhibit Q-2 P. 21]. "Twitter and other social media platforms **must establish clear policies**, provide tools to users and then swiftly and **fairly enforce those policies**, and those policies **should apply** equally to the president, politicians, administration officials, celebrities, and the teenager down the street." Mr. Pallone [D. 1-1 Exhibit Q-2 P. 21-22]; "The company's enforcement seems to chase the latest headline as opposed to addressing systematic problems". Mr. Pallone [D. 1-1 Exhibit Q-2 P. 21]; "one persistent critique of Twitter by civil rights advocates and victims of abuse and others is that your policies are **unevenly enforced.**" Mr. Pallone [D. 1-1 Exhibit Q-2 P. 32-33] "But **we have to make sure that the enforcement mechanism is there**" Mr.

PETITIONER HALL'S
EXHIBIT E

Pallone [D. 1-1 Exhibit Q-2 P. 34]; "so that we can really reduce these threats online." Mr. Pallone [D. 1-1 Exhibit Q-2 P. 44]; Twitter **needs to strengthen its policies** to ensure that users are protected from fake accounts, misinformation, and harassment" Mr. Green [D. 1-1 Exhibit Q-2 P. 48]; "I **would also hope that you** would move the same resources that have complicated so much of what this hearing has been about today so that you can focus on this to make **sure that this doesn't happen again** -- that we wouldn't have to **reprimand you** to follow the guidelines." Mr. McKinley. [D. 1-1 Exhibit Q-2 P. 117-118]; "Okay. Good. So the idea is that we will -- that they're (republicans in the house) going to put so much pressure on you to avoid pressure-- from us (members of the house) that you will change your behavior in a way that's not--- that's not fair." Mr. Peters. [D. 1-1 Exhibit Q-2 P. 145]; "I do not believe that we should just be leaving it [enforcement] to the responsibility of private companies." Mr. McKinley. [D. 1-1 Exhibit Q-2 P. 117-118]; "if you could report back to the committee within one month of what steps Twitter is taking to improve the consistency of its enforcement. Mr. Pallone [D. 1-1 Exhibit Q-2 P. 34, 36].

53. In April 2019 Nancy Pelosi publicly states "Silicon Valley's self-regulating days "probably should be" over"; "It's a "new era" for tech regulation"; "Silicon Valley is abusing the privilege of section 230 of the Communications Decency Act, "230 is a gift to them, and I don't think they are treating it with the respect that they should," she said. "And so I think that that could be a question mark and in jeopardy.... For the privilege of 230, there has to be a bigger sense of responsibility on it, and it is not out of the question that that could be removed.", and "companies that maybe could be easily broken up." https://www.vox.com/podcasts/2019/4/11/18306834/nancy-pelosi-speaker-house-tech-regulation-antitrust-230-immunity-kara-swisher-decode-podcast

54. In June 2019, U.S. Senator Josh Hawley (R-Mo.) introduced the Ending Support for Internet Censorship Act, "which removes the immunity big tech

PETITIONER HALL'S EXHIBIT E

companies receive under Section 230". "With Section 230, tech companies get a sweetheart deal that no other industry enjoys: complete exemption from traditional publisher liability in exchange for providing a forum free of political censorship," https://www.hawley.senate.gov/senator-hawley-introduces-legislation-amend-section-230-immunity-big-tech-companies

55. In November 2019, U.S. Senator. Ted Cruz (R-Texas), sent a letter to Ambassador Lighthizer, as reported by Politico, **[8]** requesting that; [Lighthizer] "remove Article 19 .17- an Article that mirrors Section 230 of the Communications Decency Act-from the United States-Mexico-Canada Agreement (USM CA). I also ask that you remove similar language: Article 18, Section 2 and 3 in the U.S.-Japan Trade Agreement, and refrain from including such language in future trade agreements."

(3) "Partner" Benefits

56. "Section §230 enables Twitter to look at the content and look for abuse and take enforcement actions against them accordingly" and "enables enforcement of harassers and bully's." Dorsey Testimony to Congress, [D.1, ¶ 113]; [D. 1-1 Exhibit Q-2 P. 121-122].

57. Twitter receive "benefits" of Executive status in the form of legal immunity and in the savings of legal fees in return for policing it's designated public forum under the government created §230. [D.1, ¶ 118]. §230's safe harbors protect Twitter." Mr. Walden [D.1, ¶ 112] and saves the government millions while trampling state and personal interests in free speech. [D.1, ¶ 114].

(4) Constitutional Rights

58. §230 prohibits the freedom of speech under the U.S. Constitution Article [I]

[8] https://www.politico.com/news/2019/11/01/ted-cruz-online-liability-trade-deals-063911

PETITIONER HALL'S EXHIBIT E

Freedom of expression and the Due Process and Equal Protections clauses within Articles [IV] and [XIV] and allows these freedoms to be regulated in a discriminatory manner. [D.1, ¶ 129]. Hall is entitled to free speech, freedom to Assemble and Freedom of Expression when in a public forum or DPF at Twitter.com. [D.1, ¶ 165]. The infringement upon Hall's speech rises from the actions of Congress in promulgating and passing §230. *Bronner v. Duggan* , 249 F.Supp.3d 27, 41 (D.D.C. 2017). Platforms like Twitter were designated by Congress to perform a governmental operation to police speech which is a function traditionally reserved exclusively to the state. *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d 30, 40 (D.D.C. 2019); *Marsh v. Alabama,* 326 U. S. 501 (1946); The Complaint alleges more than just the sole reason that Twitter provides a public forum.

59. Twitter itself believes that its computer network is a public square and public space. [D.1, ¶ 104], a digital public square", [D. 1-1 Exhibit Q-2 P. 23], that they are hosting." [D. 1-1 Exhibit Q-2 P. 169]. Twitter has intentionally transformed its computer network into a public forum, **[9]** square or market, a public gathering place, a downtown business district or community, [D.1, ¶ 107], and a public forum open to the public for the purpose of speaking in public. [D.1, ¶ 106];

(5) Conclusion

60. A private individual acts under color of law within the meaning of section 1983 when he acts together with state officials or with significant state aid. *Bigio v. the Coca-Cola Company*, 235 F.3d 63, 71-72 (2d Cir. 2000).

61. The Complaint sufficiently alleges Twitter acted in concert with state actors is sufficient under the standards of *Adickes v. S. H. Kress & Co.*, 398 U. S. 144, 398 U. S. 155-156 (1970); *e.g., O'Handley v. Weber*, No. 22-15071, 2023 WL 2443073,

[9] Federal Appeals Court declared government officials accounts are designated "digital public forum's or DPF'S with first amendment protections. [D.1, ¶ 108].

PETITIONER HALL'S
EXHIBIT E

at *4–5 (9th Cir. Mar. 10, 2023); *Freedom Watch* at. 816, in that Congress and Twitter is "pervasively entwined" with Congress and has entered into a "joint enterprise" or a "symbiotic relationship" with each other in a federal action not for goods or services, but to regulate and ban speech. *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

62. Twitter, although a private entity, was a state actor in this situation because: (1) Twitter cannot carry out its statutory mission without governmental assistance and it relies on Congress's gift of Section 230 to operate, (2) its services involve governmental functions and (3) the suppression of Hall's Tweets and banning of his contract was done under an assumption of sovereign powers of compulsion. *Edmonson v. Leesville Concrete Co.*, ___ *U.S.* ___, ___, 111 S.Ct. 2077, 2083, 114 L.Ed.2d 660 (1991); *Lugar v. Edmondson Oil Co.*,457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Adickes* at, 142; *United States v. Price*,383 U.S. 787, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966); *United States v. Wiseman*,445 F.2d 792 (2d Cir.). denied 404 U.S. 967, 92 S.Ct. 346, 30 L.Ed.2d 287 (1971); *Howard Gault Co. v. Texas Rural Legal Aid*,848 F.2d 544, 552-57 (5th Cir. 1988).

63. Some lower courts that have examined this issue, however, have determined that private police forces may become state actors in certain circumstances. *Romanski v. Detroit Entertainment. L.L.C.*, 428 F.3d 629,638 (6th Cir. 2005) (private security guard was state actor); *Payton v. Rush Presbyterian-St. Luke Medical Center*, 184 F.3d 623 (7th Cir. 1999) (private police could be state actor); *Boyle v. Torres*, 756 F. Supp. 2d 983, 995 (N.D. Ill. 2010); *Fusco v. Medeiros, 965 F. Supp.* 230, 249 (D.R.I. 1996) (whom the state confers limited legal authority, actually uses that authority when engaging in the conduct complained of').

64. §230 restricts the right of individuals to speak freely in public forums. [D.1, ¶ 130], and prohibits the freedom of speech under the U.S. Constitution Article [I] Freedom of expression and the Due Process and Equal Protections clauses within

PETITIONER HALL'S
EXHIBIT E

Articles [IV] and [XIV] and allows these freedoms to be regulated in a discriminatory manner. [D.1, ¶ 129]

IX. MAGISTRATE JOHNSTONE'S ILLEGAL POLICY

65. The undisputed facts are that:

Judge Johnstone set in motion an unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter by improperly influencing the trier of fact, or attempted to, utilizing ex-parte communications and by unfairly hampering the presentation of Appellant's claims through a bias and unconstitutional tribunal. [Exhibit A- P. 94].

66. Judge Johnstone promulgated and administered her own pro hac vice rules specifically to benefit Twitter and allow Twitter Counsel to appear before the Court although they lacked the requirements of eligibility, and that these special benefits continued for a period of over 2 years, and covering 68 incidents, ROA, 165-168, then it could rightly be stated that self-promulgated rules administered by a Court, for a period of over 2 years and covering 68 incidents would be, albeit illegal, construed to be a policy of the Court. Gleaning from these submissions to the Court is that these illegal policies demonstrate a bias of the Court for a particular entity, over an extended period of time and through several cases, is sufficient to raise a reasonable inference of the appearance of actual or apparent bias or prejudice. [Exhibit A- P. 87].

67. If you start at point A of the illegal policy, ROA, 261-263, Br., at 60. then add up how many times it was utilized, and for who's benefit, the Court's bias in favor of Twitter emerges. And although Mrazik was not a part of Appellant's case, his UPL in the Court throughout 2018, ROA 164-238 (Dkt. 74.1), demonstrates continuous use of the illegal policy and the Courts acceptance of that illegal policy which establishes bias of the Court in favor of Twitter. See (Case: 20-1933 Document: 00117781153, Filed: 08/30/2021). [Exhibit A- P. 88].

PETITIONER HALL'S
EXHIBIT E

68. Judge Johnstone's unwritten, illegal pro hac vice unofficial policies, allowed COIE and partner attorneys of COIE, on 68 separate occasions, the privilege of practicing before the Court, even though these attorneys lacked any of the requirements of eligibility demanded under Local Rules 83.1 and 83.2 to practice before the Court and in violation of New Hampshire Statute 311:7. [Exhibit A- P. 87].

69. Magistrate Judge Johnstone was, on a continuous basis, intentionally ignoring New Hampshire law and established official court pro hac vice rules, and instead promulged, implemented, managed and adopted her own non-public alternative admission procedures, within her administrative case management duties, that make pro hac vice laws and rule provisions unnecessary and for the specific reason of, allowing partner attorneys from the law firm of Perkins Coie, LLP. COIE, Ryan Mrazik and Julie "Schwartz", the privilege of practicing before the Court although they lacked the requirements of eligibility set forth in Local Rule 83.2 and in violation of New Hampshire State RSA 31 1:7 and all to the benefit of the defendant, Twitter. [Exhibit A- P. 86-87].

70. Judge Johnstone's illegal policy: (1) was inconsistent with and contrary to Acts of Congress; (2) was not prescribed by the Enabling Act of 1934 and rules of practice and procedure prescribed under 28 U.S.C. § 2071(a) and (b) and 28 U.S.C. § 2072 and is therefore unconstitutional; (3). Violates 28 U.S.C. § 2071(f) as they were not prescribed by the COURT, and are therefore unconstitutional; (4) circumvented the COURTS' prescribed LR's governing practice and procedure; (5) was not authorized by any federal statute; (6) was not recommended by any rules advisory committee; (7) was inapposite with N.H.R.S.A. 311:6 and 311:7; (8) usurped and preempted the power of the governing State Authority; (9) was not created as an immediate need under 2071(e); (10) lowered attorney eligibility required under LR 83.2 only for attorneys representing Twitter or employed by

PETITIONER HALL'S
EXHIBIT E

Perkins Coie; (11) operated with unlimited power; (12) operated with no restrictions; (13) operated without any established standards and was secretive to the public and Plaintiff; (14) was substantially biased in favor of Twitter and its Coie attorneys and are therefore unconstitutional; (15) was a moving force behind the ; (16) was the moving force behind all of the COURTS preconceived orders or pleadings, in Plaintiff's. See [Doc. 1, case 1:21-cv-01047, N.H. Federal District Court]. [Exhibit A- P. 158-159].

71. The Court was noticed of Judge Johnstone's illegal policy on March 18, 2021, Plaintiff filed Doc. 74, Exhibits at 74.1 and on April 16, 2021, McAuliffe Recusal Motion, Doc. at 77, and with the [COMPLAINT] filed in Case No. 1:21-cv-01047-LM on December 9, 2021, Plaintiff has made well known to the Court Judge Johnstone's actions such as promulgating and utilizing illegal policies; disregarding laws; using the judge's office to obtain special treatment for the defendant Twitter; and among other acts committed in; Case No. 1:19-cv-009 78-JL, involving Justice Joseph Normand Laplante and Judge Johnstone, which was live from September 17, 2019, through January 28, 2021; Case No. 1:17-cv-00733-PB, involving Justice Paul Barbadoro and Judge Johnstone, which was live from December 21, 2017, through April 25, 2019; Case No. 1:18-cv-00203-PB, involving Justice Paul Barbadoro and JOHNSTONE, which was live from March 5, 2018, through April 4, 2019; Case No. 1:17-cv-00749-JD, involving Justice Joseph A. DiClerico Jr. and Judge Johnstone, which was live from December 21, 2017, through June 12, 2018. [Exhibit A- P. 63].

72. Judge Johnstone was reappointed to a second eight-year term effective June 16, 2022. [Exhibit A- P. 82, Hall Declaration].

A. Biased Tribunal

73. Hall asks this Court to void Judge Elliott's orders as Judge Elliott was disqualified under 26 U.S. Code § 455 at the time she entered each of her orders. See [Doc. 142]. Judge Elliott through her administrative position was aware of the

PETITIONER HALL'S
EXHIBIT E

material facts of Hall's complaints concerning Magistrate Johnstone's illegal policy. This influenced her decisions, and even if it did not, judges have an obligation to maintain an appearance of impartiality that goes beyond mere actual impartiality. Under Federal Rule of Civil Procedure 60(b), the final judgment should have been vacated. See [D. 141].

74. Because Judge Elliott was disqualified under § 455 at the time she entered each of Judge Elliott's orders and judgment in favor of Twitter, they should be set aside under the standards of *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 850-51 (1988). In Liljeberg, the Supreme Court found that the judge learned he had a fiduciary interest in the case and, therefore, that his disqualification was required under § 455(b) (4), as well as § 455 (a). Liljeberg, at 866–67. The violation of § 455(b) (4) contributed to the Court's holding that vacatur of the judge's decision benefiting the University on whose board he served "was an appropriate remedy." Id. at 867.

75. A reasonable person might question the Court's ability to decide impartially on Hall's Motion to Strike, because Judge Elliott has already condoned Judge Johnstone's actions through the re-appointment of Judge Johnstone to another term, has personal knowledge of Johnstone's illegal policies through the re-appointment process, (or Judge Johnstone's own view of her policies) and now cannot be a pure and fair jurist to answer the question of whether Twitter and its attorneys participated in utilizing Judge Johnstone's illegal policies through fraud upon the court, in which their motion should be stricken or voided from the record.

B. <u>Motions to Void</u>

76. Hall motioned the Court, [Doc. 143] to void all the trial court's orders and judgments, on the grounds that the Court failed to provide an unbiased tribunal by: (1) utilized illegal policies when determining Hall's motion to Strike, (2) failing to consider substantive State Laws, (2) and all three judges displayed a bias in favor of

PETITIONER HALL'S
EXHIBIT E

the defendant Twitter by their omission of Johnstone's illegal policy, and because (3) Twitter has made numerous misrepresentations, omissions so as to form a pattern of fraud before the Court.

77. The Court errored in law in not finding that Magistrate Johnstone's acts of writing an illegal policy to benefit Twitter, Judge McAuliffe's and Judge Elliott's failure to apply substantive laws, federal laws, and precedents and Judge McAuliffe's acts in complete absence of jurisdiction, and Twitters participation in submitting pleadings to the Court that follow the pattern of fraud, with the intent to deceive, mislead, which damaged Hall.

78. The Court and it's Judges have demonstrated actual bias in favor of the Defendant Twitter, utilized unofficial policies in their decision making, and acted in a manner inconsistent with due process of law. The rendering of these judgments, preconceived in Twitter's favor, were reached without due process of law, are without jurisdiction and are void as the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition. Bass v. Hoagland, 172 F.2d 205 (5th Cir. 1949); illegal policy and bias which was administered by the *Court. City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

79. The Court, through the actions of these three Judges, acted in a manner inconsistent with due process of law, and therefore it's judgments are void. See: Wright and Miller, Federal Practice and Procedure: Civil, § 2862, pp. 199-200.

C. <u>Strike Motions</u>

80. Within Hall's [Doc. 100] Motion to Strike, he asks the Court to Strike Twitters [Doc. 3] Motion to Dismiss because it was scandalous and was submitted by Twitter as part the fraud upon the Court successfully perpetrated in part by Judge Johnstone, Twitter and its attorneys utilizing Judge Johnstone's illegal Policies and that Twitter should not otherwise benefit from the fraud upon the court.

PETITIONER HALL'S
EXHIBIT E

81. Judge Elliott errored in fact in order [D. 124], in finding that Hall's Strike Motion in its unsupported findings that Hall sought to strike Twitter's [D. 3] Motion to Dismiss because; (1) it includes on its signature line the name of Julie E. Schwartz, (2) the notation "(motion for pro hac vice admission to be filed, (3) allowing the names of other attorneys from Attorney Schwartz's law firm to appear on the signature line of filings, (4) Attorney Schwartz's name on the filing is an example of Magistrate Judge Johnstone's purported illegal pro hac vice policies," (5) that Hall's claims are based on identical grounds as *Wolford v. Budd Co.,* 149 F.R.D. 127, 130 (W.D. Va. 1993).

82. It is an error of fact to state that Hall's motion to strike is simply based upon an attorneys name on the pleading or signature line, when Hall clearly advocates that the [D. 3] pleading not be accepted because (1) it was "submitted" on behalf of Twitter by Attorney "Schwartz" while practicing law "unauthorized" and in violation of N.H. "RSA 311:7", and therefore the document is illegal under N.H. law, and scandalous under the federal rules, and (2) as it was part of the privilege of practicing before the Court, on behalf of Twitter, although the attorneys lacked the requirements of eligibility set forth in LR 83.2, and were in violation of RSA 311:7, all to the benefit of the defendant, Twitter, and that Twitter should not benefit from such scheme. (I.e. favors creating an unconstitutional Court). See [D. 100-2].

83. It is an error of fact to state that Hall's motion to strike is based on identical grounds as cases such as Wolford. Wolford only answers in the negative based upon the singular question of whether pleadings filed by attorneys not admitted to practice before the court should be dismissed or declared a nullity under Pavlak, and therefore never reaches the questions presented here, illegality under N.H. law and fruits of fraud.

84. The Court errored in law in finding that Twitter's [D. 3] Dismiss Motion was not a scandalous matter, unfit for the Court and must be stricken. *Washington Post*

PETITIONER HALL'S
EXHIBIT E

Co. v. Chaloner 1746, 63 L. Ed. 987, 39 S. Ct. 448, 250 U.S. 290 (1919). While acknowledging that this Court has considerable discretion under Fed.R.Civ.P. 12(f)., under the circumstances here, the District Court need not to use its discretion as it has already been resolved through RSA 311:7 and the Rules of this Court. Twitter's D. 3] Motion to Dismiss and MOL to be prejudicial to the Plaintiff and in violation of RSA 311:7, ABA Rule 5.5(c)(2) and LR 83.1, and is illegal and therefore scandalous and therefore an insufficient defense under Fed.R.Civ.P. 12(f) and therefore, must be stricken or void(ed) from the record in its entirety.

85. The Court errored in failing to identify which facts are material under substantive law (NH RSA 311] prior to adjudicating procedure matters. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986).

86. It is error in Law (28 U.S. Code § 1652) not to apply state substantive law **[10]** and only federal rules for procedural matters in diversity cases. *Hoyos v. Telecorp Communications, Inc.,*488 F.3d 1, 5 (1st Cir.2007) (citing *Gasperini v. Ctr. for Humanities, Inc.,*518 U.S. 415, 427, 116 S.Ct. 2211, 135 L.Ed.2d 659 (1996); *Erie R.R. Co. v. Tompkins,* 304 U.S. 64, 92, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). The question raised by Hall's motion to strike involve the substantive law as to the rights and when asking whether or not the court should accept an illegal or otherwise scandalous liabilities of the parties based upon claim that the document is illegal, part of an illegal act or are fruits of illegal activity and that the issue only become

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[10] RSA 311:7 is substantive as the sovereign NH legislature intended it to be used "statewide" in court[s] within the State of New Hampshire. The forum state was understood as having the sole power to regulate the means by which causes of action were litigated in its courts, because the courts' activities were within its borders. The Order Violates Plaintiff's procedural due process rights under the Fourteenth Amendment because the court failed its duty to ensure that legal procedures were carried out in a fair and just manner and failed to observe and apply substantive state statutory laws prior to any application of federal rules.

PETITIONER HALL'S
EXHIBIT E

procedural document into its court of Law. (Emphasis). See [D. 113]. And that state law controls the rights and duties of the parties in a federal action founded on diversity. *Erie Ry* at 817.

D. Default Motions

87. The Court errored in fact when denying [D. 124] Hall's Default Motion [D. 101], in finding that Hall's claims to Strike and Default were "merely because it includes the name of an out-of-state attorney who was not yet admitted pro hac vice", or that it was based upon an attorneys name on the pleading or signature line, or that Hall's motion to strike is based on identical grounds as cases such as *Wolford*. See above.

88. It is an error in Law in failing to identify which facts are material under substantive law prior to adjudicating procedure matters, and to not apply state substantive law (NH RSA 311:7) and only federal rules for procedural matters in diversity cases under 28 U.S. Code § 1652. See STRIKE MOTION above.

E. Motion to Renew

89. The Court errored in Law when granting Twitter's [D. 99] motion to renew its [D. 3] motion for the reasons set forth in Hall's Motion to Strike and Motion to Default above.

X. THE REAPPOINTMENT COMMISSION

90. The Magistrate Re-appointment process is administered through the administrative office of the United States Courts. Triggered by rule by Magistrate "Judge Johnstone, a re-appointment "Commission" was formed per statute**[11]** in late 2021 and a "Merit Selection Panel" was appointed and notice to the public was sent out in early January 2022, and Judge Johnstone was reappointed by the Commission to a second eight-year term effective June 16, 2022, despite her bad

[11] See 28 U.S.C. § 631

PETITIONER HALL'S
EXHIBIT E

behavior.**[12]**

91. The subject matter before the administrative Article III panel was to determine if the Court should re-hire Judge Johnstone despite comments that her previous work for the Court, demonstrated bad (moral) character, judgment, legal ability, temperament, and a commitment to equal justice under the law, despite writing unofficial rules for Twitter and its attorneys, and to the detriment of the Plaintiff's in their cases, [Exhibit A- P. 29], to which Hall's credibility was not the issue as the reappointment proceeding was an administrative or re-hiring proceeding [Exhibit A-P. 12].

92. The tasks to be performed by the judges on the Commission are clearly nonjudicial in nature, and do not involve the exercise of Article III power to adjudicate cases and controversies. While it would be unheard of for an Article III Judge to reject the call of the President, at least in theory these three individual members of the judiciary serve voluntarily as commissioners and are empowered as such under the Act, rather than as an Article III Court. President's Com'n on Organized Crime ("Scarfo"), 783 F.2d 370, 377 (3d Cir. 1986) (historical list of extra-judicial activities of judges). Their removal from this office by the President under 28 U.S.C. § 991(a) would leave their judicial powers intact. *U.S. v. Hickernell* 690 F. Supp. 272 (S.D.N.Y. 1988).

93. Hall filed comments to the Merit Selection Panel citing his]D. 74] Rule 60

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[12] The Federal Magistrate Act of 1979 (Pub. L. No. 96-82; 93 Stat. 643) established certain minimum standards and procedures for the selection and appointment of United States magistrate judges, which are codified at 28 U.S.C. § 631. In accordance with 28 U.S.C. § 631(b)(5), the Judicial Conference of the United States has promulgated the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges (Id. Appendix J).

PETITIONER HALL'S
EXHIBIT E

Motion, which alleges Judge Johnstone's unconstitutional bad behaviors. [Appellant's Brief "AB", Exh. 6]. Hall then filed amended comments to the Merit Selection Panel, [Appellant's Brief "AB", Exh. 6], attaching his [Rule 59(e) Motion] objections filed in Case No. 1:21-cv-01047-LM, stating that he believes Judge Johnstone set in motion an unconscionable scheme calculated to interfere with the judicial systems ability to impartially adjudicate a matter by improperly influencing the trier of fact, or attempted to, utilizing ex-parte communications and by unfairly hampering the presentation of Appellant's claims through a bias and unconstitutional tribunal, which amounts to judicial misconduct.

A. Recusal

94. Hall appeals Judge Elliott's 11/23/2022 order denying Hall's [D. 104] recusal motion pursuant to 28 U.S.C. "§ 144", 28 U.S.C. § "455(a)" and 28 U.S.C. § "455(b)(1)". Both the 11/23/2023, Order and Order [D. 124] violate Hall's substantive due process right to have his case tried before an impartial judge which is a fundamental right essential to a fair trial, and his statutory rights within § 144 and § 455 to have a non-bias or even the appearance of a bias judge preside over the case as Judge Elliott has refused to recuse herself.

95. Hall filed a [D. 104] recusal motion stating that Judge Elliott's Commission decision disregarded Judge Johnstone's previous performance of disregarding rules, statutes and laws, and that her dual role[s] [Administrative/Judicial] gives the appearance of objective bias or partiality to be constitutionally intolerable and that she should recuse herself. Hall also stated that Judge Elliott participated in the process of voting in chambers, among other Article III judges, which voted to re-appoint Judge Johnstone, despite her bad behavior, and was either compliant with her Article III administrative duties and has investigated Hall's claims and Judge Johnstone's illegal policy and thus has personal knowledge or "extrajudicial" information (knowledge of disputed evidentiary facts, prior conduct, prior

PETITIONER HALL'S
EXHIBIT E

knowledge or an administrative connection with the case), and personal knowledge of off-the-record briefings in chambers, administrative or other meetings with other justices, clerks or personnel which leave no trace in the record, and not what she has learned through [Hall's] case, and would be commingling her duties as administrator, advocate and Judge, which violate Hall's Fifth Amendment rights to an impartial tribunal and that due process guarantees an absence of actual bias on the part of a judge, and that judges must not "become an advocate or otherwise use . . . judicial powers to advantage or disadvantage a party unfairly," **[13]**

96. The Court errored in Law under § 144 as Hall has demonstrated through declaration, (considered to be true} *In re Martinez Catala*, 129 F.3d 213, 218 (1st Cir. 1997). that Judge Elliott has a personal bias or prejudice either against him or in favor of Twitter; to allow a District Court Judge to preside in a case where (s)he has also administratively and extra-judicially participated, inquired, investigated, reviewed panel notes and comments from the public and voted (among the other Article III justices) to re-appoint a Magistrate, which included identical material facts within this case. *González-González,* at 7-8.

97. The Court errored in law under the standards of § 144 and § 455(a), which only requires the appearance of partiality, not the existence of actual partiality.

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[13] Due process U.S. CONST. AMEND V guarantees "an absence of actual bias" on the part of a judge. *In re Murchison,* 349 U.S. 133, 136 (1955). Due process essential to a fair trial. *Mitchell v. Sirica*, 502 F.2d 375, 390 (D.C. Cir. 1974); see *Tumey v. Ohio,* 273 U.S. 510, 535 (1927); *United States v. González-González*, Criminal No. 93-318 (FAB), 6-7 (D.P.R. Feb. 27, 2019). "It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *Caperton v. A. T. Massey Coal Co.* 556 U.S. 868 (2009), (quoting *Murchison* at, 133, 136; *Guthrie v. WERC*, 111 Wis. 2d 447, 454, 331 N.W.2d 331 (1983); "constitutionally unacceptable." See *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *Nicodemus v. Chrysler Corp.,* 596 F.2d 152, 155-56 (6th Cir. 1979) (quoting *Whitaker v. McLean*, 118 F.2d 596, 596 (D.C. Cir. 1941)).

PETITIONER HALL'S
EXHIBIT E

"Appears to be so." *Liteky v. United States*, 510 U.S. 540, 553 n.2 (1994). *Martinez Catala at,* 213, 220; Reasonable standards concerning impartiality. *United States v. Hines,* 696 F.2d 722, 728 (10th Cir. 1982); *Franks v. Nimmo*, 796 F.2d 1230, 1234-35 (10th Cir. 1986); *United States v. Nelson,*718 F.2d 315, 321 (9th Cir. 1983); *Hoover v. Ronwin,*466 U.S. 558, 104 S.Ct. 1989, 80 L.Ed.2d 590 (1984). *United States v. Mirkin*, 649 F.2d 78, 81 (1st Cir. 1981). To require disqualification, the alleged bias or prejudice must be both "(1) personal, i.e., directed against a party, and (2) extrajudicial." *United States v. Carignan*, 600 F.2d 762, 763 (9th Cir. 1979). *United States v. Kelley*, 712 F.2d 884, 889 (1st Cir. 1983)

98. This approach advances Congress' intent to ensure that the "courts must not only be, but must seem to be, free of bias." *In re United States,* 158 F.3d 26, 36 (1st Cir. 1998); *Liljeberg* at, 847, 860 (1988) ("The goal of § 455(a) is to avoid even the appearance of partiality" and to "promote public confidence in the integrity of the judicial process."). The Court must "take the objective view of an informed outsider" and decide whether a reasonable, informed outsider "might question the judge's ability to remain impartial in hearing the case[.]." *In re United States,* at 67; *In re. Bulger, 710 F.3d 42, 45-46 (1st Cir. 2013).* Where recusal is a close question, "the balance tips in favor of recusal." *In re Boston's Children First*, 244 F.3d 164, 167 (1st Cir. 2011). § 455(a) also provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

99. The Court errored in law under the standards of § 455(b)1, as 455(b)(1), requires recusal where the judge has "personal knowledge of disputed evidentiary facts." In Hall's Motion to Recuse he states that because Judge Elliott was involved with the re-appointment proceedings of Judge Johnstone, those same evidentiary matters at issue during the re-appointment process are the same evidentiary matters surrounding Judge Johnstone's illegal Policies are at issue in Hall's case. e.g., *United States v. Alabama*, 828 F.2d 1532, 1543-46 (11th Cir. 1987) (holding recusal

PETITIONER HALL'S
EXHIBIT E

mandatory under § 455(b)(1) where trial judge's activities had involved him in "disputed evidentiary facts"), cert. denied, 487 U.S. 1210, 108 S.Ct. 2857, 101 L.Ed.2d 894 (1988). *El Fenix de Puerto Rico v. The M/Y Johanny*, 36 F.3d 136, 141 n.4 (1st Cir. 1994).

100. The tasks to be performed by the judges on the Commission are clearly nonjudicial in nature, and do not involve the exercise of Article III power to adjudicate cases and controversies. While it would be unheard of for an Article III Judge to reject the call of the President, at least in theory these three individual members of the judiciary serve voluntarily as commissioners and are empowered as such under the Act, rather than as an Article III Court. Scarfo at 370, 377 (historical list of extra-judicial activities of judges). Their removal from this office by the President under 28 U.S.C. § 991(a) would leave their judicial powers intact. Hickernell, at 272. See Hall's Arguments [D. 104] Motion to Recuse.

101. Accepting the facts as alleged in Hall's [D. 104] Motion to Recuse and [D. 104-1] Declaration as true, Judge Elliott, through her administrative statutory duties, **[14]** Judge Elliott served on the Commission, participated, **[15]** inquired, investigated, reviewed panel notes and comments from the public and voted (among the other Article III justices) to re-appoint Judge Johnstone although Judge Johnstone's unofficial Policies perpetuated fraud upon the court and created an unconstitutional proceeding which violated the rights of Hall, and that knowledge of a party or knowledge of disputed evidentiary facts gained "outside the case" constitutes grounds for recusal under § 455(a) because her acts "inferable" or

[14] *In Forrester v. White* , 484 U.S. 219, 229, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988), (administrative decisions " not judicial or adjudicative."

[15] The theme is that there is an almost irrebuttable presumption that a judge is "tainted" and must be disqualified where, as here, she surrounded herself with individuals who may not be truly disinterested. See [D. 104]

PETITIONER HALL'S
EXHIBIT E

"inferred" to be bias. *United States v. Torres*, 128 F.3d 38, 46–47 (2d Cir.1997); *United States v. Greer,* 285 F.3d 158, 171 (2d Cir.2002).

XI. CONCLUSION

102. Magistrate Johnstone's illegal policy and the omission and acts by the three judges, unconstitutionally tainted the entire case, Judge Elliott's personal knowledge is unlawful requiring vacatur, Twitter's dismiss motion is scandalous requiring default, and void as substantive law was not followed. Hall has stated three (I, II, III) adequate claims under the standards of law, Twitter acted as a Federal Actor on behalf and at the request of Congress to silence Hall's free speech and freedom of expression.

Wherefore, because the Court made factual findings on a motion to dismiss and reached factual conclusions in fact and law that are inconsistent with the Complaint, the courts decisions should be reconsidered and reversed.

Respectfully submitted,
DANIEL E. HALL
Pro Se

XII. CERTIFICATE OF SERVICE

I certify that on this date, I served the foregoing Appellant's Brief upon the Defendant, through its attorney of record, Demetrio F. Aspiras, counsel of record, via the Court's electronic filing system.

Dated: August 28, 2023

/s/ Daniel E. Hall
Pro Se Petitioner

PETITIONER HALL'S
EXHIBIT E

XIII. CERTIFICATE OF COMPLIANCE

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with the word limit of Fed. R. App. P. 32(a)(7)(B)(i) because, excluding the parts of the document exempted by the Fed. R. App. P. 32(f):

this document contains no more than 13,000 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

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Dated: August 28, 2023

/s/ Daniel E. Hall
Pro Se Petitioner

PETITIONER HALL'S
EXHIBIT E

United States Court of Appeals
For the First Circuit

No. 23-1555

DANIEL E. HALL, a/k/a Sensa Verogna,

Plaintiff - Appellant,

v.

TWITTER, INC.,

Defendant - Appellee.

APPELLEE'S BRIEFING NOTICE

Issued: August 30, 2023

Appellee's brief must be filed by **September 27, 2023**.

The deadline for filing appellant's reply brief will run from service of appellee's brief in accordance with Fed. R. App. P. 31 and 1st Cir. R. 31.0. Parties are advised that extensions of time are not normally allowed without timely motion for good cause shown.

Presently, it appears that this case may be ready for argument or submission at the coming **December, 2023** session.

The First Circuit Rulebook, which contains the Federal Rules of Appellate Procedure, First Circuit Local Rules and First Circuit Internal Operating Procedures, is available on the court's website at www.ca1.uscourts.gov. Please note that the court's website also contains tips on filing briefs, including a checklist of what your brief must contain.

Failure to file a timely brief in compliance with the federal and local rules could result in the appellee not being heard at oral argument. See 1st Cir. R. 45.0.

Maria R. Hamilton, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITIONER HALL'S
EXHIBIT E

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PETITIONER HALL'S
EXHIBIT E

UNITED STATES COURT OF APPEALS

for the

FOR THE FIRST CIRCUIT

Case No. 23-1555

DANIEL E. HALL,

PLAINTIFF - APPELLANT,

- v. -

TWITTER, INC.,

DEFENDANT - APPELLEE.

Appeal from the United States District Court

For the District of New Hampshire

Case No. 1:20-cv-00536-SE

Judge Samantha D. Elliott

APPELLANT'S REPLY BRIEF

Daniel E. Hall, PRO SE

Aka. Sensa Verogna

SensaVerogna@gmail.com

Dated: October 18, 2023

PETITIONER HALL'S
EXHIBIT F

TABLE OF CONTENTS

Authorities

SUPREME COURT

FIRST CIRCUIT

PETITIONER HALL'S EXHIBIT F

OTHER CIRCUITS

PETITIONER HALL'S EXHIBIT F

DISTRICT COURTS

OTHER CITATIONS

PETITIONER HALL'S EXHIBIT F

I. PRELIMINARY STATEMENT

On May 4, 2020, Hall filed his [D. 1] "Complaint", asserting claims for (1) racial discrimination in violation of Section 1981, (2) racial discrimination of services of public accommodation in violation of Title II; and (3) "constitutional violations" of his free speech, free expression, and free assembly rights under the First Amendment of the United States Constitution and Part I, Articles 22 and 32 of the New Hampshire Constitution, and his due process and equal protection rights under both constitutions. *Hall v. Twitter Inc.* 20-cv-536-SE (D.N.H. May. 9, 2023).

The District Court's ("Court") [D. 139] "Order" and Post/pre-judgment orders are fundamentally flawed as it applies allegations not contained within Hall's Complaint or motions, or otherwise is asking the wrong questions in order to come to a predetermined result or preference of controlling law. Twitter's arguments and Reply Brief, "RB" suffers the same flaws. Both also mistakenly claim that Section 230 provides immunity for all of Hall's claims.

The facts alleged in Hall's Complaint are sufficient to permit the court to infer more than the mere possibility of discrimination. *Ashcroft v. Iqbal,* 129 S. Ct. 1950 (2009). A liberal construction means that the court will read the pleadings to state a valid claim to the extent that it is possible to do so from the facts available.

A manifest error is one that amounts to a "wholesale disregard, misapplication, or failure to recognize controlling precedent." *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183, 195 (1st Cir. 2004) (defining manifest error as an error "that is plain and indisputable, and that amounts to a complete disregard of the controlling law").

II. REVIEW STANDARDS

This Court "review[s] de novo an order of dismissal for failure to state a claim." *Hammond v. Kmart Corp.*, 733 F.3d 360, 362 (1st Cir. 2013). "We afford

de novo review to the district court's legal conclusions and clear-error review to its findings of fact." *Williams v. United States*, 858 F.3d 708, 714 (1st Cir. 2017).

Whether the evidence presented under § 455(a) requires disqualification is a question of law, which should be reviewed on appeal de novo. *In re Hatcher*, 150 F.3d 631, 637 (7th Cir. 1998); *Hook v. McDade*, 89 F.3d 350, 353-54 (7th Cir. 1996); "[d]rawing all inferences favorable to the honesty and care of the judge whose conduct has been questioned, [as our present circuit standard does,] could collapse the appearance of impropriety standard under § 455(a) into a demand for proof of actual impropriety." *In re United States,* 158 F.3d 26, 36 n.8 (1st Cir. 1998). When "determining whether a judge's impartiality might reasonably be questioned," the First Circuit follows the standard set forth in *United States v. Cowden*, 545 F.2d 257, 265 (1st Cir.1976) to objectively determine ""if there is a reasonable factual basis for doubting the judge's impartiality . . . ." H. Rep. No. 1453, 93d Cong., 2d Sess., 1974; U.S. Code Cong. Admin. News p. 6355.

Because an order denying Rule 60(b) relief is generally considered a final appealable order, *FDIC v. Ramirez-Rivera*, 869 F.2d 624, 626 (1st Cir. 1989), and because subject matter jurisdiction is a question of law, review should be de novo and not for an abuse of discretion. *Skwira v. United States,* 344 F.3d 64, 72 (1st Cir. 2003) (citing *Valentín v. Hosp. Bella Vista*, 254 F.3d 358, 365 (1st Cir. 2001)). ("[A] decision whether or not a judgment is void under 60(b)(4) allows no room for discretion. The review is de novo.").

Because Hall's Rule 59 and Rule 60 motions require review of constitutional claims, review is de novo as Hall's claims are properly preserved. *United States v. Neto,* 659 F.3d 194, 200 (1st Cir.2011).

Hall's argues in his motion to strike that the Court errored in not applying state law before applying the federal rules regarding attorney Schwartz's acts. *Robidoux v. Muholland*, 642 F.3d 20, 22 (1st Cir.2011) ("Choice of law

determinations are questions of law, which we also review de novo."); *Torre v. Brickey,* 278 F.3d 917, 919 (9th Cir.2002). ("Whether state or federal law applies to a particular issue in a diversity action is a question of law which we also review de novo.").

Complaint DOES NOT state that "Twitter acted pursuant to its own rules and Terms of Service" as alleged in the RB. Twitter banned Sensa's Twitter account for "allegedly" violating Twitter rules." [Doc. 1 ¶ 18].

III. TWITTER'S DEFENSES

Twitter's "VFC" is invalid as a defense in Claims I and II, as it acts as an impermissible prospective waiver of federal and state statutory and Constitutional rights. [D.1, ¶ 13] (additional claims cleaned up). "[C]ourts will not lend their aid to relieve parties from the results of their own illegal adventures." *Tocci v. Lembo*, 92 N.E.2d 254, 256 (Mass. 1950); *United States v. Mardirosian*, 602 F.3d 1, 7 (1st Cir. 2010), (a contract provision cannot ratify illegal conduct).

Hall's claims DO NOT arise from information provided by another information content provider and therefore Section 230(c)(1) does not apply. See 47 U.S.C. § 230(c)(1); *e.g., Universal Commc'n Sys., Inc. v. Lycos, Inc.,* 478 F.3d 413, 418 (1st Cir. 2007); *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 409 (6th Cir. 2014). Section 230(c)(1)'s protections extend only to claims that would hold a defendant liable for "information provided by another information content provider."47 U.S.C. § 230(c)(1) (emphasis added). A separate but related question is whether a plaintiff bringing claims based on their own content is "another information content provider" under Section 230(c)(1). Courts have declined to apply Section 230(c)(1) to content created by a plaintiff, reasoning that allowing Section 230(c)(1) to cover such content would render Section 230(c)(2) superfluous. *e.g., e-ventures Worldwide, LLC v. Google, Inc.,* No. 2:14-cv-646-FtM-PAM-CM, 2017 WL 2210029, at *3 (M.D. Fl. Feb. 8, 2017) (declining to

apply Section 230(c)(1) to unfair competition claims based on Google's removal of plaintiff's advertising material). Hall's cause of action seeks to hold Twitter liable for its own conduct, and conduct as a state or "federal actor" rather than for third-party content, and thus Twitter is not being treated as a publisher or speaker. §230(c)(1) does not provide immunity for its own discrimination "acts and omissions." *Doe v. Facebook, Inc.* 142 S. Ct. 1087 (2022).

Section 230(c)(1) applies to claims for content that is "left up," while Section 230(c)(2) applies to claims for content that is "taken down."[1] In practice, however, courts have also applied Section 230(c)(1) to "take down" claims, and courts sometimes collapse Section 230's two provisions into a single liability shield or do not distinguish between the two provisions.[2] A defendant's chosen statutory basis for immunity under Section 230 is consequential: Section 230(c)(2) includes a good faith requirement absent from Section 230(c)(1), while Section 230(c)(1) is limited to claims based on another's content.[3]

Because Hall's Claims I and II DO NOT treat Twitter as a publisher under 230(c)(1), but seek to hold Twitter liable for engaging in discrimination and publishing are not elements of these claims and because Twitter concedes that

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[1] E.g., *Doe v. GTE Corp.* 347 F.3d 655, 659 (7th Cir. 2003); cf. *Malwarebytes, Inc. v. Enigma Software Grp. USA,* LLC, 141 S. Ct. 13, 15 (Thomas, J., statement respecting the denial of certiorari) (articulating this view of Section 230 before positing that "[t]his modest understanding is a far cry from what has prevailed in court").

[2] E.g., Domen v. Vimeo, Inc., No. 1:19-cv-08418, 2020 WL 217048, slip op. at *13 (S.D.N.Y. Jan. 15, 2020) (holding that 230(c)(1) and (2) both provided immunity for claims arising from video hosting provider's decision to remove content); Malwarebytes, 141 S. Ct. at 17 (Thomas, J., statement respecting the denial of certiorari) (collecting cases); Riggs v. Myspace, Inc., 444 F. App'x 986 (9th Cir. 2011) (analyzing a social media website's decision to delete user profiles under 230(c)(1)).

[3] A separate but related question is whether a plaintiff bringing claims based on their own content is "another information content provider" under Section 230(c)(1). Courts have declined to apply Section 230(c)(1) to content created by a plaintiff, reasoning that allowing Section 230(c)(1) to cover such content would render Section 230(c)(2) superfluous. See e.g., e-ventures (declining to apply Section 230(c)(1) to unfair competition claims based on Google's removal of plaintiff's advertising material).

subdivision 230(c)(2)(A) do not bar Hall's claims, 230 cannot defend Twitter's discriminatory acts, or acts on behalf of Congress.

Hall has argued that Twitter's First Amendment rights do not apply to claim III, as Twitter was acting as a state actor when it suppressed his tweets and severed his contract. [D. 13.1, ¶ 26, 38]; [D. 6-1, ¶ 29, Motion to Declare Twitter a State actor].

IV. THE COURT ERRORED IN DISMISSING HALL'S COMPLAINT

Hall has set forth 'factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.'" *Lemelson v. U.S. Bank Nat'l Ass'n*, 721 F.3d 18, 21 (1st Cir.2013). Hall's claims are plausible which includes factual content that allows the court to draw the reasonable inference that Twitter is liable for the misconduct alleged.

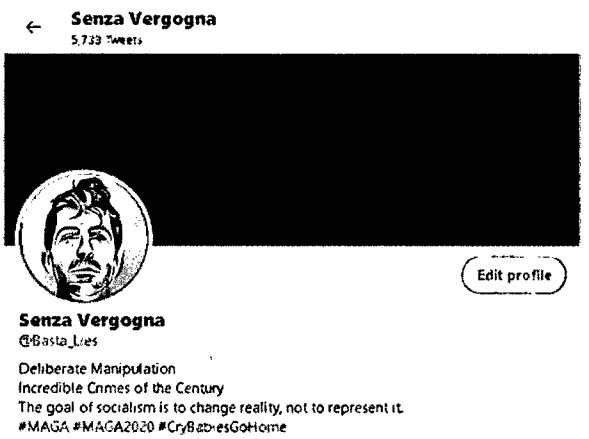
A. Claim I- Racial Discrimination in Violation of Section 1981

"Nothing in § 1981 requires that parties exhaust any administrative remedies or fulfill any notice requirements before bringing a lawsuit. " *Henderson v. Aria Resort & Casino Holdings, LLC,* 2:21-cv-0280-JAD-NJK, 7 (D. Nev. May. 31, 2022). In considering a claim of discrimination under § 1981, the court applies the same analytical framework as for a Title VII claim. *Lipsett v. Univ. of P.R.*, 864 F.2d 881, 896 (1st Cir. 1988). "The burden of establishing a prima facie case of disparate treatment is not onerous." *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981); A § 1981 claim may be proven by either direct evidence or the burden-shifting approach articulated in *McDonnell Douglas Corp. v. Green,* 411 U.S. 972 (1973). (burden-shifting standard applies to suits under § 1981). Glessner v. Chardan, LLC, CIVIL SAG-22-03333, 8 (D. Md. Jul. 5, 2023).

For the purpose of making the dismissal determination, a court must accept all the well-pleaded factual allegations of the complaint as true, even if doubtful, and must construe the allegations in the light most favorable to the plaintiff. Bell

Atlantic Corp. v. Twombly :: 550 U.S. 555 (2007); *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007). Hall is not required to establish a prima facie case in his Complaint in order to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Khalik v. United Air Lines, 671 F.3d 1188, 1192 (10th Cir. 2012)*. However, analyzing the allegations of a complaint in light of the elements of the alleged cause of action "help[s] to determine whether [the plaintiff] has set forth a plausible claim." *Id.*

27. The meaning of Hall's plausible allegations that he "acted" or "behaved" like "a white person," because Twitter's algorithms have the ability to identify "users on race based information for its advertisers", based upon their speech and behaviors. [D. 13-1, ¶¶ 28-30]. Hall also alleges that he "acted, represented, displayed, behaved and portrayed himself to be a white person", with a picture of a white man on each and every one of his 5,733 tweets. AOB at 5. See Below.



[D. 1-2, Exhibit E]; [A]lgorithms are "going to ban.. way of talking. [D. 1, ¶ 49]

First, Hall alleges that he is a member of a protected class. Second, Hall alleges two harmless Tweets were censored and removed and that his contract was severed by Twitter. Third, Hall claims that he was unable to use the services offered at Twitter.com [D. 1, ¶ 14] allegedly under the pretext of its "health

PETITIONER HALL'S
EXHIBIT F

policies". *Collymore v. Hassan* Civil Action No. 18-11634-LTS (D. Mass. Jan. 8, 2019).

Circumstantial Evidence alleged in the Complaint includes, in part;

Twitter's workforce has in the past utilized its algorithms [D. 1, ¶ 30] to discriminate against over 600,000 predominantly white groups such as republicans and conservatives, and lied about it publicly for years, [D. 1, ¶ 28] admitted it under pressure from Congress, and then secretly continued the practice.

Twitter was aggressively taking action by limiting, locking or suspending users' contracts for reasons such as abuse, hate and white nationalism, (White people) where actions were taken on 605,794 accounts Jan-June 2018, 612,563 accounts July-Dec 2018, and 1,254,226 accounts Jan-June 2019, [D. 1, ¶ 24], then suddenly stopped the reporting account actions.

Twitter's workforce demonstrates behaviors of lying to the public, compare; "We do not shadow ban" Vijaya Gadde, legal counsel for Twitter. [D. 1, ¶ 33]; "claims [of banning conservative voices] are unfounded and false," Nick Pickles, a senior strategist. [D. 1, ¶ 33]; To statements by CEO Dorsey, "we haven't been as forthright as we need to." [D. 1, ¶ 72]; Twitter shadow banned 600,00 users, CEO Dorsey, "Correct" [D. 1, ¶ 35]. [D. 1, ¶ 38] (Twitter acknowledged that is had "shadow banned.")

Twitter employees targeted conservatives and Russians, for removal by writing and utilizing algorithms. [D. 1, ¶ 33]; Twitter's workforce demonstrates that discriminatory banning by Twitter is "a thing." [D. 1, ¶ 29]; Build algorithms that demonstrate bias. [D. 1, ¶ 55] Banned accounts based upon discriminatory factors. [D. 1, ¶ 50];

Twitter's "health policies" promote and allow "White Hate" by allowing blue check'ers to post derogatory and discriminatory speech to their combined 50 million followers, which is hateful and promotes hate against the race of white people. [D. 1, ¶ 40], [D. 1-1, Exhibit L]

Twitter continues to make its services available to and has not banned the contracts or the benefits of a contract of similarly situated non-white users, who are outside Sensa's protected class, and continues to allow non-whites to post racist divisive hashtags such as #KillWhites and #Whitegenocide and

PETITIONER HALL'S
EXHIBIT F

to promote hate against the race of white people. [D. 1, ¶ 41], [D. 1-1, Exhibit M]

"similarly situated" non-white users were not disciplined to the severity of Hall. [D. 1, ¶¶ 41, 44, 45]; [D. 1-2, Exhibits N and O]

Twitter itself interjected race as one of the main reasons for updating and changing its Health Policy specifically to track and discipline white socialists, white separatists and white nationalists, with being white being the common denominator, and thus, race had something to do with the decision-making process. [D. 1, ¶ 47]

Twitter's hateful conduct policy, shows that the company has explicitly codified political views into its policies. [D. 1, ¶ 65]; CEO Dorsey admits "the people who build Twitter are biased." [D. 1, ¶ 65];

Hall's claim I alleges (1) he is within the protected class, [4] (Doc. 1 at ¶¶ 2, 139); (2) Twitter discriminated against him on the basis of his race; (3) the discrimination implicated one or more of the activities listed in the statute, including the right to make and enforce contracts." *Hammond, at* 362. Hall's §1981, Claim I plausibly alleges (1) intentional racial discrimination (2) that caused a contractual injury. Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media, 140 S. Ct. 1009, 1014 (2020).

Given Hall's light burden at this stage, and accepting all of his well-pleaded factual allegations as true, the Court errored in applying the proper facts to the proper standards of law and that Hall's pleading sufficiently alleges factual allegations to state a plausible claim for racial discrimination under § 1981. *Jones v. E. Okla. Radiation Therapy Assocs., LLC*, Case No. 16-CV-150-JED-TLW, 3

[4] 42 U.S.C. § 1981 prohibits racial discrimination against whites as well as nonwhites in the making and enforcing of contracts. *McDonald v. Santa Fe 17 Trail Transp. Co.,* 427 U.S. 273, 295 (1976) (Section 1981 explicitly applies to " all persons." e. g., *United States v. Wong Kim Ark,* 169 U.S. 649, 675-676 (1898).

(N.D. Okla. Jul. 10, 2017), has shown "a sufficient nexus between the asserted discrimination and some contractual right or relationship" *Garrett v. Tandy Corp.*, 295 F.3d 94, 98 (1st Cir. 2002), and has proffered evidence of "an impaired contractual relationship." *Yong LI v. Mass. Gen. Hosp.,* Civil Action No. 11-11557-JCB, 12 (D. Mass. Oct. 23, 2014); Domino's Pizza, Inc. v. McDonald, 546 U.S. 470, 476 (2006), and that Twitter's workforce was *motivated* by [the person's state of mind]'" *Damon v. Fleming Supermarkets of Fla., Inc.,* 196 F.3d 1354, 1359 (11th Cir.1999), The Court's dismissal of Count I should be reversed.

B. Claim II- Racial Discrimination in a Place of Public Accommodation in Violation of 42 U.S.C. § 2000a.

The Court's Order denying claim II cannot be sustained as it denied the Complaint on the basis that Twitter's "online social networking platform, is not a public accommodation" and never reaches Hall's allegations that (1) Twitter's facilities operated as public accommodations, [D.1, at Exhibit Q], and (2) Hall was denied *the services* of a place of public accommodation.

42 U.S.C. § 2000a, "Title II" entitled Hall "to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the grounds of race, color, religion, or national origin. *Andrews v. Blick Art Materials, LLC,* 268 F. Supp. 3d 381, 389 (E.D.N.Y. 2017) ("inaccessibility of Target.com impedes the full and equal enjoyment of goods and services offered in Target stores, the plaintiffs state a claim").

Hall has alleged a prima facia case of Title II public accommodation, discrimination, in showing that he; "(1) is a member of a protected class, (2) attempted to exercise the right to full benefits and enjoyment of a place of public accommodation, (3) was denied those benefits and enjoyment, and (4) was treated

less favorably than similarly situated person who are not members of the protected class. *Saint Francis College v. Al-Khazraji,* 481 U.S. 604 (1987).

Title II covers *the services* "of" a place of public accommodation, not the services "at" or "in" a place of public accommodation. If Congress had intended to limit Title III to services provided at a business's physical premises, it presumably would have used the words "at" or "in" rather than "of." *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 33 (1999), Twitter's online platform, which sells advertising to the general public and maintains facilities open to the public, qualifies as goods or services "of a place of public accommodation" *Id.* [D.1, Exhibit P].

The elements of Hall's prima facie case are clearly satisfied by the factual allegations in his Complaint: (1) Hall, as a White American, he is a member of a protected class; (2) Hall attempted to avail himself of the services that Twitter at its place(s) of public accommodations. AOB at 15–16; Doc. 1 ¶¶ 98-103. (3) Hall was denied those benefits and services; (4) was treated less favorably than similarly situated person who are not members of the protected class. [D. 1, ¶ 40, 41, 44, 45]; [D. 1-2, Exhibits L, N and O]

Services were withheld, denied, or refused [D. 1, ¶ 17] and "interfered with Hall's right to enjoy the services of its platform without discrimination on the basis of race" and plausibly alleges his race was the reason for his suspension which is sufficient to state a claim for violation of Title II.

Hall has pled that he fully intended to continue with the contract as an active user but was, unless enjoined, prohibited from doing so. [D. 1, ¶ 144]; *Nanni v. Aberdeen Marketplace, Inc.,* 878 F.3d 447, 455 (4th Cir. 2017). Causing "continuing, present adverse effects." O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974). With strong evidence to suggest that the government's meddling has not ceased. *Louisiana v. Biden,* 45 F.4th 841, 845 (5th Cir. 2022).

A reasonable fact finder could conclude that the denial of service to a white Hall was motivated by considerations of plaintiffs' race where many non-white's did not have similar Tweets removed and their accounts terminated. *Acey v. Bob Evans Farms, Inc.,* CIVIL ACTION NO. 2:13-cv-04916, 9-10 (S.D.W. Va. Mar. 13, 2014).

Hall need not have visited any of Twitter's public accommodations to enjoy the services of those public accommodations and has made the connection between the goods and services complained of and an actual physical place that is required. *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006, 1011 (6th Cir. 1997). The Language Of The Statute Does Not Limit Title III To Services Provided At A Company's Physical Facility. The Services "Of" A Place Of Public Accommodation Need Not Be Provided "At" The Place Of Public Accommodation. *Carparts Distribution Ctr., Inc. v. Automotive Wholesaler's Ass'n,* 37 F.3d 12, 19 (1994). The Court's dismissal of Count II should be reversed.

C. Claim III- Violations of Free Speech

There are a number of situations where the United States Supreme Court has recognized the conduct of individuals or private organizations to be "state action," and therefore subject to provisions of the Constitution such as Equal Protection, Due Process, or the First Amendment. Equal Protection is guaranteed under Section I of the 14th Amendment and Due Process is guaranteed under the 5th Amendment.

"We (as a society) have to be committed to defending free speech however impolitic, or unpopular, or even wrong because defending that is the only barrier to violence. That's because the only way we can influence one another short of physical violence is thru speech, thru communicating ideas. The moment you say certain ideas can't be communicated you create a circumstance where people have no alternative but to go hands on." [6]

There are mainly two bases of power: Coercive (fear) and Persuasive (love). Persuasion requires understanding. Coercion requires only power. We usually equate coercion with obvious force, but sometimes it's far more subtle. [6] "Coercion" is leveraging targeted institutional power against one's adversaries to achieve a desired effect. If you want people to stop smoking, for example, you don't need to make it illegal; you can simply make smoking expensive (raise taxes) or offer bribes (lower health insurance premiums). Both are still coercive in that the power to give or take away resides entirely in the hands of the "coercer." [6]

When Congress enacted Section 230 if showed love to Twitter and Big Tech by offering immunity to regulate and police [7] speech. [8] Years later, having reaped the benefits of this immunity, Congress's constant "persuasive love" or encouragement through hearings, sprinkled with a few threats from its Members, [9] brings this subtle coercive power [10] full circle as companies like Twitter are

[5] stifled by more subtle governmental interference." *Bates v. City of Little Rock,* 361 U.S. 516, 523 (1960).

[6] Sam Harris, Making Sense with Sam Harris, #67 – Meaning and Chaos

[7] the performance of a "public function" (a function that has been traditionally and exclusively performed by the state) is state action (*Marsh v. Alabama*, 326 U.S. 501 (1946));

[8] First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say. *Rumsfeld v. Forum for Academic and Institutional Rights* [FAIR], 547 U.S. 47 (2006). First Amendment not only limits the government from punishing a person for his speech, it also prevents the government from punishing a person for refusing to articulate, advocate, or adhere to the government's approved messages. "The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.' " *Wooley v. Maynard*, 430 U.S. 705 (1977). The right to freedom of speech allows individuals to express themselves without government interference or regulation. The Supreme Court requires the government to provide substantial justification for interference with the right of free speech when it attempts to regulate the content of the speech.

[9] if the government and the private party enter into a "joint enterprise" or a "symbiotic relationship" with each other it is state action. *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

[10] if the government coerces, influences, or encourages the performance of the act, it is state action (Rendell-Baker v. Kohn, 457 U.S. 830 (1982)); "coerced or significantly encouraged social media platforms to moderate content", which violated the First Amendment. *Biden v. Missouri* :: 595 U.S. ___ (2022).

PETITIONER HALL'S
EXHIBIT F

now fearful they could lose their immunity. [11] Also, Twitter is no lamb in conspiring [12] with Congress to deprive people of their rights, as it reaped the government teat for years, and has utilized the power of Section 230 to insulate its advertising agency from any liability for a host of other illegal behaviors such as racial discrimination under the umbrella of Section 230 "health policies", which contravenes the statutes intended purpose of providing immunity for only third party postings on bulletin boards, or publishers of third party content.

Congress holds hearings, [13] under the tone "We have a lot of questions about Twitter's business practices including questions about your algorithms, content management practices, and how Section 230's safe harbors protect Twitter." Walden ¶ 325-28. With Members imposing a legal obligations about a mandatory rule (230) with statements such as; "more needs to be done" [by Twitter]. Walden ¶ 160; "Twitter must do more to regain and maintain the public trust." Pallone ¶ 206; "Twitter must establish clear policies to address the problems discussed today, provide tools to users and then swiftly and fairly enforce those policies." Pallone ¶ 216; "we have to make sure that the enforcement mechanism is there." Pallone ¶ 467; "Twitter needs to strengthen its policies." Green ¶ 75. These officials entangled themselves in Twitter's decision-making processes, namely their moderation or "health policies."

Hall's First Amendment rights prohibits government officials, including Congress, from coercing or compelling social media platforms to censor the speech of their users. *Missouri,* at 595. Hall, as a US citizen, has free speech and freedom

[11] if the government is "pervasively entwined" with the leadership of the private organization, the acts of the organization are state action. *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 535 U.S. 971 (2002).
[12] if the government and the private party enter into a "joint enterprise" or a "symbiotic relationship" with each other it is state action. Burton, at 715.
[13] D. 1-3, Exhibit Q]

PETITIONER HALL'S
EXHIBIT F

of expression rights. [14] These rights cannot be "infringed" by the government. Only Congress may restrict the time, place, or manner of speech, and "shall make no law...abridging freedom of speech." Congress restricted these rights, facially, through Section 230(c)(2)(A), any "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." Section 230(c)(2)(A) also provides immunity to any interactive computer service willing to "police" it's public forums for any such speech. Policing what is generally left to local or state authorities who determine whether said speech is in violation of the law, with the US Supreme Court being the final arbitrator.

Not all acts of governmental delegation necessarily trigger constitutional obligations, but this one did. Section 230 triggers constitutional obligations of free speech, and through its offer of immunity, contracts out those constitutional obligations (sovereignty) to private companies such as Twitter, and in agreeing to take on this job, [15] Twitter becomes a "state actor" in agreeing to take on the job of regulating and policing speech and to receiving it's benefits. *West v. Atkins*, 487 U. S. 42 (1988). Other constitutional obligations include the due process and equal protection rights of determining whether Hall's speech was in fact illegal or in violation of restricted speech as determined by the US Supreme Court.

Congress could have done the job itself possibly through regulation, or allowed state authorities to determine which speech was illegal, but instead delegated that job to private companies such as Twitter, and by accepting the job,

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[14] Hall also has freedom of assembly rights in a public forum which was not decided by the Court and not briefed here.

[15] See Twitters MOL, D. 3-1, P. 1--"As an initial and dispositive matter, Plaintiff's claims are barred by Section 230 of the Communications Decency Act ("CDA") ("Section 230")"

PETITIONER HALL'S
EXHIBIT F

Twitter accepted the Congress's responsibilities. Id., at 55; *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S, 139 S. Ct. 1921 (2019). See [D. 3, P. 1].

Section 230's regulatory scheme of regulating speech coerces, compels private platforms to restrict speech which trigger constitutional restrictions and usurps the local and state function for violations of free speech which are exclusively reserved to Congress and the policing of speech is an exclusive state or local function of policing free speech, as it *Evans v. Newton,* 382 U.S. 296, 301 (1966). Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 157 (1978). This scheme also confers Congresses sovereign power to regulate speech (AOB at 28-29 ¶¶ 41-43), without providing the due process of law when speech is banned.

Hall has plausibly alleged that Twitter (1) performs a public function in policing speech generally regulated Congress and enforced by state and local authorities; or (2) was compelled by Congress to take particular action of banning Hall's speech, or (3) that Congress acted jointly with Twitter, a private entity, which satisfies the standard under *Manhattan*, at 1921.

As Twitter's acts of suppressing Hall's speech were in essence that of Congress, Hall has established "state" action restrictions under both the US and N.H. Constitutions, stripping Twitter of any first amendment rights, and claim III should be reversed.

V. THE COURT ABUSE ITS DISCRETION BY DENYING HALL'S VARIOUS PRE- AND POST-JUDGMENT MOTIONS

A. The Court Abused Its Discretion in Its Pre-Judgment Orders

1. The judge abused her discretion in not recusing herself.

Hall DID NOT admit that "a judicial commission formed pursuant to a judicial procedure." Hall specifically states that "The Magistrate Re-appointment process is administered through the administrative office of the United States Courts."—"a re-appointment "Commission" was formed per 28 U.S.C. § 631

which directs Article III judges to serve as Members of the Commission. See AOB at 33 ¶ 90.

The distinction between Hall's case and cases like J.P.E.H, (hurt feelings), Logue (Judges statement in the case) and Kelley (judge's prior adverse ruling against a party), is that these rulings were based upon "in the record" acts by the judge and within their "judiciary duties", and not as Hall alleges, in [her] administrative capacity and outside the record, AND NOT in her judicial capacity as Twitter argues.

Hall contends that it's not speculation, but based upon facts, that Judge Elliott, was a member of the reappointment commission, was objectively biased in favor of Twitter as she gained "personal knowledge of disputed evidentiary facts, of Magistrate Johnstone's illegal and unwritten policy of allowing Twitter and its attorneys to practice before the bar, without having met the eligibility requirements, (which demonstrates bias in favor of Twitter), when acting in her administrative capacity, and outside the record of Hall's case, which would require disqualification under 18 U.S.C. § 455(b)(1). Hall also argued that there is an almost irrebuttable presumption that a judge is "tainted" and must be disqualified where, as here, she surrounded herself with individuals who may not be truly disinterested. See [D. 104] (Several other District Judges who allowed Magistrate Johnstone's to be utilized in their cases, were also members). And that a reasonable person could question Judge Elliott's impartiality and, therefore, recusal was required under 28 U.S.C. § 455(a) as she is ineligible by law. *Ark. Teacher Ret. Sys. v. State St. Bank & Tr. Co.*, 512 F. Supp. 3d 196, 236 (D. Mass. 2020)

Judicial power includes both adjudicatory functions and administrative functions. *In re Bar Exam Class Action* 752 So. 2d 159 (La. 2000). Decisions not to "reappoint" state employees are treated the same as job "terminations" in this context. *Branti v. Finkel*, 445 U.S. 507, 512 n. 6, 100 S.Ct. 1287, 1291 n. 6, 63

L.Ed.2d 574 (1980). ("Acts are judicial in nature if they are (1) normal judicial functions (2) that occurred in the judge's court or chambers and were (3) centered around a case pending before a judge."). [D. 119]. Administrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts. *In Ex parte Virginia*, 100 U. S. 339 (1880) (administrative decisions are "not judicial or adjudicative.").

Judge Elliot had NO "strong duty" to sit under section 455 as Congress's initial goal in amending section 455 was to eliminate the concepts of "duty to sit" and "substantial interest". *Blizard v. Frechette*, 601 F.2d 1217, 1221 (1st Cir. 1979), judges must still hear cases unless the statute prohibits it). *Uniloc USA, Inc. v. Microsoft Corp.*, 492 F. Supp. 2d 47, 54 (D.R.I. 2007).

In accepting as true Hall's allegations that Judge Elliot knew about Hall's submission to the commission and investigated his claims, and voted to reappoint Magistrate Johnstone despite her unconstitutional acts towards Hall and other Plaintiff's, her knowledge was "indisputably obtained . . . during the performance of her administrative and not judicial duties," and therefore serve as a basis for disqualifying [her] on grounds of personal bias and personal knowledge of Hall's claims out of record. Hence, it was error in fact and law (28 U.S.C. § 144 and 28 U.S.C. § 455), or an abuse of the judge's discretion in not recusing herself and not granting Hall's motion to recuse.

2. The judge abused her discretion in not striking and defaulting Twitter and renewing Twitter's [D. 99] renewal of its motion to dismiss.

Hall's claim to strike Twitter's D.3 [D. 99] Motion to Dismiss does not hinge upon Eck's actions, but the actions of Schwartz, a non-member of the bar when she advocated on behalf of Twitter. The Court lack any immediate discretion, because there was a hard fast law in place, that in diversity cases, state law must be looked

at first. The Court fails to address whether Schwartz's' advocacy on behalf of Twitter in submitting the D.3 motion is illegal under N.H. law, and therefore unscrupulous under Rule 9.

B. The Court Abused Its Discretion in Its Post-Judgment Orders

1. Hall's Doc. Rule 60(b) motions are not defective

Hall's (Doc. 142 & Doc. 143) Rule 60(b) motions are not defective because both challenge the Court's D. 139 Order [16] dismissing the case for lack of jurisdiction which terminated all proceedings, so the order was plainly final. "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States,* 324 U. S. 229, 324 U. S. 233 (1945). Because the Doc. 139 Order was a "final judgment, order, or proceeding," from which relief under Rule 60(b) may be sought, the district court could not have denied this motion as being procedurally defective. Fed. R. Civ. P. 60(b).

2. The Court Improperly Denied Hall's Doc. 143 Rule 60(b) Motion

Hall could not be "re-litigating" something to which had never been litigated prior and this was his first fair opportunity to litigate whether (1) the Court's final order was void because Judge Elliot was disqualified under § 455 at the time she entered the Order. (Doc. 143); and whether (2) "all the Court's Orders and Judgments" were void on the grounds the District Court Judges failed to provide an unbiased tribunal and on the grounds of fraud by the defendant Twitter. (Doc. 143). If, as Hall alleges, Judge Elliot was disqualified under § 455 at the time she entered the Order in favor of Twitter it would be void in not providing an unbiased tribunal.

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[16] Doc. 39 is also included within "all the Court's Orders and Judgments."

PETITIONER HALL'S
EXHIBIT F

The Court, through the actions of the three Judges, [17] acted in a manner inconsistent with due process of law, in rendering judgments, preconceived in Twitter's favor, and rendering judgments while objectively biased in favor of Twitter, which were reached without due process of law, are without jurisdiction and amounts to a plain usurpation of power constituting a violation of due process,'" *United States v. One Rural Lot No.* 10.356, Etc., 238 F.3d 76, 78 (1st Cir. 2001) and are void and subject to relief under Fed. R. Civ. P. 60(b)(4) or Rule 60(b)(6) as the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition. *Esso Standard Oil Co. v. Rodríguez-Pérez*, 455 F.3d 1, 4-5 (1st Cir. 2006), Hall has demonstrated that he has been denied a full and fair opportunity to litigate his claims. [D. 143, at 37-42].

3. The Court Improperly Denied Hall's Rule 59(e) Motion

Consistent with the Rule's corrective purpose, Hall's Doc. 141 Rule 59(e) motion urged the Court to fix what he saw as "manifest errors of law and fact" in which he argued many facts which were misinterpreted or flat out misrepresented, and many instances in which the court applied the law incorrectly to the facts of the case. It would be absurd to describe the motion as re-litigating when Hall had never before litigated the Court's errors in facts and law. The rule in this circuit is *that Rule 59(e) motions are to be "aimed at reconsideration, not initial consideration." Harley-Davidson Motor Co., Inc. v. Bank of New England-Old Colony, N.A.*, 897 F.2d 611, 616 (1st Cir. 1990). And because the Court failed to correct these errors of fact and because it did not apply the law correctly to the corrected facts which establish grounds to amend or alter, it incorrectly denied Hall's said motions and Twitter's motion to renew, and therefore was an abuse of

[17] Having allowed Twitter 66 times prior, when Magistrate Johnstone entered Hall's case, the case was immediately tainted with bias and unconstitutional.

the court's discretion. Hall therefore urges more than an inadvertent mistakes by the Court, and instead argues that the Court committed errors of fact and law. *U.S. v. Fiorelli,* 337 F.3d 282, 288 (3d Cir. 2003). And because the rule and laws allow Hall to point out errors of fact and law or a manifest injustice, Hall's motion is not procedurally defective and jurisdiction of this Appeals Court remains attached.

VI. CONCLUSION

Hall has requested that judicial notice be taken to facts not in dispute and facts commonly known in this area, and based upon these facts and the facts in record, this Appeals Court should conclude that a material factor deserving significant weight was ignored, and that improper factors were relied upon, and that the District Court made serious mistakes in weighing any of said factors which amounts to an abuse of discretion, judgment should be reversed and remanded. *United States v. One 1987 BMW 325*, 985 F.2d 655, 657–58 (1st Cir.1993).

Wherefore, because the Court made factual findings on a motion to dismiss and reached factual conclusions in fact and law that are inconsistent with the Complaint, the District Court's decisions should be reversed and remanded with Hall's Complaint reinstated.

Respectfully submitted,

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PETITIONER HALL'S
EXHIBIT F

XII. CERTIFICATE OF SERVICE

I certify that on this date, I served the foregoing Appellant's Brief upon the Defendant, through its attorney of record, Demetrio F. Aspiras, counsel of record, via the Court's electronic filing system.

Dated: October 18, 2023

/s/ Daniel E. Hall
Pro Se Petitioner

XIII. CERTIFICATE OF COMPLIANCE

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with the word limit of Fed. R. App. P. 32 because, excluding the parts of the document exempted by the Fed. R. App. P. 32(f):

this document contains no more than 6,500 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman, 14-point font.

Dated: October 18, 2023

/s/ Daniel E. Hall
Pro Se Petitioner

PETITIONER HALL'S
EXHIBIT F

UNITED STATES COURT OF APPEALS

for the

FIRST CIRCUIT

Case No. 23-1555

Daniel E. Hall,

a.k.a. Sensa Verogna

PLAINTIFF - APPELLANT,

- v. -

TWITTER, INC.,

DEFENDANT - APPELLEE.

Appeal from the United States District Court

For the District of New Hampshire

APPELLANT'S PETITION FOR REHEARING AND REHEARING EN BANC OF THE MAY 28, 2024, PANEL ORDER

Appellant Plaintiff, PRO SE

Daniel E. Hall

Manchester, N.H.

PETITIONER HALL'S
EXHIBIT G

AUTHORITIES

US SUPREME COURT

FIRST CIRCUIT

OTHER CIRCUITS

PETITIONER HALL'S
EXHIBIT G

OTHER COURTS

RULES, LAWS, OTHER

PETITIONER HALL'S
EXHIBIT G

TABLE OF CONTENTS

PETITIONER HALL'S
EXHIBIT G

INTRODUCTION

Appellant, Daniel E. "Hall" petitions for rehearing and/or rehearing en banc of the May 28, 2024, "Panel Order" before Circuit Judges Kayatta, Gelpi and Montecalvo, entering judgment in favor of Appellees ("Twitter") concluding that;

> "plaintiff failed to plead facts sufficient to make out a plausible claim that Twitter suspended his account on the basis of race or that Twitter is a state actor for constitutional purposes under the circumstances of this case. See *Doe v. Brown Univ.*, 43 F.4th 195, 208 (1st Cir. 2022) (explaining that a § 1981 c*laim requires proof of an intent to discriminate on the basis of race); Manhattan Comm. Access Corp. v. Halleck*, 587 U.S. 802 (2019) (explaining requirements for a private entity to be deemed a state actor). (See Exhibit A).

The Panel Order affirms the decision of the District Court of New Hampshire, in Civil No. 20-cv-536-SE, the [D. 139 "Order"] (Hall v. Twitter Inc. 20-cv-536-SE (D.N.H. May. 9, 2023)) (See Exhibit B) which sweeps under the rug, the Panel's failure to protect Hall's constitutional rights to free speech, and his right to equal protection and his right to due process regarding Hall's remaining claims which include his motions for recusal, strike, default, and it's rule 59 and 60 rulings. See AOB. Doc. 00118046219.

STANDARDS FOR REHEARING AND EN BANK REHEARING

A panel rehearing is appropriate here because the panel has overlooked and misapprehended material points of law and/or facts in the record, errored in the application of the correct precedent to the facts of the case, overlooks a controlling principle law, misstates the law, is plainly incorrect and, which gives rise to a circuit

PETITIONER HALL'S EXHIBIT G

split, in the decision. Fed. R. App. P. 40(a)(2). An en banc rehearing by this Circuit is proper here as (1) the Panel's "Opinion" on several issues conflicts with a decision of the Supreme Court or a decision of this Circuit so that consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions or (2) the case involves a question of exceptional importance because it conflicts with opinions of another courts of appeals, the Supreme Court's decisions discussed below and substantially affects a rule of national application in which there is an overriding need for national uniformity or (3) to resolve legal issues. Fed. R. App. P. 35(b).

The Panel Order conflicts with US Supreme Court, this Circuit, and many other circuits pertaining to Motion to Dismiss Standards

The Panels' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because Hall has been proceeding, from the litigation's outset, without counsel. A document filed pro se is "to be liberally construed," *Estelle*, 429 U.S., at 106, 97 S. Ct. 285, 50 L. Ed. 2d 251, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007).

PETITIONER HALL'S EXHIBIT G

In *Swierkiewicz v. Sorema N. A.*,534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002), the Supreme Court reversed the court of appeals for requiring employment discrimination plaintiffs to specifically allege the elements of a prima facie case of discrimination. We explained that "the Federal Rules do not contain a heightened pleading standard for employment discrimination suits," and a "requirement of greater specificity for particular claims" must be obtained by amending the Federal Rules. Id., at 515, 122 S.Ct. 992 (citing *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993)). and just last Term, in *Hill v. McDonough*,547 U.S. 573, 126 S.Ct. 2096, 165 L.Ed.2d 44 (2006). Specific pleading requirements are mandated by the Federal Rules of Civil Procedure, and not, as a general rule, through case-by-case determinations of the federal [127 S.Ct. 920] courts." Id., at 582, 126 S.Ct. 2096 (citing Swierkiewicz). *Jones v. Bock,* 549 U.S. 199, 213 (2007) See *Leatherman*, at 517, (a federal court may not apply a standard "more stringent than the usual pleading requirements of Rule 8(a)" in "civil rights cases alleging municipal liability"); *Swierkiewicz* (2002) (imposing a "heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2)"). *Johnson v. City of Shelby* 574 U.S. 10 (2014).

"Plausible," "means something more than merely possible." And a complaint that "pleads facts that are 'merely consistent with' a defendant's liability ... 'stops short

PETITIONER HALL'S EXHIBIT G

of the line between possibility and plausibility.' " *Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1* (1st Cir. 2011) (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)). All three of Hall's claims are more than merely possible which includes factual content that allows the court or any reasonable person to draw the reasonable inference that Twitter is liable for the misconduct alleged.

The Panel Order conflicts with US Supreme Court, this Circuit, and many other circuits pertaining to pleading intent.

In support of its judgment, the Panel cites *Doe v. Brown Univ.*, 43 F.4th 195, 208 (1st Cir.2022), "(a § 1981 claim requires proof of an intent to discriminate on the basis of race).". **However, there is no heightened pleading requirement in this case alleging a violation of civil rights at the motion to dismiss stage of the proceeding.** See *Swierkiewicz* (2002); *Educadores Puertorriquenos En Accion v. Hernandez*, 367 F.3d 61, 66 (1st Cir. 2004). The ruling in "Swierkiewicz is fully applicable to all civil rights actions." *Educadores*, 367 F.3d at 66, n. 1. *Simmons v. Galvin,* 652 F. Supp. 2d 83, 101-2 (D. Mass. 2007). Additionally, Hall's does not need to prove discriminatory intent for his disparate impact claims under § 1981. Both the District and Appeals Panel overlook the fact that there is no heightened pleading requirement in civil rights cases. See *Cepero-Rivera v. Fagundo*,414 F.3d 124, 128 (1st Cir. 2005); (*Swierkiewicz*); *Educadores*, at 61, 66-67. Hence, in adjudicating the present motion to dismiss under Rule 12(b)(6), the Court(s) should

PETITIONER HALL'S EXHIBIT G

have simply applied the notice pleading requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure. *Cepero-Rivera*, at 128; *Educadores*, at 66-67. And not under the heightened standard of "legally sufficient evidentiary basis," Fed.R.Civ.P. 50(a) which was used in *Goodman v. Bowdoin College*, 380 F.3d 33, 44 n.18 (1st Cir. 2004) where Goodman opposed a motion for judgment as a matter of law (not a motion to dismiss as in this case). Goodman is also partially based upon *Dartmouth Review v. Dartmouth College*,889 F.2d 13, 17 (1st Cir. 1989). But the *Dartmouth Review* standard, has since been overruled in Educadores 61, 66-67, [1] which rejected any heightened pleading standards in civil rights cases.

Under Rule 8(a)(2), a complaint need only set forth "a short and plain statement of the claim showing that the pleader is entitled to relief, to which he has. (citing *Educadores*, at 41, 47. The Court must give the defendant only a fair notice of what the plaintiff's claim is and the grounds upon which it rests. *Conley v. Gibson,* 355 U.S. 41, 47 (1957). Because it is not necessary to plead facts sufficient to establish a prima facie case at the pleading stage, both the District and Panel Appeal Judgments are errors in law. See *Swierkiewicz,*534 U.S. at 512, 122 S.Ct. 992. This

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[1] We join several of our sister circuits in holding that there are no heightened pleading standards for civil rights cases. Our duty is made manifest. See *Phelps v. Kapnolas,*308 F.3d 180, 186-87 n. 6 (2d Cir. 2002) (per curiam); *Galbraith v. County of Santa Clara,*307 F.3d 1119, 1121, 1123-26 (9th Cir. 2002); *Goad v. Mitchell,*297 F.3d 497, 502-03 (6th Cir. 2002); *Higgs v. Carver*,286 F.3d 437, 439 (7th Cir. 2002); *Currier v. Doran*,242 F.3d 905, 911-17 (10th Cir. 2001); see also 2 James Wm. Moore et al., Moore's Federal Practice § 9.10[2], at 9-66 (3d ed. 2004).

PETITIONER HALL'S EXHIBIT G

conclusion is bolstered by the fact that the Twombly Court, which first authoritatively articulated the plausibility standard, cited Swierkiewicz with approval. See *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)* (discussing how the new pleading standard does not "run[ ] counter to" Swierkiewicz). Several other courts of appeals have considered the question and concluded, as we do, that the Swierkiewicz Court's treatment of the prima facie case in the pleading context remains the beacon by which we must steer. See, *e.g., Keys v. Humana, Inc.*,684 F.3d 605, 609–10 (6th Cir.2012); *Khalik v. United Air Lines*, 671 F.3d 1188, 1191–92 (10th Cir.2012); *Coleman v. Md. Ct. of App.*,626 F.3d 187, 190 (4th Cir.2010); *Arista Records* LLC v. Doe 3,604 F.3d 110, 120–21 (2d Cir.2010); *al–Kidd v. Ashcroft*,580 F.3d 949, 974 (9th Cir.2009), rev'd on other grounds,—— U.S. ——, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011). See *Rodríguez-Reyes v. Molina-Rodríguez,* 711 F.3d 49, 54 (1st Cir. 2013). Plaintiff does not have to plead the full prima facie case in the complaint.

Such a requirement by this Panel violates the notice pleading standard under Federal Rule of Civil Procedure 8(a). See *Rodriguez-Reyes*, at 49, 53-54; *Educadores*, at 61, 66-67. *Drew v. State* 2015 DNH 36 (D.N.H. 2015).

The Panel Order conflicts with US Supreme Court, this Circuit, and many other circuits pertaining to allowing material facts cited in Halls § 1981 Claims.

"It is apodictic that evidence of past treatment toward others similarly situated can be used to demonstrate intent in a race discrimination suit." See *Village of Arlington*

PETITIONER HALL'S EXHIBIT G

Heights v. Metropolitan Housing Corp.,429 U.S. 252, 266, 97 S.Ct. 555, 564, 50 L.Ed.2d 450 (1977); *Albert v. Carovano*, 851 F.2d 573 (2d Cir. 1988) (en banc); *Oliver v. Digital Equipment Corp.*, 846 F.2d 103, 109 (1st Cir. 1988); *Johnson v. Legal Services of Arkansas, Inc.*, 813 F.2d 893, 896-97 (8th Cir. 1987). The *Dartmouth Review* "comparator" proof of intent to discriminate based on "evidence of past treatment toward others similarly situated" may be introduced if direct evidence of racial discrimination is not present, which in this circuit, applies to section 1981 claims. See *Pina v. Children's Place*, 740 F.3d 785, 796 (1st Cir. 2014). It is plausible that Twitter discriminated against Hall because he was white because Twitter's Workforce have made statements suggesting;

1. it was creating an algorithm to address and deal with **White** Supremacy users on their platform.

2. its new algorithm surfacing 50% of tweets.

3. it took action by limiting, locking or suspending (Whites) users' contracts for reasons such as abuse, hate and **white nationalism**. Compl. ¶ 24

4. "we've taken a lot of actions to remove accounts en masse." Compl. 55

5. its algorithms are bias. Compl. 55.

6. "the people who build Twitter are biased" Compl. 69

7. its CEO believes that permanently banning someone does not promote health. Compl. 56

PETITIONER HALL'S EXHIBIT G

8. it had not been forthright with the public. Compl. 72.

9. it shadow banned 600,000 people on their platform. Compl. 34

10. its policy manager of Twitter trust and safety stated "Safety "Yeah, that's something we're working on"...."we're trying to get the shitty people to not show up. It's a product thing we're working on." Compl. 66

11. it banned prominent whites. Compl. 25, and Exh. J.

12. it lied and intentionally lied to the public and to its shareholders about its past shadow banning. Compl. 28.

13. its former engineer from Twitter confirmed that it would be a good thing to ban Trump supporters or Conservatives. Compl. 29

14. its direct messaging engineer for Twitter confirmed that the majority of Twitter's algorithms target conservatives. Compl. 30

15. its former software engineer for Twitter confirms Twitter has shadow banned in the past. Compl. 31

16. its general council, lied when she stated that "Twitter does not shadow ban." Compl. 33

17. its former content review agent of Twitter admits to being anti-Trump and banning Trump supporters. Compl. 50.

PETITIONER HALL'S
EXHIBIT G

18. its product lead at Twitter stated; "our behavioral ranking doesn't make judgements based on political views or the substance of tweets" but on "behavior signals." Compl. 52.

20. its employee who works on machine learning believes that a proactive, algorithmic solution to white supremacy would also catch Republican politicians. Compl. 85

21. its software engineer states that "algorithms" are going to ban a way of talking. Compl. 49.

22. its former content review agent of Twitter states that "Twitter was probably about 90% anti-Trump, maybe 99% anti-Trump." Compl. 50

Twitter also;

1. interjected race when it banned "White" nationalists and Supremists. Compl. 47.

2. continues to make its services available to and has not removed offensive tweets, locked or banned the user contracts of Blue Checker's with over 50 million followers, to post derogatory and discriminatory speech against whites. Compl. 40

3. continues to make its services available to and has not banned the contracts or the benefits of a contract of similarly situated non-white users. Compl. 41

4. still makes its services available to and has not banned the contracts of similarly situated users outside Hall's protected class from posting violative tweets using similar words such as Hall used. Compl. 44, 45, Exhibits N,O.

PETITIONER HALL'S EXHIBIT G

5. hateful conduct policy, shows that the company has explicitly codified political views into its policies. Compl. 65

6. Public perception is that Twitter shows bias against Republicans, Conservatives and mainly whites. Compl. 26, Exhibit K.

Hall's Complaint provides facts which demonstrate patterns of conduct or decision-making by Twitter that have disproportionately impacted individuals of the White race. It also depicts the departures from normal procedures or policies that suggest racial considerations played a role, when it continuously allows Non-whites to post virtually the same words as Hall, and not suffer the same consequences as Hall, who is White. The Complaint also provides comparative evidence showing more favorable treatment of individuals outside the Hall's protected class and Twitter's Workforce pervasive bias or the perception of bias towards a predominantly white group. See Compl. Exhibits J-N.

These many witness statements and reports of and by Twitter's Workforce corroborate Hall's claims and provide an unbiased account of the events that occurred. The use of such witness statements are a powerful way to substantiate the factual allegations in Hall's Complaint, to which the reliability and admissibility of members of the Workforces' statements has never been challenged. These are not conclusionary or bald assertions but actual facts described by those within Twitter's

PETITIONER HALL'S EXHIBIT G

Workforce. The Panel errored in law in not considering these facts or errored in not giving the proper weight to these material facts.

Hall's Complaint gives Twitter more than fair notice of his claims and the grounds upon which they rest. The Complaint addresses the what (discrimination of contract and public place of accommodation), who (by Twitter and its Workforce), when (from 2018-2019), where (from Twitter's public forum), and why (because of his race and behaviors of his race) of his claims. The question of whether Twitter had an intent to discriminate against Hall because of his race is a highly fact-specific and more appropriately addressed at summary judgment or by the trier of fact. *Cabrero Pizarro v. Christian Private Academy*, 555 F. Supp. 2d 316, 320 (D.P.R. 2008).

The Panel Order conflicts with US Supreme Court, this Circuit, and many other circuits pertaining to performing state actor tests.

In support of its Order, the Panel cites *Manhattan Comm. Access Corp. v. Halleck*, 587 U.S. 802 (2019) (explaining requirements for a private entity to be deemed a state actor). (See Exhibit A). Manhattan only determined that "a private entity who provides a forum for speech is not transformed by that fact alone into a state actor." *Manhattan*, at 1921, 1930. Hall alleges so much more than that here.

The Panel errored in law in not applying the relevant material facts to the proper standards of law and in only performing one aspect of the public function test i.e. whether an online platform could be a state actor, and failed to consider other aspects of the public function tests such as Exclusivity of the function (Congresses duty in

PETITIONER HALL'S EXHIBIT G

protecting the sovereignty of free expression and speech); Nature and degree of government involvement (passing § 230 and legal protections for those who submit to it); Delegation of public function (protection of freedom of expression and speech); Traditional public function (sovereign duty of the government); Enabling legislation (§ 230); Public/private nature of the entity (Twitter's first defense was § 230); Public/private nature of the entity (Twitter reaffirms its nature when utilizing § 230 legal protections first); The Panel also erred in law in not preforming the Nexus test- which focuses on the relationship between the government and the private entity.(which was on full display when members of Congress threatened to repeal § 230) And the Symbiotic relationship test- which focuses more on the relationship between the government and the private entity and on the interdependence between the gov. and the private entity. (The hearings reaffirm that the government, without further legislation, cannot protect speech on these "public platforms". Having invoked § 230 legal defenses, Twitter concedes that it is not purely private).

When Hall sued Twitter immediately relied upon the legal protections afforded by § 230 as a defense.[2] By successfully invoking § 230 immunity, Twitter was essentially shielding themselves from government regulation or accountability for

[2] "As an initial and dispositive matter, Plaintiff's claims are barred by Section 230 of the Communications Decency Act ("CDA") ("Section 230")" Twitters motion to dismiss. Document 3-1, P. 2-3. "The CDA protects Twitter from being sued for precisely the conduct alleged here." Twitters motion to dismiss. Document 3-1, P. 7

PETITIONER HALL'S EXHIBIT G

their actions. This could be seen as completing a cycle where Congress has, through § 230, granted platforms broad discretion to regulate speech, and then the platforms use that government-granted immunity to avoid any real oversight or consequences for how they wield that power. In this way, the government's decision to limit its own regulatory authority over platforms through § 230 has the practical effect of empowering those private entities and Twitter to become de facto regulators of online speech, without meaningful checks or balances. This also creates a feedback loop where the government has effectively delegated its responsibility for protecting free expression to private companies, who can then leverage the government's own legal framework (§ 230) to entrench their control.

When Twitter relied on § 230 liability protections, [Doc. 3.1], they, 1) conceded that it is not a purely private, First Amendment-protected publisher, but rather more akin to a government actor; 2) undermined their own claims to have the same free speech rights as publishers; 3) acknowledged a status closer to that of a government-regulated entity, rather than a fully private actor. Twitter's new owner, Elon Musk believes that during the time of Hall's Complaint, that Twitter was a state actor.[3] The many statements by Congress members, both in chambers and in public, were leveraging targeted institutional power against Twitter to achieve a desired effect.

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[3] PLAINTIFF-APPELLANT'S RULE 10(e) MOTION TO CORRECT OR MODIFY THE RECORD filed November 20, 2023

PETITIONER HALL'S EXHIBIT G

These many statements were coercive in that the power to give or take away resides entirely in the hands of the "coercer" which in this case is Congress itself. In 2019, the same year Hall was banned, Congress held many hearings, concerning White Supremists Compl. 86, 87, 89, (with concerns for liberty protections).

It is entirely plausible that Congress, through § 230, relinquished its sovereign duty to protected the freedoms of expression and speech, to private entities in exchange for legal protection. Those platforms who seek its protections are acting as state actors, as they are acting on behalf of the government in protecting the freedom of expression and free speech.

And it is also entirely plausible that Congress coerced platforms like Twitter to remove White Supremists and White Nationalists from their sites, with "White" being the common denominator, to which Hall fits the description.

In dismissing Hall's claims for Recusal, Strike, and through 1st Cir. L. R. 27.0(c). Local Rule 27.0. through summary disposition, the Panel Order violates Hall's Constitutional rights to equal protections under the law.

The Panel had a duty to scrutinize whether the lower court correctly interpreted and applied the law, ensuring that Hall's Constitutional rights were protected and legal principles were followed, and they failed to uphold this duty when they failed to address the substance of Hall's due process and equal protection claims.

Hall continues to object to each substantive order of the District Court which were not addressed in the Panels Order, which include the Order to dismiss Hall' second

claim, (public accommodation), the District Court's 6/7/2023 order, denying Hall's [D. 141] motion for reconsideration, Hall's [D. 142] motion to vacate on the basis that the District Court failed to provide a constitutional and unbiased tribunal, and Hall's [D.143] motion to vacate, because of the fraud or misrepresentations performed by the Defendant, "Twitter" throughout the proceedings. Hall also appeals the District Courts' "11/23/2022 Order" denying Hall's [D. 104] motion to recuse "Judge Elliott"; the "[D. 124 Order]" denying Hall's [D. 100] strike motion and [D. 101] default motion; the [D. 124 Order] denying Hall's [D. 122] judicial notice motion, and [D. 123] hearing motion; the [D. 124 Order] granting Twitter's [D. 99] motion to renew; the [D. 139 Order] (Hall v. Twitter Inc. 20-cv-536-SE (D.N.H. May. 9, 2023)) and [D. 140] judgement, granting Twitter's [D. 3] motion to Dismiss, and dismissing Hall's [D. 1] "Complaint" and Exhibits, (collectively as "Complaint"), and on the grounds the District Court has patently misunderstood Hall's claims. . . or has made an error not of reasoning but apprehension, [1] errors that are plain and indisputable, which amounts to a complete disregard of the controlling law, [2] as the Order is against the law, against the weight of the credible evidence, or tantamount to a miscarriage of justice, and on grounds as stated throughout, resulting in manifest errors of law and fact. [3] And as described in Appellant's Opening Brief and his Reply (Docket 00118064784, filed on 10/19/2019).

PETITIONER HALL'S
EXHIBIT G

In deciding Hall's motions for judicial notice and a motion for a Rule 201 hearing, (Doc. 00118091413), without providing Hall with a hearing as requested by Hall under Rule 201, the Panel failed to apply the law and Rule 201 which violated Hall's Constitutional rights to a due and fair process.

Wherefore, because the Panel's Order required intent for a § 1981Claim, required a higher pleading standard at the motion to dismiss stage than allowed by Rule 8, failed to apply the many statements from Twitter's Workforce and Congress members, and failed in performing state actor tests, and for all the forgoing reasons, the Panel's Order should be reversed.

Respectfully,

/s/ Daniel E. Hall
Plaintiff, Appellant
Pro Se

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This document complies with Fed. R. App. P. Rules because this document contains no more than 3,900 words.

CERTIFICATE OF SERVICE

I certify that on June 11, 2024, I served the foregoing Motion upon the Defendant, through its attorney of record to Demetrio F. Aspiras, counsel of record via the Court's electronic filing system.

/s/ Daniel E. Hall

PETITIONER HALL'S EXHIBIT G

United States Court of Appeals for the First Circuit

Daniel E. Hall, a/k/a Sensa Verogna,	)	
Plaintiff, Appellant,	)	Case No. 23-1555
v.	)	
	)	APPELLANT'S
Twitter, Inc.,	)	RESPONSE
Defendant, Appellee	)	

PLAINTIFF-APPELLANT'S RESPONSE TO DEFENDANT-APPELLEE'S MOTION FOR AN ORDER IMPOSING FILING RESTRICTIONS ON DANIEL E. HALL OR TO PERMIT TWITTER TO LODGE ROLLING OBJECTIONS

Respectfully, Plaintiff-Appellant Daniel "Hall" files this "Response" in opposition to Defendant-Appellee "Twitter's" "Motion" (Dkt. 00118083204, filed on December 8, 2023) to impose filing restrictions on Hall and to label him an abuser or in the alternative, permit the Court to screen any future motions by Hall on behalf of Twitter, as Twitter states it will not be filing any future responses in the case. Hall, at this time, is not planning, nor does he intend to file any more post-submission, pre-order motions to the panel, but is also mindful that he cannot control what other people say in public, and believes he has every right to advocate on behalf of himself and his claims within the rules, and without being labeled an abuser. Twitter's Motion is a desperate attempt to deflect its own shortcomings and smear and stigmatize Hall's good name with the same spear. A review of the record establishes that Hall has not shown a likelihood of serious abuse warranting this court's interference.

I. General Response

Hall's motions to this Appeals Court seek to either judicially notice or allow by Rule, (1) material facts regarding Magistrate "Johnstone's" illegal pro hac vice policy because they are undisputed and indisputable in this case AND (2) Elon Musk's supervening public admissions as undisputed non-hearsay.

Throughout the case Twitter has omitted and attempted to bury the material facts that Johnstone's illegal policies existed and resulted in 68 proven favors from the District Court to Twitter. Now Twitter states in its Motion that these material facts Hall wishes to judicially notice, are "disputed and unsupported "facts" are either properly disputed or unsubstantiated," which is untrue because Twitter has continuously, throughout the case, failed to dispute material facts submitted by Hall.

In the process of omitting throughout, that Johnstone's policy even existed other than in the mind of Hall, Twitter failed to dispute any of the material facts submitted by Hall either in his motions, declarations, briefs to the District Court or this Appeals Court regarding Magistrate Johnstone's illegal pro hac vice policies which favored Twitter. Twitter cannot now claim that these material facts Hall wishes to judicial notice are now in dispute, because Twitter never disputed these material facts to begin with.

Regarding Musk's public admissions which have supervened since the disputed decision was issued, Twitter fails to demonstrate clear or obvious hearsay error and only mentions Musk's public admissions as **hearsay** only in passing and without providing any evidence to support it.

II. Standard

Hall agrees that this Appeals Court has the discretion to manage and control its docket in some form or fashion, and to enter appropriate orders governing the conduct of counsel and parties, *Johnson v. Morgenthau,* 160 F.3d 897, 899 (2d Cir. 1998), but would argue that this "discretion" and the degree to which it is applied, is not unlimited and is bound by the relevant provisions of the Appellate rules, Federal Rules of Civil Procedure and relevant case law dealing with similar procedural matters. See *Gulf Oil Co. v. Bernard,* 452 U.S. 89, 100, 101 S.Ct. 2193, 2200, 68 L.Ed.2d 693 (1981); See, *Tiller v. Baghdady*, 244 F.3d 9, 14 (1st Cir. 2001), ("a trial court's discretion is not unlimited.") Moreover, all writs must be "agreeable to the usages and principles of law." 28 U.S.C. § 1651.

The Court also must be alert of suppressing a particular point of view. *Forsyth County,* 505 U.S. at 130, 112 S.Ct. 2395 (internal quotation marks omitted); See also *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975). Since limiting communications causes its own problems, an exercise of discretion limiting communication must be supported by a " clear record and specific findings that reflect a weighing of the need for a limitation and the potential for interference with the rights of the parties. Only such a determination can ensure that the court is furthering, rather than hindering, the policies embodied in the Rules, especially Rule 10, Procedural Rules of evidence 201, 801, and 804. In addition, such a weighing-identifying the potential abuses being addressed-should result in a carefully drawn order that limits speech as little as possible,

consistent with the rights of the parties under the circumstances. *Gulf Oil Co.* at 101-02, 101 S.Ct. at 2200-01. Finally, any order imposing a serious restraint on expression must be " justified by a likelihood of **serious abuses.**" The " mere possibility of abuses" is insufficient to support a ban on communications. Id. at 104, 101 S.Ct. at 2202. See also, *Payne v. the Goodyear Tire Rubber Co.*, 207 F.R.D. 16, 18-19 (D. Mass. 2002).

III. Hall's Motions/Briefs Regarding Johnstone's Illegal Policy

In addition to his opening and reply briefs, Hall has filed six motions, and 1 letter to the clerk in this appeal. 3 motions are pre-submission of the briefs regarding Magistrate Johnstone's illegal pro hac vice policy and 3 post-submission motions and 1 letter, regarding Elon Musk's public admissions regarding Twitter's discriminatory acts and state actor status.

A. Hall's Motions in this Appeal

1. In Hall's (Dkt. 00118041810) "Motion for Judicial Notice," and his (Dkt. 00118075301) "Reply to Twitter's Response, Hall asks the Court to take judicial notice of documents which set forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case under Rule 201[b] as these adjudicative facts are "generally known" or are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and of the truth of the substance of those filings, and of the undisputed material facts contained within these documents as these material facts are not subject to reasonable dispute as Twitter has not disputed these facts previously, to **which Twitter now opposes.** Dkt. 00118045337

2. In Hall's (Dkt. 00118045431) "Motion to Correct the Record," Hall seeks incorporate filings from the district court case into his appellate case, which **Twitter did not oppose.**

B. Hall's Motions in the District Court

1. Hall's D. 74 motion to set aside orders under Rule 60 sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. **Twitter Made No Response** in rebuttal to these material facts.

2. Hall's D. 77 motion to disqualify Judge McAuliffe sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized by McAuliffe, and a D. 77-3 declaration, in support of these material facts. **Twitter Made No Response** in rebuttal to these material facts.

3. Hall's D. 91 motion to disqualify Judge McAuliffe sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized by McAuliffe, and a D. 91-2 declaration, in support of these material facts. Twitter objected only generally and **Made No Response** in rebuttal to Johnstone's illegal pro hac vice policy. D. 93

4. Hall's D. 100 motion to strike Twitter's D. 3 motion to dismiss sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case, and a D. 100-1 verified MOL, in support of these material facts. Twitter's only rebuttal was "Nor is there any basis for Plaintiff's **speculation** that Johnstone adopted "unwritten, illegal pro hac vice policies" "in granting Ms. Schwartz's pro hac vice application." D. 106.

5. Hall's D. 103 objection to Twitter's D. 99 motion to renew D. 3 sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. **Twitter Made No Response** in rebuttal to these material facts.

PETITIONER'S EXHIBIT H

6. Hall's D. 104 motion for recusal of Judge Elliot sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized by Elliot, and a D. 104-2, P. 3, declaration in support of these material facts. Twitter in describing Hall's complaint to the Merit Selection Panel, was "about Magistrate Judge Johnstone's **allegedly** "illegal" pro hac vice policies." D. 109,

7. Hall's D. 105 motion to move district forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. Twitter objected stating Johnstone's "**allegedly** "illegal" pro hac vice policies." D. 110.

8. Hall's D. 122 motion for judicial notice of Johnstone's illegal policy sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. **Twitter Made No Response** in rebuttal to these material facts. This motion *was "granted to the extent that it requests that the court take judicial notice of the existence of certain court records filed in other cases and in this case."*

9. Hall's D. 141 Rule 59 Motion for Reconsideration sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. **Twitter Made No Response** in rebuttal to these material facts.

10. Hall's D. 142 Rule 60 motion to vacate sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. **Twitter Made No Response** in rebuttal to these material facts.

11. Hall's D. 143 motion for Reconsideration sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. **Twitter Made No Response** in rebuttal to these material facts.

C. Hall's Interlocutory Appeals

1. Hall's Mandamus Appeal No. 22-1987, sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. (Dkt. 00117957469, P. 13-16). Hall filed an En banc petition filed on January 13, 2023 (Dkt. 00117964034) and a Supreme Court filing. (Docket 22-7601). All of which **Twitter Made No Response** in rebuttal to these material facts.

2. In Hall's Interlocutory Appeals No. 20-1933, 20-2005, 20-2091, 21-1317, sets forth material facts describing Johnstone's illegal pro hac vice policy and how it was utilized in his case. (Dkt. 00117761529, P. 53-54, 57-60. In Twitter's Answering Brief, (Dkt. 00117773181) **Twitter mentions only "fanciful speculation"** and **"fanciful allegations"** when rebutting Hall's allegations of Johnstone's Illegal Policy.

IV. Hall's Motions/Briefs Regarding Twitter as a State Actor

A. Hall's Motions in the District Court

1. Relevant here, Hall's [D. 6] motion first introduces the statements of (1) US House Speaker Nancy Pelosi on Apr 11, 2019, [D. 6.1, MOL, P. 5, para 12]; (2) US Senator Ted Cruz November 1, 2019, [D. 6.1, MOL, P. 5, para 13]; and (3) US Senator Josh Hawley on June 19, 2019, [D. 6.1, MOL, P. 5, para 14]. All of which **Twitter Made No Response** in rebuttal to these material public statements.

B. Hall's Motions in This Appeal

1. In Hall's (Dkt. 00118045437) "Motion for Judicial Notice II," Hall asks the Court to take judicial notice of public statements of Jack Dorsey, Speaker Pelosi, Senator Josh Hawley and Senator Ted Cruz under Rule 201[b] as these adjudicative facts or statements are relevant, undisputed, "generally known" or are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and of the truth of the substance of these public statements, as they are undisputed material facts not subject to reasonable dispute as Twitter has not

disputed these facts previously, **which Twitter now opposes.** Dkt. 00118048922

2. In Hall's (Dkt. 00118066991) Letter to Supplemental Authorities, Hall asks the Court to supplement the Missouri et al. v. Biden et al., to which **Twitter opposes** by way of Rule 28(j). Dkt. 00118069023

3. In Hall's (Dkt. 00118070078) "Motion for Judicial Notice III," Hall asked the Court to take judicial notice of Elon Musk's supervening public statements under Rule 201[b], or possibly under Rule 10(e), as these adjudicative facts or statements are relevant, "generally known" or are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Twitter opposes, as the appeal is under submission, and that the record should be closed as no extraordinary circumstances exist. (Dkt. 00118073573)

4. In Hall's (Dkt. 00118075971). "Rule 10(e) Motion to Correct or Modify the Record," Hall asks the Court to either expand the record under Rule10(e) or to expand by taking judicial notice of Elon Musk's supervening public admissions under Rule 201[b] as these judicial admissions are relevant, "generally known" or are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and of the truth of the substance of these public statements under Rules 801 and 804, as they are not hearsay but admissions.

   Twitter opposes arguing Rule 10 doesn't allow for Musk's statements, that the appeal is under submission, and that the record should be closed as no extraordinary circumstances exist. **Twitter does not dispute** the truth of Musk's admissions as being accurate and capable of immediate determination and only offers the conclusional statement in its Response that Musk's admissions are hearsay without providing any evidence to support it. (Dkt 00118079904).

Hall has Replied, arguing that Rule 10 does allow for modification, and that even if extraordinary circumstances were a requirement, they have been met here, and that the Court also has equity powers in the interest of justice. (Dkt. 00118082579).

V. Twitter's Claims of Disputable Facts

When a party fails to dispute material facts in a case, it can have significant consequences for their position and the outcome of the case. If a party fails to dispute material facts, those facts may be deemed accepted or admitted by the court. The court may consider the undisputed facts as true and use them as a basis for its decision-making process. The burden of proof rests with the party making the claim or asserting an issue. If the opposing party fails to dispute material facts, it may relieve the burden of proof for the asserting party. This means that the asserting party may no longer need to present evidence or arguments to establish those facts. Failing to dispute material facts can limit the scope of arguments that a party can make. If a fact is not disputed, the party may not be able to later argue against it or introduce contradictory evidence.

A. Johnstone's Illegal Policy

A review of the record establishes that "what happened" *United States v. Alcantar*, 83 F.3d 185, 191 (7th Cir. 1996), was, that Twitter failed to dispute any of the material facts submitted by Hall either in his motions, declarations, briefs to the District Court or in this Appeals Court regarding Magistrate Johnstone's illegal pro hac vice policies which favored Twitter. Twitter cannot now claim that these material facts Hall wishes to judicial notice are now in dispute or disputed or unsupported, because Twitter never disputed these material facts to begin with.

Perfunctory and undeveloped arguments are waived. *United States v. Berkowitz*, 927 F.2d 1376, 1383 (7th Cir. 1991). For example, a two-sentence "argument" that cites no legal authority is not a legal argument. It is perfunctory, and the Court will not consider it. See *Martinez v. Colvin,* 12 CV 50016, 2014 U.S. Dist. LEXIS 41754, at *26–27 (N.D. Ill. Mar. 28, 2014) ("[T]he Court notes that parties should not view judges as bloodhounds who are merely given a whiff of an argument and then expected to search the record high and low in an effort to track down evidence to locate and capture a party's argument."). Additionally, when an argument effectively requires analogous reasoning (think qualified immunity) but the brief contains no analogous reasoning, the Court may find waiver. And when responding to an argument, mere contradiction rather than a developed argument results in waiver. Id. at *27 ("[M]erely contradicting an opposing party's developed argument with a single, unsupported sentence is not an argument.").

B. Twitter's State Actor Admissions

A review of the District Court record establishes that "what happened" was, Twitter failed to dispute the material facts of the statements made by Dorsey and several government actors in the District Court and contained in Judicial Notice II, and cannot now dispute these material facts for the truth of the matter.

Regarding Musk's public and relevant admissions which have supervened since the disputed decision was issued, Twitter fails to demonstrate clear or obvious hearsay error and only mentions Musk's public admissions as **hearsay** only in passing and without providing any evidence to support it.

VI. Twitter's Claims of Alleged Abuse by Hall

A. Alleged Abuse

To support gagging Hall, Twitter, in sum, states that Hall filed 45 motions, and 5 interlocutory appeals, within 3.25 years. (See attached Chart)

> In the first 3 months of the case, Hall filed **16** motions, 5 of which were motions to reconsider or to object.
>
> Of the 29 motions after the District Court's [D. 54] order, 12 were filed in between Order 54 and Twitter's reintroduction of its Dkt. 3 Motion to Dismiss after interlocutory appeals.
>
> Of those **12**, 7 were motions to reconsider, object, clarify or apply for EFC, and out of the remaining **5** motions, Twitter replied or objected to only *2*.
>
> Of the **16** remaining motions after Twitter reintroduced its motion to dismiss, 10 were motions to reply, reconsider or vacate, and out of the remaining **6** motions, Twitter replied to *5* of those motions.
>
> In sum, Twitter's complaint is that Hall filed 29 motions after [D. 54], 11 which were actual motions to which Twitter answered to only 7 of those motions.

And even though [D. 54] order notes that Hall's declaratory relief "motions are not cognizable under the Federal Rules of Civil Procedure"; And "Such declaratory relief is neither proper nor necessary"; And "Those "facts" will be resolved in due course, as necessary to resolve the parties' dispute." And that Hall has "demonstrated propensity to file numerous meritless and/or unnecessary motions", it still does not rise to level of abuse required to sanction Hall. Nowhere in order [D. 54] does the Court mention or does Twitter in its Motion to Stay, [D. 24, 24-1](or in any

other), support any "abusive", "frivolous" or "vexatious," "beyond mere litigiousness" and "involv[es] groundless encroachment" behaviors to describe Hall's motions or actions.

B. Rolling Objections

Let's say for some insane reason, the Court gags Hall from speaking or making any further motions without first having to seek permission from the Court. First, if Hall made an "emergency motion" under any proposed gag order, the Court would have to predetermine if there are grounds for the motion, and if there is, they, then are to inform Twitter of the value of the motion and then issue a separate order requiring that Twitter respond to the Motion, and then ultimately decide the issue presented. So, rather than just allow motions and objections by the parties, it now must, with only half the arguments before it, decide if it is meritless, and if it is, require Twitter to respond, and then look at the issue all over again, now with the other half of the arguments presented. This makes no sense what so ever and requires the Court to do extra subservient work on behalf of Twitter and its attorneys to act as Twitter's first line of defense and is exactly what Hall alleges happened in the bias District Court below. What Twitter suggests in its Motion is both frivolous, meritless, and should not be allowed.

IV. CONCLUSION

A review of the District Court record establishes that Hall's motions to any Court in this case has been grounded or supported in either a Rule, Law, Doctrine or other theory of law and certainly have not ever been brought in bad faith or in the face of an adverse judgment. In Hall's submissions to this Appeals Court, Hall believes that material facts

regarding Johnstone's illegal pro hac vice policies, are undisputed by Twitter and therefore can be judicially noticed. Hall sees no rule which would invalidate a post-submission pre-order motion from the parties. Twitter blows up any of its unsupported post-submission arguments in filing its own Motion, "Post-Submission".

Twitter, while attempting to bury the truth of material facts of Johnstone's illegal pro hac vice policy, and the special favors it was receiving from the District Court, leaves Twitter defenseless against these material facts as true, because the case record demonstrates that Twitter never substantively disputed the facts of Hall's allegations contained within his motions, declarations and judicial notice.

A review of the District Court record establishes that Twitter or the District Court in this case has never before alleged Hall's conduct to be "beyond mere litigiousness" or "involv[ing] groundless encroachment, frivolous or vexatious, until now. Other than labeling Hall's motions as abusive and stating the number of submissions, Twitter fails to provide any facts as to why any of Hall's motions to the Court(s) are in any way abusive to either itself or the Court. Twitter has failed to sufficiently prove more than a mere possibility of abuse or an abusive history by Hall and that there is a likelihood of serious abuse by Hall, which would warrant this court's interference or to issue an injunction in support of a ban on Hall's communications.

For all these reasons, Hall requests the Court to deny Twitter's Motion which would restrict Hall from filing additional submissions or, in the alternative, permit Twitter to lodge a rolling objection to any future

submissions Hall may file until the Court issues its decision on the merits.

Respectfully,

/s/ Daniel E. Hall
Plaintiff, Appellant
Pro Se

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This document complies with Fed. R. App. P. 27(d)(2)(A) because this document contains no more than 5,200 words.

CERTIFICATE OF SERVICE

I certify that on December 12, 2023, I served the foregoing Motion upon the Defendant, through its attorney of record to Demetrio F. Aspiras, counsel of record via the Court's electronic filing system.

/s/ Daniel E. Hall

PETITIONER'S EXHIBIT H

THE UNITED STATES SUPREME COURT

HALL V. TWITTER
Case No. 1:20-cv-00536-SE
Case No. 23-1555

DECLARATION IN SUPPORT OF PETITONER FOR MANDAMUS

Petitioner, Daniel E. Hall, hereby declares;

1. I am a New Hampshire resident over eighteen and have personal knowledge of facts below.

2. I was the plaintiff in case no. Case No. 1:20-cv-00536-SE before the First District Court. (formerly 1:20-cv-00536-SM).

3. I was the appellant in case no. 23-1555 before the First Circuit Court of Appeals.

4. I have attached further evidence of the District Courts' and presiding judges involvement in the fraud upon the court, which definitively shows that both Magistrate JOHNSTONE and Judge MCAULIFFE allowed TWITTER attorney, Ms. SCHWARTZ to practice law before the court when she was not a bar member.

5. Attached Exhibits 1 and 2 are the signature pages of SCHWARTZ'S Motion to Dismiss and Memorandum of law submitted to the Court, *prior* to her filing her motion for pro hac vice and prior to her being admitted to the bar of the court which include the notation "Motion for pro hac vice admission to be filed." Attached Exhibits 1-2. See screenshot below.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

ORR & RENO, PROFESSIONAL ASSOCIATION

Dated: June 1, 2020 By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
45 S. Main Street, P.O. Box 3550
Concord, NH 03302
(603) 223-9100
jeck@orr-reno.com

Julie E. Schwartz, Esq. (*motion for pro hac vice admission to be filed*)
Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
(650) 838-4490
JSchwartz@perkinscoie.com

6. Attached Exhibits 3-25 are the signature pages of SCHWARTZ'S various motions submitted to the Court *after* she filed a motion for pro hac vice and *prior* to her being admitted to the bar of the court which include the notation "motion for pro hac vice admission pending". Attached Exhibits 3-25. See screenshot below.

Dated: June 12, 2020 By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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Julie E. Schwartz, Esq. (*motion for pro hac vice admission pending*)
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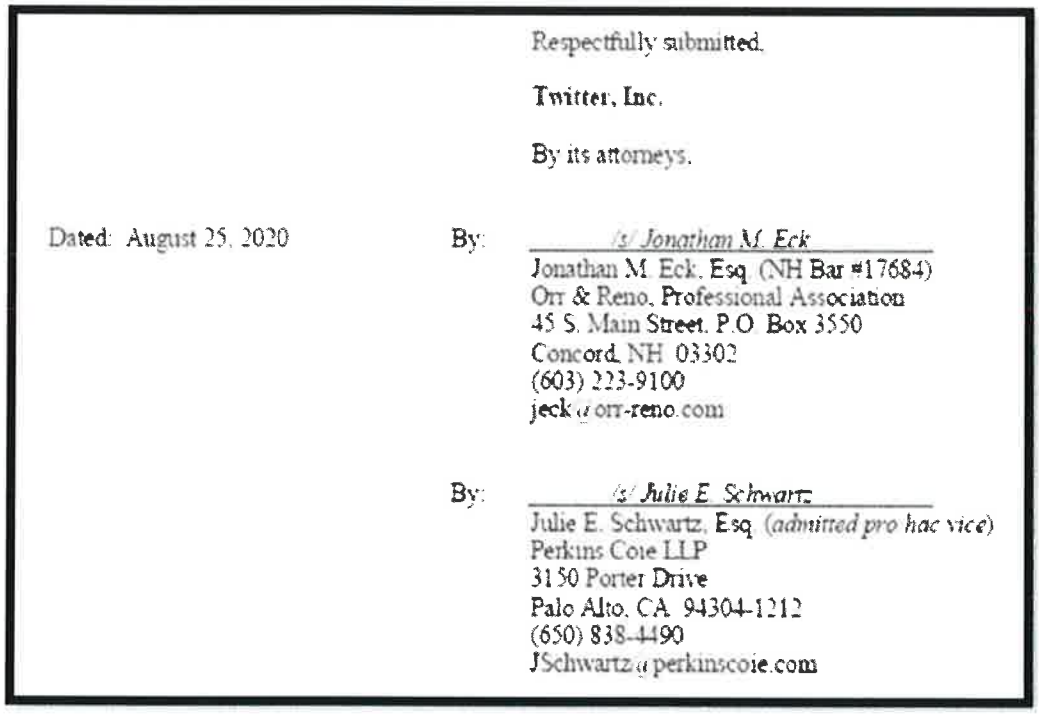
(650) 838-4490
JSchwartz@perkinscoie.com

7. Attached Exhibit 26 is the signature page of SCHWARTZ'S first appearance and submittal to the District Court, after she was admitted to the bar of the court which include her signature and the notation "admitted pro hac vice". See Local Rule L.R. 83.6(a). See screenshot below.



Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: August 25, 2020

By: /s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)
Orr & Reno, Professional Association
45 S. Main Street, P.O. Box 3550
Concord, NH 03302
(603) 223-9100
jeck@orr-reno.com

By: /s/ Julie E. Schwartz
Julie E. Schwartz, Esq. (*admitted pro hac vice*)
Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
(650) 838-4490
JSchwartz@perkinscoie.com

8. Exhibits 1-25 conclusively demonstrate that SCHWARTZ, in total, submitted 25 filings with the court while not a member of the bar of the Court and that these filings were submitted by attorneys who represented TWITTER and with the substance of these filings being "practices of law."

9. Exhibit 26 captures the essence of fraud upon HALL.

iii.

10. When TWITTER first filed its motion to dismiss, I did not know of JOHNSTONE'S illegal pro hac vice policies which allowed TWITTER attorneys to practice law in the court while not members of the bar. I only knew that she was an attorney from California and was not a member of the Courts bar because she had not yet filed for pro hac vice.

11. So while I was focused on the illegality of the motion to dismiss and MOL, TWITTER through its attorneys, in an effort to conceal the fraud, the bias of the Court and to give the appearance that SCHWARTZ'S initial motion was legal, continued to file motions in the same manner of using a [notation/no signature] as they did with the motion to dismiss, and JOHNSTONE and MCAULIFFE continued to allow the illegal policy [notations/no signature] to continue so that it would appear that nothing was out of the ordinary and to give the appearance that SCHWARTZ'S initial motion to dismiss and MOL were within the rules of the Court. The end of the initial fraud was that after she was admitted to the bar of the Court, SCHWARTZ would now sign the submittals.

12. What I didn't know then, or did not understand or realize until last week, is that a notation on a submittal to the Court is not a valid substitute for being admitted to the bar.

13. So while I could see the blatant fraud upon the Court being perpetrated through TWITTER'S motion to dismiss, I was blind to the continuing fraud of

allowing SCHWARTZ to practice before the court before she was admitted to the bar so that JOHNSTONE and TWITTER could conceal JOHNSTONE'S illegal policies, the fraud being perpetrated upon the Court and the inherent bias of the Court in favor of TWITTER.

14. I contend that any submittals done before SCHWARTZ was admitted to practice in the First Federal District Court, be disallowed under Local Rules and N.H State Law, and be stricken from the record as SCHWARTZ was practicing law unauthorized when she commenced legal work on the case before being admitted to the bar through pro hac vice procedures.

15. I contend that this conclusive evidence proves without a shadow of a doubt that TWITTER, JOHNTONE and MCAULIFFE had knowledge of JOHNSTONE'S illegal policy and the fraud upon the Court but continued this policy to conceal and to cover up the initial fraud of allowing TWITTER attorney MRAZIK to practice unauthorized 66 times in other cases before the Court and prior to my complaint being filed which biased the Court in favor of TWITTER.

"I declare, certify, verify and state declare pursuant to U.S. 28 U.S Code 1746 and under penalty of perjury that the foregoing is true and correct.

Dated: September 15, 2024

Daniel E. Hall
393 Merrimack Street
Manchester, N.H. 03103

No.

In the Supreme Court of the United States

DANIEL E. HALL, PETITIONER

v.

TWITTER, INC., RESPONDENT

CERTIFICATE OF SERVICE

As required by Rules 29 and 39, service of a single copy of the foregoing Motion for Leave to Proceed in Forma Pauperis with attached Declaration, and a Petition for Writ of Mandamus with attached Appendix, was made upon the Defendant of record via U.S. Mail to Appellee's attorney of record, Demetrio F. Aspiras, III OF Drummond Woodsum, 670 N Commercial St, Ste 207, Manchester, NH 03101-1845, and a copy Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001, and mailed first class, and that the service of 10 copies and the original of the foregoing was mailed on this day to the United States Supreme Court Clerk via United States Postal Service by first-class mail.

Dated, September 15, 2024

Daniel E. Hall
Petitioner- Appellant- Plaintiff
Pro Se

No.

In the Supreme Court of the United States

DANIEL E. HALL, PETITIONER

v.

TWITTER, INC., RESPONDENT

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

ATTACHED APPENDIX III- DECLARATION IN SUPPORT

Daniel E. Hall
Petitioner, Pro Se
Aka. Sensa Verogna
393 Merrimack Street
Manchester, N.H. 03103
SensaVerogna@gmail.com

October 21, 2024

THE UNITED STATES SUPREME COURT

HALL V. TWITTER

DECLARATION IN SUPPORT OF PETITONER FOR MANDAMUS

Petitioner, Daniel E. Hall, hereby declares;

1. I am a New Hampshire resident over eighteen and have personal knowledge of facts below.

2. At the Supreme Court Clerk's request, and to avoid including any opinions, legal arguments, or conclusions in the declaration, I have revised my September 15, 2024 Declaration, and state as follows;

3. I was the Plaintiff in Hall v Twitter, Inc., case no. 20-cv-536-SM (D.N.H. 08/27/2020), and the Appellant in an Interlocutory appeal, case no. 20-1933 (consolidated), which was denied by Circuit Judges Lynch, Thompson, Kayatta, (08/08//2022). I requested a Rehearing which was denied by Circuit Judges Lynch, Thompson, Kayatta, Barron, Gelpi, on (09/09/2022).

4. I was the Plaintiff in Hall v Twitter, Inc., case no. 20-cv-536-SE (D.N.H. 11/23/2023), and the Petitioner in a Petition for Mandamus, case no. 22-1987, which was denied by Circuit Judges Lynch, Kayatta, Montecalvo, on (12/30/2022). I requested a Rehearing which was denied by Circuit Judges Lynch, Kayatta, Montecalvo, Barron, Gelpi, on (01/25/2023). I was the Petitioner in a Petition for

Mandamus to the U.S. Supreme Court, case no. 22-7601, which was denied on (10/02/2023).

5. I was the Plaintiff in Hall v Twitter, Inc., case no. 20-cv-536-SE, (D.N.H. 05/09/2023), and the Appellant in an appeal, case no. 23-1555, which was affirmed by Circuit Judges Kayatta, Gelpi, Montecalvo, (05/28/2024). I requested a Rehearing which was denied by Circuit Judges Kayatta, Gelpi, Montecalvo, Barron, Rikelman, on (07/10/2024).

6. I was the Plaintiff in Verogna v. Johnstone, et. al, case no. 1:21-cv-01047-LM (D.N.H. 1/27/2022), which was dismissed by District Court Head Judge McCafferty, and I was the Appellant in case no. 22-1364, which was affirmed by Circuit Court Judges Barron, Lynch, Howard on (11/14/2022). I requested a Rehearing which was denied by Circuit Court Judges Barron, Lynch, Howard, Kayatta, Gelpi, Montecalvo, on (01/17/2023). I requested a Writ of Certiorari from the U.S. Supreme Court, case no. 22-7607, which was denied on (10/02/2023).

7. Attached Exhibits 1 and 2 are the signature pages of Twitter's Attorney, Ms. Schwartz's, Motion to Dismiss and Memorandum of law submitted to the District Court, *prior* to her filing her motion for pro hac vice and prior to her being admitted to the bar of the court which include the notation "Motion for pro hac vice admission to be filed." Attached Exhibits 1-2. See screenshot below.

Respectfully submitted.

Twitter, Inc.

By its attorneys.

ORR & RENO, PROFESSIONAL ASSOCIATION

Dated: June 1, 2020 By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
45 S. Main Street, P.O. Box 3550
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Julie E. Schwartz, Esq. (*motion for pro hac vice admission to be filed*)
Perkins Coie LLP
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(650) 838-4490
JSchwartz@perkinscoie.com

8. Attached Exhibits 3-25 are the signature pages of Attorney Schwartz's various motions, objections, memorandums of law, replies, motions to strike and to extend time, etc. which were submitted to the District Court *after* she filed a motion for pro hac vice and *prior* to her being admitted to the bar of the court which include the notation "motion for pro hac vice admission pending". See Attached Exhibits 3-25. See screenshot below of Exhibit 4 as an example.

Respectfully submitted.

Twitter, Inc.

By its attorneys.

Dated: June 12, 2020 By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
ORR & RENO, PROFESSIONAL ASSOCIATION
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Julie E. Schwartz, Esq. (*motion for pro hac vice admission pending*)
Perkins Coie LLP
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(650) 838-4490
JSchwartz@perkinscoie.com

9. On 08/19/2020, Attorney Schwartz was granted a motion to appear pro hac vice on behalf of Twitter, by order of Magistrate Johnstone.

10. Attached Exhibit 26 is the signature page of Attorney Schwartz's first appearance and submittal to the District Court, after she was admitted to the bar of the court which include her signature and the notation "admitted pro hac vice". See screenshot below.

Respectfully submitted.

Twitter, Inc.

By its attorneys.

Dated: August 25, 2020

By: /s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)
Orr & Reno, Professional Association
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jeck@orr-reno.com

By: /s/ Julie E. Schwartz
Julie E. Schwartz, Esq. (*admitted pro hac vice*)
Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
(650) 838-4490
JSchwartz@perkinscoie.com

11. Attorney Schwartz submitted documents to the District Court (Exhibits 1-25) before she was admitted to the bar of the District Court.

13. When Twitter first filed its motion to dismiss, I was aware that Ms. Schwartz was an attorney from California and had not yet filed for pro hac vice.

14. Attorney Schwartz continued to file motions in the same manner, using a notation indicating her pending pro hac vice status, until she was admitted to the bar of the Court.

15. I did not realize until September 2024 that a notation on a submittal to the Court is not a valid substitute for being admitted to the bar.

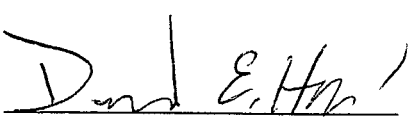
16. Attorney Schwartz submitted documents to the court before she was admitted to practice in the First Federal District Court through pro hac vice procedures.

17. These submissions occurred before Attorney Schwartz was officially admitted to the bar of the court.

18. I noticed that these submissions occurred before Ms. Schwartz was officially admitted to the bar of the court. Additionally, I found records (which were judicially noticed in the District Court) indicating that another attorney, Mr. Mrazik, while representing Twitter, had submitted documents in 3 other cases, and submitted 66 filings on behalf of Twitter before being admitted to the bar.

"I declare, certify, verify and state declare pursuant to U.S. 28 U.S Code 1746 and under penalty of perjury that the foregoing is true and correct.

Dated: October 21, 2024



Daniel E. Hall
393 Merrimack Street
Manchester, N.H. 03103

DECLARATION- TABLE OF CONTENTS

WHEREFORE, the Defendant, Twitter, Inc., respectfully requests that this Honorable Court:

A. Grant Twitter's Motion to Dismiss Complaint and dismiss, with prejudice, Plaintiff's claims and this action;

B. In the alternative, transfer any surviving claims against Twitter to the Northern District of California; and

C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

ORR & RENO, PROFESSIONAL ASSOCIATION

Dated: June 1, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
45 S. Main Street, P.O. Box 3550
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Julie E. Schwartz, Esq. (*motion for pro hac vice admission to be filed)*
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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: June 1, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

iii.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

ORR & RENO, PROFESSIONAL ASSOCIATION

Dated: June 1, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
45 S. Main Street, P.O. Box 3550
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Julie E. Schwartz, Esq. (*motion for pro hac vice admission to be filed)*
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Dated: June 1, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 12, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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Dated: June 12, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)) (emphasis in original); Twitter's Mot. to Dismiss Memo. of Law [Doc. 3-1], at 19–21. Accordingly, Plaintiff's Motions should be denied.

IV. CONCLUSION

The Court should deny Plaintiff's Motions because they are barred by the Federal Rules and because, even if properly raised, declaratory relief would be inappropriate in this case due to the substantive claims asserted in the Complaint. Though the Court need not reach the merits of the legal questions posed in the Motions, Twitter is not a place of public accommodation or a state actor. Plaintiff's Motions fail as a matter of law and must be denied.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 12, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 12, 2020

By: */s/ Jonathan M. Eck*

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Dated: June 12, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)) (emphasis in original); Twitter's Mot. to Dismiss Memo. of Law [Doc. 3-1], at 19–21. Accordingly, Plaintiff's Motions should be denied.

IV. CONCLUSION

The Court should deny Plaintiff's Motions because they are barred by the Federal Rules and because, even if properly raised, declaratory relief would be inappropriate in this case due to the substantive claims asserted in the Complaint. Though the Court need not reach the merits of the legal questions posed in the Motions, Twitter is not a place of public accommodation or a state actor. Plaintiff's Motions fail as a matter of law and must be denied.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 12, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 19, 2020

By: */s/ Jonathan M. Eck*

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CERTIFICATE OF SERVICE

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Dated: June 19, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 19, 2020

By: */s/ Jonathan M. Eck*

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Dated: June 19, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 19, 2020

By: */s/ Jonathan M. Eck*

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Dated: June 19, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

iii.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 19, 2020

By: */s/ Jonathan M. Eck*

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Dated: June 19, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

businesses that do not become 'state actors' based solely on the provision of their social media networks to the public."), *aff'd*, No. 19-7030 (D.C. Cir. May 27, 2020).

D. If This Case is Not Dismissed, It Should Be Transferred

Plaintiff's only responses to Twitter's alternative motion to transfer are that: (1) indemnification provisions "are looked upon with disfavor in New Hampshire;" Obj., ¶ 46, and (2) "Defendant has waived its personal jurisdiction defense." Obj., ¶ 52. But Twitter has neither invoked any contractual indemnity nor contested this Court's exercise of personal jurisdiction over it. As a result, any surviving claim ought to be transferred under 28 U.S.C. § 1404(a).

III. CONCLUSION

The Court should dismiss this lawsuit with prejudice because each of Plaintiff's claims are barred by both the CDA and Twitter's own First Amendment rights. Beyond those immunities, Plaintiff's lawsuit also fails because his Complaint lacks allegations sufficient to state claims upon which relief can be granted.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 22, 2020

By: */s/ Jonathan M. Eck*

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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: June 22, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Twitter have the opportunity to respond to the unfounded accusation that Attorney Schwartz has engaged in the unauthorized practice of law.

4. Twitter, through its undersigned counsel, sought Plaintiff's concurrence to the relief sought through this motion, but Plaintiff did not grant such concurrence.

5. No memorandum of law is necessary because the relief requested is within the discretion of the Court.

WHEREFORE, the Defendant, Twitter, Inc., respectfully requests that this Honorable Court:

A. Enter an order granting Twitter leave to file its reply memorandum, in the form attached hereto as Exhibit A; and

B. Grant such other and further relief as the Court deems just.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 22, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 22, 2020

By: */s/ Jonathan M. Eck*

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CERTIFICATE OF SERVICE

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Dated: June 22, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 24, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: June 24, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 25, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: June 25, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

motions to which Twitter is obligated to respond in short order. *See, e.g.,* Plaintiff's Motion to Declare Twitter's Computer Network a Public Forum [Doc. 16.] And Plaintiff's practices thus far in the litigation suggest that more motions may follow.

V. CONCLUSION

For the foregoing reasons, the Court should stay further proceedings in this litigation by staying Twitter's obligations to object to any of Plaintiff's currently pending or forthcoming motions, and by delaying any decisions on those motions until the Court has resolved Twitter's pending motion to dismiss. In the alternative, Twitter requests that the Court issue other appropriate relief to delay briefing on Plaintiff's motions pending the outcome of the motion to dismiss.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 25, 2020

By: */s/ Jonathan M. Eck*

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Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 26, 2020

By: */s/ Jonathan M. Eck*

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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: June 26, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 29, 2020

By: */s/ Jonathan M. Eck*

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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: June 29, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 29, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: June 29, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

opposition to the litigant's use of a pseudonym by counsel, the public, or the press is illegitimately motivated. *See Doe v. Trustees of Dartmouth College*, No. 18-cv-040-LM, 2018 WL 2048385, at *4-5 (D.N.H. May 2, 2018) (quoting *Doe v. Megless*, 654 F.3d 404 (3d Cir. 2011)). Twitter simply asks that the Court undertake that analysis.

2. Accordingly, Twitter respectfully requests that the Court evaluate Plaintiff's request under the *Megless* standard to determine whether proceeding anonymously is justified under the circumstances.

3. Twitter does not file a memorandum of law herewith as all authority in support of its objection is cited herein.

WHEREFORE, the Defendant, Twitter, Inc., respectfully requests that this Honorable Court:

A. Apply the *Doe v. Megless*, 654 F.3d 404 (3d Cir. 2011) standard in ruling on Plaintiff's Motion to Proceed Anonymously [Doc. 15]; and

B. Grant such other and further relief as the Court deems just.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 29, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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Dated: June 29, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Courts answer, Plaintiff is left in the dark as to how to proceed with his Constitutional Claims as there are unanswered questions of law that need to be answered by a judge.").]

Second, where leave is granted, non-dispositive replies cannot exceed five pages. *Id.* Plaintiff failed to obtain leave of court prior to filing his Reply, and it exceeds five pages. As a result, Twitter respectfully requests that the Court strike Document 35 for being both unauthorized and overlength. *See Zibolis-Sekella v. Ruehrwein*, No. 12-cv-228-JD, 2013 WL 4042423, at *1 (D.N.H. 2013) (striking reply brief filed without leave, pursuant to LR 7.1(e)(2)).

Twitter, through its undersigned counsel, sought Plaintiff's concurrence to the relief sought through this motion, but Twitter did not receive such concurrence.

No memorandum of law is necessary because Twitter cites herein the authority in support of the relief it requests.

WHEREFORE, the Defendant, Twitter, Inc., respectfully requests that this Honorable Court:

A. Enter an order striking Document 35 (the Reply); and

B. Grant such other and further relief as the Court deems just.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

ORR & RENO, PROFESSIONAL ASSOCIATION

Dated: July 15, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: July 15, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

A. Deny Plaintiff's Motion for Reconsideration; and

B. Grant such other and further relief as the Court deems just.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: August 4, 2020

By: */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)
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CERTIFICATE OF SERVICE

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Dated: August 4, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: June 22, 2020

By: */s/ Jonathan M. Eck*

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Dated: June 22, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

Schwartz's appearance on its Motion to Dismiss constitutes the unauthorized practice of law. [*See, e.g.*, Motion at A, ¶¶ 5-11, 13-25; *see also* Docs. 17, 18; 43.]

6. For the foregoing reasons, the Court should deny Plaintiff's Motion for Judicial Notice.

7. Twitter does not file a memorandum of law herewith as all authority in support of its objection is cited herein.

WHEREFORE, the Defendant, Twitter, Inc., respectfully requests that this Honorable Court:

A. Deny Plaintiff's Motion for Judicial Notice; and

B. Grant such other and further relief as the Court deems just.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: August 12, 2020

By: */s/ Jonathan M. Eck*

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iii.

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: August 14, 2020 By: */s/ Jonathan M. Eck*

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Dated: August 14, 2020 */s/ Jonathan M. Eck*

Jonathan M. Eck, Esq. (NH Bar #17684)

Respectfully submitted,

Twitter, Inc.

By its attorneys,

Dated: August 25, 2020

By: */s/ Jonathan M. Eck*

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By: */s/ Julie E. Schwartz*

Julie E. Schwartz, Esq. (*admitted pro hac vice*)
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CERTIFICATE OF SERVICE

I, Jonathan M. Eck, certify that on this date service of the foregoing document was made upon the Plaintiff, *pro se*, via email.

Dated: August 25, 2020

/s/ Jonathan M. Eck
Jonathan M. Eck, Esq. (NH Bar #17684)

iii.