ENVISAGE LAW

September 27, 2022

VIA ELECTRONIC MAIL
AND FEDERAL EXPRESS

Ms. Vijaya Gadde
Head of Legal, Policy, and Trust
Twitter, Inc.
1355 Market Street, Suite 900
San Francisco, CA 94103
vijaya@twitter.com

RE: Second Wrongful Suspension of the @LibsofTikTok Twitter Account
Breach of Contract and Promissory Estoppel
Texas House Bill 20

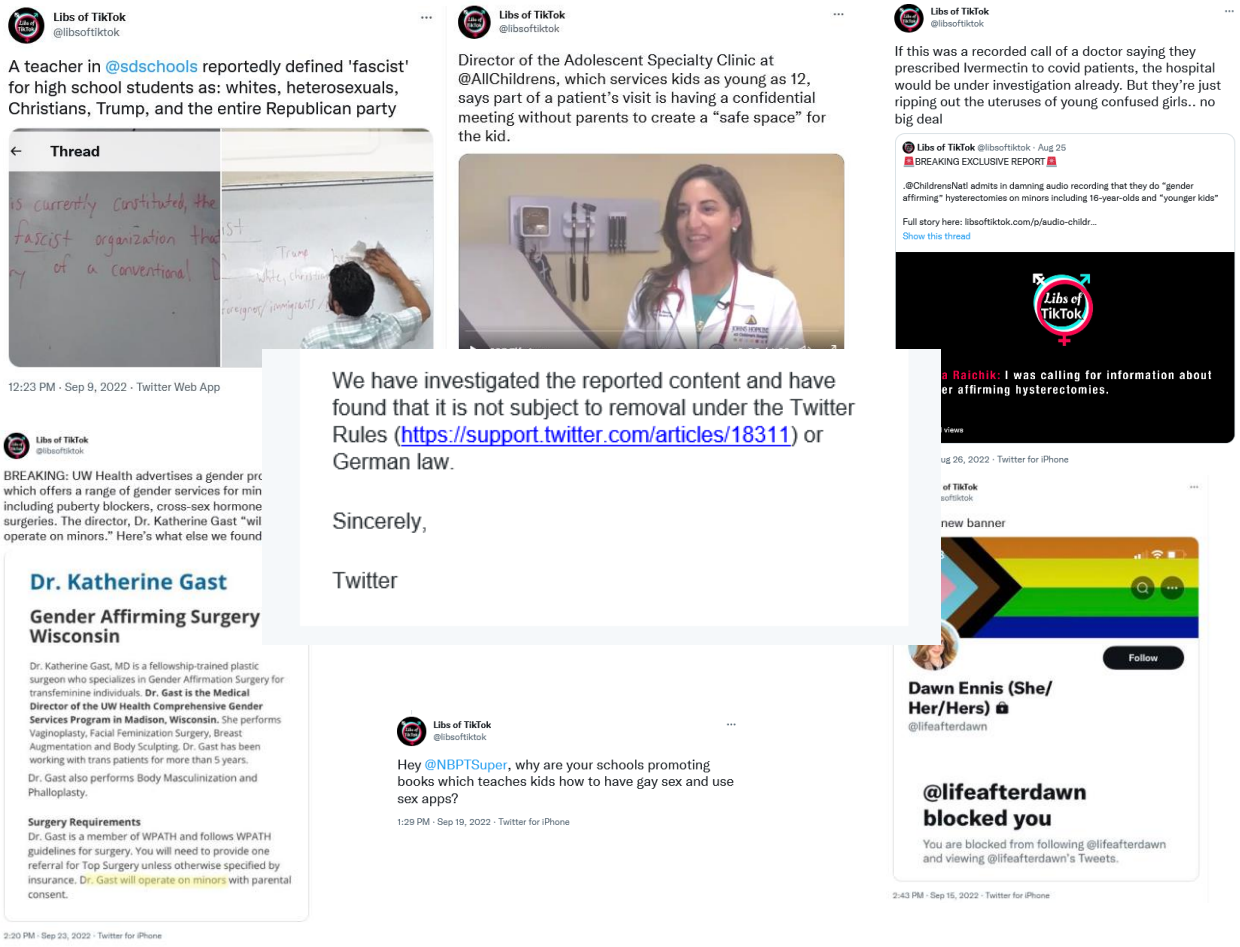
Dear Ms. Gadde:

As you know, we represent journalist Chaya Raichik who reports under the name Libs of TikTok. This past Sunday, Twitter again wrongfully suspended our client's Twitter account for another seven days. We are writing Twitter once again to request that your company reinstate the @LibsofTikTok account.

We do not need to rehash the lengthy arguments we raised in our September 1 letter regarding LOTT's previous suspension. Suffice it to say, once again, our client did not violate Twitter's hateful conduct policy, a speech code that recognizes "that everyone has a voice, and a right to use it." *Id*. *Hateful conduct policy*, https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy (last visited Sept. 27, 2022). Again, our client's reporting may be offensive to Twitter users, including users who identify with protected categories, but that is not sufficient in and of itself to cut LOTT off from your company's platform and our client's audience.

In this latest suspension, as with the last, Twitter did not specify the content your company deemed to violate its hateful conduct policy. We are aware of third parties posting messages on Twitter that "[o]ur investigation found this account," i.e., @LibsofTikTok, "violated the Twitter Rules," but these are not content-specific findings.

Remarkably, on numerous occasions, Twitter has confirmed to LOTT in writing that our client's reporting **did not violate** Twitter's Rules, including your company's hateful conduct policy. As Twitter explained in a recent e-mail to LOTT, your company "is required by German law to provide notice to users who are reported by people from Germany via the Network Enforcement Act reporting flow." For each of the tweets shown below, your company concluded that "[w]e have investigated the reported content and have found that it is not subject to removal under the Twitter Rules." The link shown below goes to a variety of Twitter speech codes, including your company's hateful conduct policy.



Twitter to LOTT: Tweets are "not subject to removal under the Twitter Rules"

If the tweets pictured above had violated any Twitter policy, your company's investigations surely would have uncovered such violations, and we would have seen reports to that effect. Instead, your company explicitly concluded that LOTT did not violate Twitter's Rules. To be clear, your company reached these conclusions even though many might argue that the tweets above constitute targeting or incitement against the individuals and entities pictured, but Twitter found to the contrary. LOTT is in possession of dozens of other e-mails from Twitter regarding similar tweets your company found to not violate any Twitter speech code. LOTT did not solicit these e-mails and conclusions—your company provided them.

Twitter's apparent cognitive dissonance is not a matter of mere academic curiosity for LOTT. Twitter's conclusions regarding LOTT's previous tweets have legal consequences for your company. LOTT's most recent reporting is not materially different from any of LOTT's other, Twitter-cleared tweets. At the very least, Twitter's prior investigations are relevant for purposes of a breach of contract claim. Twitter's speech code has not changed and neither has the nature of our client's reporting. Moreover, the e-mails induce reasonable reliance by LOTT that it can tweet information like that cited above without fear of reprisal from your company. As we pointed out in our September 1 letter, if we were to litigate these issues, the "for any or no

reason" language in Twitter's Terms of Service will not provide an escape for Twitter for the same reason the plaintiff's breach of contract and promissory estoppel claims in *Berenson v. Twitter, Inc.*, 2022 WL 1289049 (N.D. Cal. Apr. 29, 2022), moved into discovery. Like the plaintiff in *Berenson* who challenged Twitter's application of its COVID-19 misleading information policy, LOTT did not ask Twitter to promulgate a hateful conduct policy or issue specific findings regarding our client's content.

Since we last wrote to Twitter, the Fifth Circuit dealt a significant blow to your company's position that the First Amendment gives Twitter an unfettered right to discriminate against our client's speech. The court in *NetChoice, L.L.C. v. Paxton*, 2022 WL 4285917 (5th Cir. Sept. 16, 2022), squarely rejected the notion that "corporations have a freewheeling First Amendment right to censor what people say," *id.* at *1, declining to turn back the clock more than a century to "a discredited *Lochner*-era vision of property rights," *id.* at *21. Twitter's current censorship of LOTT violates Texas House Bill 20 and, if necessary, our client will not hesitate to seek injunctive relief under this statute if Twitter permanently suspends LOTT's account. *See* Tex. Civ. Prac. & Rem. Code § 143A.007.

Finally, Twitter's censorship activities are not going unnoticed. Outside of perhaps the Gilded Age of a bygone era, rarely has a multi-billion-dollar company's words—claiming to be "the free speech wing of the free speech party" while censoring journalism—so contradicted its actions. Many Americans are tired of listening to your company talk the talk of free expression while walking the walk of censorship. And LOTT is no exception. If Twitter refuses to live up to its own words and aspirations, and permanently bans our client's account, LOTT will have no choice but to ask a court to order Twitter to live up it is own statements. We reiterate our request that Twitter immediately reinstate the @LibsofTikTok account.

Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

James R. Lawrence, III