PUBLIC ADVOCATE OF THE UNITED STATES, INC.
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CHANTILLY, VIRGINIA 20151
Telephone: 703-845-1808 · Website: publicadvocateusa.org

October 26, 2020
By mail & by email to EnfComplaint@fec.gov

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Eugene Delgaudio and Public Advocate of the United States
Federal Election Commission Complaint Against Twitter

Dear Sirs:

This complaint is filed on behalf of: (i) Eugene Delgaudio, a political activist and President of Public Advocate of the United States, who resides in northern Virginia; and (ii) Public Advocate of the United States, located in Chantilly, Virginia, which is a nonprofit advocacy organization (hereinafter "Complainants").

This complaint is filed against Twitter and the Biden-Harris campaign (hereinafter "Respondents") for violation of various provisions of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. §§ 30101, *et seq.* ("FECA" or "the Act"), and the implementing regulations adopted by the Federal Election Commission ("Commission" or "FEC") and published at 11 C.F.R. §§ 100.1, *et seq.*

**SUMMARY OF COMPLAINT**

This Complaint and its exhibits set out the basis for Complainants' belief that the Respondents have violated the Federal Election Campaign Act. Specifically, Complainants charge that, based on the facts set out below, Respondents violated the following statutes:

1. the prohibition on corporations making in-kind contributions (*see* 52 U.S.C. §§ 30101(8), 30118); and

2. the limitations on making coordinated expenditures (52 U.S.C. § 30116(a)(7)).

FECA provides that if the Commission, upon receiving a complaint, has reason to believe that a person has committed a violation of the Act, it shall make an investigation of the alleged violation. *See* 52 U.S.C. § 30109(a)(2). This Complaint is filed pursuant to 52 U.S.C. § 30109(a)(1), with the request that the FEC conduct such investigation into whether the Respondents' conduct violated federal campaign finance laws during the time in question, and if so, that it impose appropriate sanctions, as well as take whatever further action is appropriate and in accordance with the law.

This Complaint is verified by Eugene Delgaudio, both in his individual capacity and as a representative of Public Advocate of the United States, and is based upon such knowledge, information, and belief of the facts as stated below and as contained in the identified exhibits. The relevant facts and alleged offenses are summarized as follows:

**IDENTITY OF RESPONDENT**

Twitter, Inc. is social networking company headquartered in San Francisco, California which owns Twitter, a social networking service.

**BACKGROUND OF RESPONDENT'S ACTIONS IN VIOLATION OF FEDERAL ELECTION LAW**

Complainant Public Advocate had a Twitter profile (@PublicFreedom) with nearly 5,000 followers and over 14,000 tweets (*i.e.,* posts). Less than a month before the November 2020 general election, during the day on October 8, 2020, Twitter temporarily restricted Public Advocate's Twitter account. Then, on October 23, 2020, Twitter apparently permanently suspended the account. This initial restriction and now the permanent suspension has had three effects.

First, the suspension has denied to Public Advocate the ability to post new material to its account and to communicate with its followers about matters relevant to the Presidential election.

Its last posting to that account occurred earlier on the same day of its suspension on October 8, 2020.

Second, during the period of the temporary restriction, Twitter provided a warning for users choosing to view Public Advocate's profile, making it appear that Public Advocate had done something wrong, which stated:

> "Caution: This account is temporarily restricted. You're seeing this warning because there has been some unusual activity from this account. Do you still want to view it?"[1]

Third, now that the account has been permanently suspended, Public Advocate has no method to make new posts, to promote its website on Twitter, or to even explain to its followers that it did nothing wrong, leaving the impression that it had done something to deserve a permanent suspension.[2]

Public Advocate has repeatedly asked Twitter for an explanation, but Twitter has refused to provide any explanation for the suspension, or to describe what "unusual activity" it believed occurred.

However, there are three reasons why Public Advocate believes that the purpose of Twitter's suspension was designed, and has had the effect of discouraging and suppressing the public's access to information from Public Advocate on important public policy issues involving the Presidential election in a way to reduce conservative criticism of the policies of the candidate for President (Joe Biden) and Vice President (Kamala Harris) supported by Twitter in the days immediately prior to the November 2020 Presidential election. And, the "warning label" that

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[1] A screenshot of this warning is attached as Exhibit A.

[2] A screenshot of the suspension is attached as Exhibit B.

Twitter had imposed on Public Advocate's listing, and now its permanent suspension, had the additional effect of preventing new tweets, preventing the public's viewing of old tweets, and deterring current followers as well as those who may want to become followers, from receiving information critical of the candidate for President (Joe Biden) and Vice President (Kamala Harris) supported by Twitter.

1. Public Advocate's tweets consistently have supported pro-family Trump policies.[3] Recent tweets have supported President Trump's nomination for the U.S. Supreme Court Judge Amy Coney Barrett. Also, Public Advocate has promoted Tucker Carlson be allowed to be a moderator of one of the Presidential debates between Donald Trump and Joe Biden.[4]

2. Public Advocate uses Twitter to promote its website which contains information that supports Trump pro-family policies and information which is critical of anti-family policies advocated by others, including former Vice President Joe Biden and Vice Presidential Nominee Kamala Harris.

3. Before its account was suspended, Public Advocate had attempted to purchase ads (known as "promoting" a tweet on Twitter) to Support President Trump's nomination for Associate Justice of the United States Supreme Court, Amy Coney Barrett, whose nomination is opposed by former Vice President Biden. Twitter refused to accept that advertisement, and now Public Advocate is barred from using this method to communicate its views.

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[3] A screenshot of those tweets is attached as Exhibit C.

[4] *See* https://www.publicadvocateusa.org/news/article.php?article=11845.

## RESPONDENTS' ACTIONS VIOLATE THE FEDERAL ELECTION CAMPAIGN ACT

Complainants believe that Respondent violated the following provisions of the Federal Election Campaign Act.

1. the prohibition on corporations making in-kind contributions (*see* 52 U.S.C. §§ 30101(8) and 30118); and
2. the limitation on making coordinated expenditures (52 U.S.C. § 30116(a)(7)).

### I. Corporate Contributions Prohibited.

The Federal Election Campaign Act ("FECA") prohibits any and all contributions from corporations to candidates or their committees. *See* 52 U.S.C. § 30118(a). The definition of contribution includes a "gift, subscription, loan ..., advance, or deposit of money or **anything of value** made ... for the purpose of influencing any election for Federal office...." 11 C.F.R. § 100.52(a).

"Anything of value," as used in the context of defining a contribution, "includes all **in-kind** contributions," which are non-monetary contributions that also encompass "the provision of any goods or **services without charge or at a charge that is less than the usual and normal charge** for such goods or services." 11 C.F.R. § 100.52(d)(1) (emphasis added). Thus, when a corporation pays its employees to perform services for a candidate or campaign to influence an election but does not charge the campaign or charges less than a normal charge, the provision of

those services constitutes an illegal corporate contribution.[5] This conclusion was confirmed by the FEC in Advisory Opinion 1984-24 (Sierra Club):

> The Act and regulations prohibit a **corporation** from using its general treasury funds to provide goods and services at no charge to candidates in any Federal election. A corporation's donation of **the services of its employees** and the use of its facilities incident to its employees' services qualifies as a gift of something of value to the candidate. Thus, the expenditure of corporate treasury funds to provide such services and facilities **falls squarely within the prohibition** of [52 U.S.C. § 30118.] Nothing in the Act or regulations excludes such corporate disbursements from the Act's prohibition. [AO 1984-24 at 4 (emphasis added).]

Here, Respondent Twitter has provided valuable services to the political campaign of Presidential candidate Joe Biden and Vice Presidential candidate Kamala Harris by suppressing criticism. Respondent's employees have used corporate time and resources to target and remove political speech critical of Twitter's favored candidates, because such speech was considered harmful to those candidates, all for the purpose of influencing the 2020 Presidential Election. Because Respondent is a corporation, it is prohibited from providing this service to the campaign free of charge, or for less than they should normally charge. Therefore, these services constitute a prohibited corporate in-kind contribution to the Biden campaign.

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[5] *See also* 52 U.S.C. § 30101(8)(A)(ii) ("The term 'contribution' includes … the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.").

## II. Corporate Coordination with Political Campaigns.

While Complainants know of no direct evidence, there is at least circumstantial evidence that Respondent has coordinated its activities with federal political candidates. While Twitter has been censoring anti-Biden postings, the Biden campaign has worked hard to give the appearance that it is highly critical of social media.[6] At the same time, Twitter has put into key roles persons hostile to President Trump, and who formerly served President Obama, Vice President Biden, and Senator Kamala Harris. There are growing indications of a revolving door between Twitter and the Biden/Harris/Obama team.

First, Fox News reported that one of the senior Twitter officials is Nick Pacillio, who serves as "senior Communications manager" for Twitter. Nick Pacillio formerly worked as Press Secretary and Deputy Press Secretary for Kamala Harris. Nick Pacillio became well known when he spoke on behalf of Twitter in defense of Twitter removing a Tweet relating to COVID-19 posted by President Trump.[7]

Second, another indication that this open hostility is cover for coordination is that Twitter hired former FBI General Counsel James Baker to be its Deputy General Counsel. While at the FBI, Baker engaged in highly improper conduct by coordinating to receive and disseminate at the FBI disinformation from a research company working for the Hillary Clinton campaign in 2016.

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[6] *See, e.g.*, D. Cooper, "Biden Campaign Says Facebook Is Failing to Tackle Election Lies," Engadget (Sept. 29, 2020).

[7] *See* J. Wulfsohn, "Former Kamala Harris press secretary is top Twitter communications official, announced removal of Trump clip," *Fox News* (Aug. 12, 2020).

Moreover, demonstrating that the revolving door swings both ways, the Biden campaign and would-be transition team has hired Carlos Monje, who worked for the Obama Administration before serving as Twitter's public policy director, and co-chair of candidate Biden's infrastructure policy.[8]

Based on circumstantial evidence, these Complainants urge the Commission to undertake an investigation to identify illegal coordination. "Coordination" means activity "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 C.F.R. § 109.20(a).

Any corporate expenditure that is coordinated with a candidate or committee cannot be considered a lawful independent expenditure. *See* 11 C.F.R. § 109.20(b). Thus, any coordinated corporate expenditure is a prohibited corporate contribution. Even if Respondent was to defend its action in suspending Public Advocate's account as being something other than a communication (*i.e.,* the opposite of a communication — the suppression of a communication critical of a candidate for federal office), this would not provide any defense if Twitter coordinated with any campaign in any way.[9]

**CONCLUSION**

Wherefore, Complainants pray that the Commission investigate these matters under 52 U.S.C. § 30109(a)(2), and find reason to believe that violations of the Act and the FEC regulations may have occurred, as set forth above. In addition, the Commission should

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[8] *See* G. McConway, "Biden Hires Twitter Manager for Transition Team," *Conservative Journal Review* (Sept. 20, 2020).

determine and impose appropriate sanctions for any and all violations committed by Respondent, and should order such additional remedies as are appropriate and in accordance with law.

Respectfully submitted,

EUGENE DELGAUDIO
PRESIDENT
PUBLIC ADVOCATE OF THE
UNITED STATES, INC.
4451 BROOKFIELD CORPORATE DR.
SUITE 104
CHANTILLY, VIRGINIA 20151
Phone 703-845-1808
Email: info@publicadvocateusa.org
publicadvocateusa.org@gmail.com

Exhibits (as stated)

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[9] This legal theory was relied on by the U.S. Department of Justice in indicting former Trump Attorney Michael Cohen for violation of the Federal Election Campaign Act. *See United States v. Cohen* (S.D. N.Y., Docket No. 18-cr-602), Criminal Information at 11-17.

**VERIFICATION**

I hereby verify that the foregoing statements and allegations made in the attached complaint, are true to the best of my knowledge, information, and belief.

Sworn pursuant to 18 U.S.C. § 1001.

Executed on October 27, 2020.

Eugene Delgaudio

Signed and sworn to before me in my District:

Notary Public

Date: 10/27/2020

My Commission Expires 04/30/2023

Exhibit 1

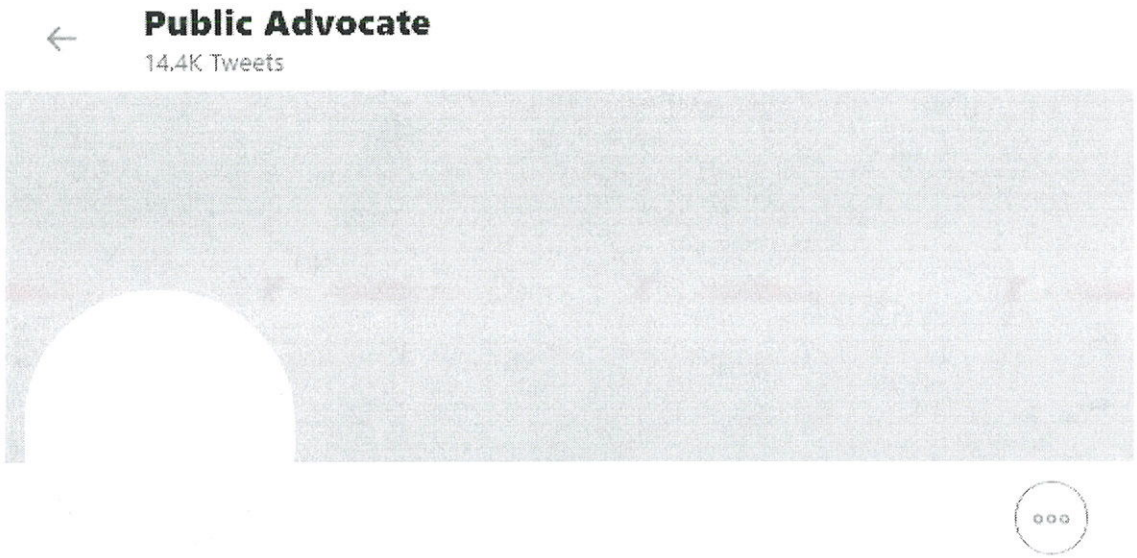

Public Advocate
14.4K Tweets
Public Advocate
@PublicFreedom
Caution: This account is temporarily restricted
You're seeing this warning because there has been some unusual activity from this account. Do you still want to view it?
Yes, view profile

Exhibit 2

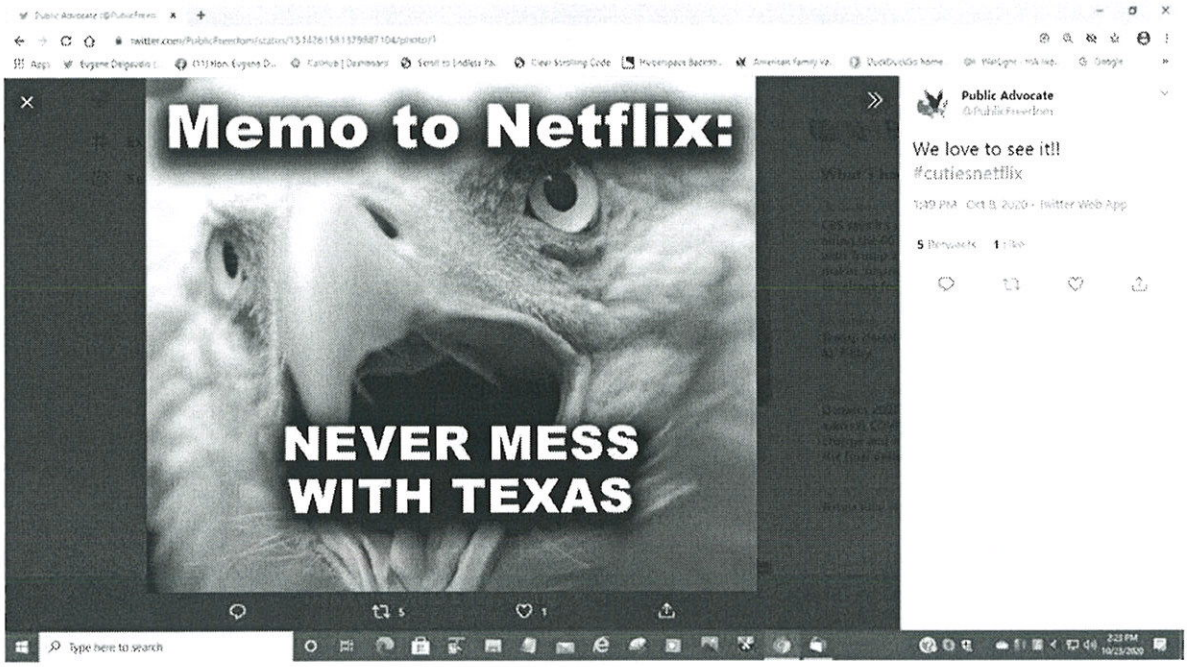


**@PublicFreedom**

## Account suspended

Twitter suspends accounts which violate the Twitter Rules

Exhibit 3


Memo to Netflix:
NEVER MESS WITH TEXAS
Public Advocate
We love to see it!!
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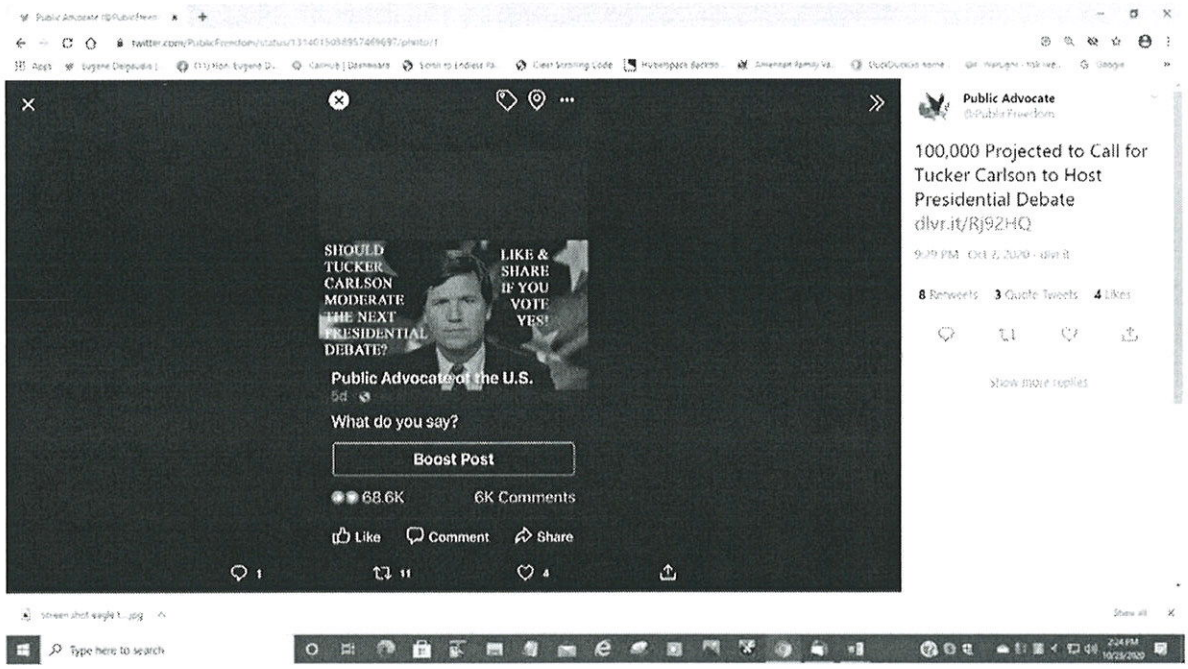
5 Retweets 1 Like
Type here to search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What do you say?
Boost Post
68.6K
6K Comments
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100,000 Projected to Call for Tucker Carlson to Host Presidential Debate
dlvr.it/RJ92HQ
8 Retweets 3 Quote Tweets 4 Likes
Show more replies
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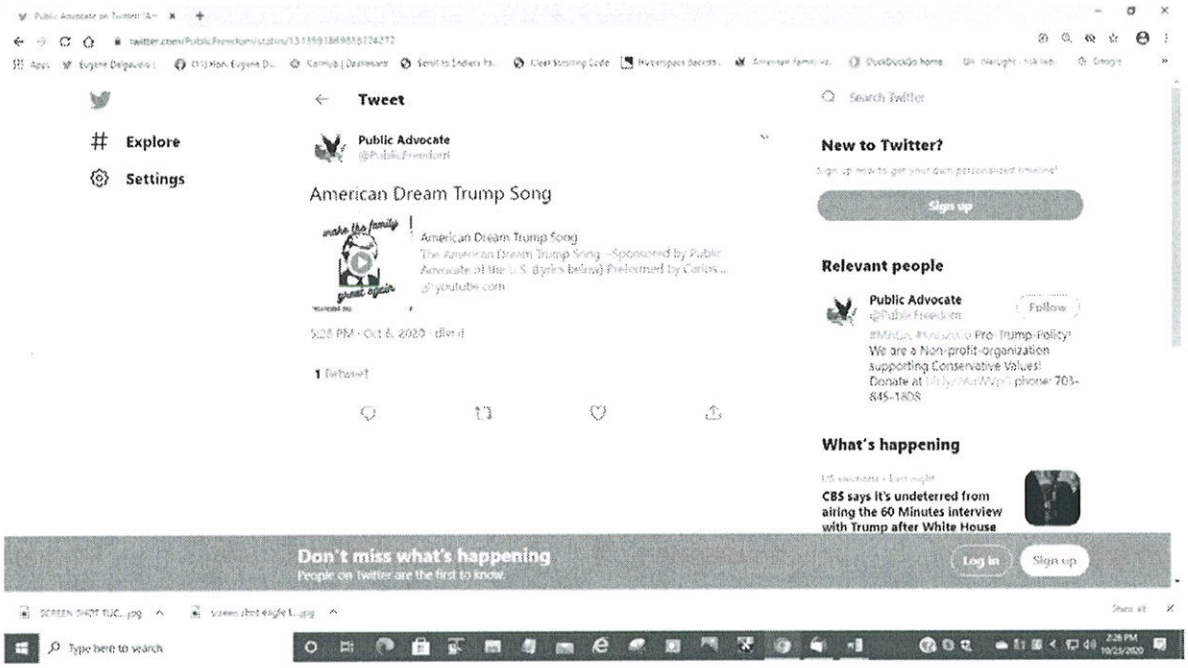
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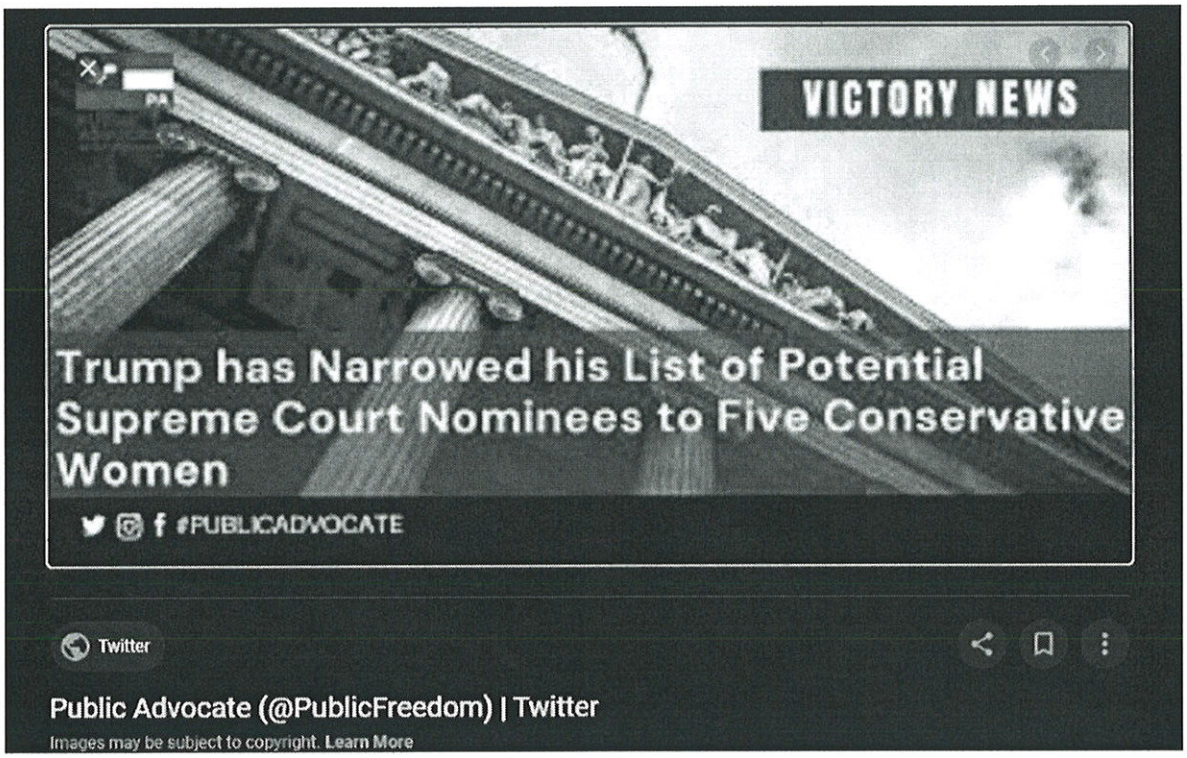
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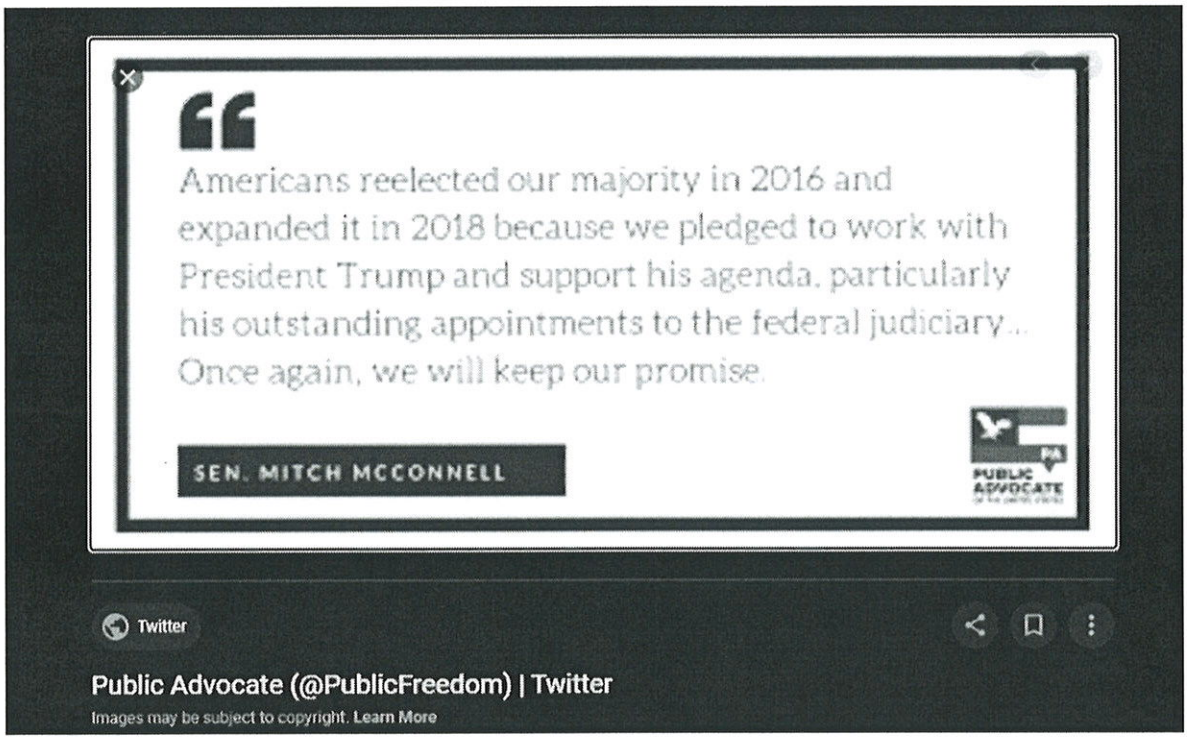
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