

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Dr. SHIVA AYYADURAI

Plaintiff,

v.

WILLIAM FRANCIS GALVIN,
MICHELLE K. TASSINARI,
DEBRA O'MALLEY, AMY COHEN,
NATIONAL ASSOCIATION OF STATE
ELECTION DIRECTORS, all in their individual
capacities, and WILLIAM FRANCIS GALVIN,
in his official capacity as the Secretary
of the Commonwealth of Massachusetts

Defendants.

and TWITTER, INC.

Proposed Defendant.

Case No.: 1:20-cv-11889-MLW

PLAINTIFF DR. SHIVA'S PROPOSED AGENDA FOR SCHEDULING CONFERENCE

In accordance with the Court's June 1, 2021 Memorandum and Order (ECF No. 135), Plaintiff, Dr. Shiva Ayyadurai ("Plaintiff" or "Dr. Shiva"), respectfully submits his proposed agenda for the June 15, 2021, scheduling conference in this matter,¹ including with respect to (i) whether he will seek to file a revised proposed Second Amended Complaint; (ii) whether he proposes to seek discovery before the pending motions are decided; and, (iii) setting forth the parties' respective views on any disputed issues. In anticipation of filing his proposed agenda,

¹ Consistent with the Court's June 1, 2021 Memorandum and Order (ECF No. 135), this submission constitutes Dr. Shiva's proposed agenda and not that of either the Defendants or Twitter, Inc. ("Twitter"). Dr. Shiva understands, however, that the Defendants or Twitter may seek to file their own proposed agenda(s).

Dr. Shiva and his counsel met and conferred by telephone with counsel for the defendants and Twitter on June 8, 2021.

Dr. Shiva proposes the following agenda for the scheduling conference:

i. Dr. Shiva's Filing of a Revised Proposed Amended Complaint

Dr. Shiva seeks leave to file a revised proposed Second Amended Complaint by July 15, 2021, thirty (30) days after the date of the scheduling conference. Dr. Shiva anticipates at least adding additional facts to his complaint and framing his allegations in a more compliant fashion. He is unable to yet assess what other changes he will make to the claims in this matter. Defendants do not oppose Dr. Shiva's proposal to file a new Second Amended Complaint by July 15, 2021.

ii. Dr. Shiva's Proposed Targeted Discovery and Request for Supplemental Briefing Prior to the Court's Decision on the Pending Motions

Dr. Shiva seeks leave to propound targeted document requests and a Rule 30(b)(6) deposition notice to each of the Defendants. He also seeks to serve a subpoena *duces tecum* for documents and testimony under Rule 30(b)(6) on Twitter, Inc. ("Twitter"). He proposes to do so by July 15, 2021, when he serves his Second Amended Complaint. Dr. Shiva's focused discovery will be directed at the 11th Amendment issue raised by the state Defendants and the gathering of facts related to the now disclosed relationship between the state actors and Twitter which has been the subject of inquiry by Dr. Shiva and the Court and as to which the Court has tentatively concluded the facts are likely to be inextricably intertwined with the legal argument necessary to fairly resolve of the Motion. Dr. Shiva notes more particularly, but without limitation, that he will seek facts directed at the Affidavits submitted to date by Defendants, the existence and use of the so-called "Playbook," the Agreement between the state actors and

Twitter with respect to handling complaints from the state actors including the Complaint which led to the removal of Dr. Shiva from Twitter.

Dr. Shiva has suggested to Defendants that both they and the Court will be in a better position to assess his need for this targeted discovery once they see his proposed new Second Amended Complaint and the actual discovery requests which he intends to serve on July 15, 2021. Dr. Shiva further proposes that he have thirty (30) days from the date any permitted discovery is completed to file any necessary supplemental briefing necessary to oppose the pending motions.

Counsel for the state Defendants oppose proceeding in this manner, even though it was these Defendants who urged the Court during the May 20-21, 2021 hearing to consider facts in the record and not rely solely on matters of law, and now take the position that Dr. Shiva should not be allowed to propound discovery and that the matter of the targeted discovery Dr. Shiva seeks should not be considered until after Dr. Shiva files his Second Amended Complaint and Defendants have refiled anew their motions to dismiss. Counsel for Twitter likewise opposes discovery and insists that all discovery issues involving Twitter be litigated in the Central District of California, consistent with its forum selection clause.

Respectfully submitted,

Dr. SHIVA AYYADURAI,
By his attorneys,

/s/ Benjamin J. Wish

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Dated: June 11, 2021

CERTIFICATE OF SERVICE

I, Benjamin J. Wish, hereby certify that this document has been filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this date.

Dated: June 11, 2021

/s/ Benjamin J. Wish
Benjamin J. Wish