

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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| DR. SHIVA AYYADURAI, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Hearing Requested |
| v. |) | |
| |) | |
| WILLIAMS FRANCIS GALVIN, MICHELLE) |) | Civil Action No. 20-cv-11889 |
| K. TASSINARI, DEBRA O'MALLEY, AMY) |) | |
| COHEN, NATIONAL ASSOCIATION OF) |) | |
| STATE ELECTION DIRECTIOS, allegedly in) |) | |
| their individual capacities, and WILLIAM) |) | |
| FRANCIS GALVIN, in his official capacity as) |) | |
| Secretary of State for Massachusetts.) |) | |
| |) | |
| Defendants.) |) | |
| |) | |
| |) | |
| |) | |

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
BY THE NATIONAL ASSOCIATION OF STATE ELECTION DIRECTORS AND
INDIVIDUAL DEFENDANT AMY COHEN**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant The National Association of State Election Directors (“NASED”) and Individual Defendant Amy Cohen¹ respectfully move the Court to dismiss all claims against them with prejudice for failure to state a claim. This motion is supported by the accompanying Memorandum of Law and the points and authorities cited therein, and joins in and incorporates the arguments and authorities set forth in the motion and supporting memorandum previously submitted by Defendants William Francis Galvin, Debra O'Malley, Michelle K. Tassinari (Dkt Nos. 36 & 37).

¹ Ms. Cohen does not waive her defense to personal jurisdiction as set forth in her concurrent motion pursuant to Fed. R. Civ. P. 12(b)(2), and joins in this motion only to the extent the Court does not grant dismissal on jurisdictional grounds.

As set forth therein, Plaintiff's misguided attempt to hold NASED and Ms. Cohen, who are private actors not subject to state control, liable for supposed violations of his federal constitutional rights under a state action theory and for alleged injuries resulting from the independent actions of nonparty Twitter fails under well-established law, and is impermissibly based on their exercise of constitutionally-protected rights. Indeed, Defendants good faith and one-time report to Twitter expressing NASED's view that Plaintiff had violated its Terms of Service is too attenuated to be of constitutional significance or merit any relief.

In addition, Plaintiff fails to plead any of the elements of his federal statutory claims based on the conclusory and speculative allegations in the Amended Complaint, and in any event Defendants are entitled to qualified immunity in the event they are deemed state actors. Plaintiff's state law claim fails because it is entirely derivative of his federal claims, and the NASED lacks capacity to be sued in Massachusetts as an unincorporated association.

For these and for the reasons set forth in this Motion's supporting memoranda, the Court should dismiss the claims against them with prejudice.

Dated: January 7, 2021

Respectfully submitted,

/s/ Nolan J. Mitchell

Nolan J. Mitchell (BBO #668145)

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned hereby certifies that he conferred with Plaintiff in an effort to resolve or narrow the issues in this motion, but the parties were unable to do so.

/s/Nolan J. Mitchell
Nolan J. Mitchell

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of January, 2021, a true and correct copy of this document was served on plaintiff and all registered counsel of record via the Court's ECF system.

/s/Nolan J. Mitchell
Nolan J. Mitchell