

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

OPPOSITION TO MOTION TO COMPEL COMPLIANCE WITH SUBPOENA DUCES TECUM

This action raises profound questions about the use of third-party process against a journalist. The underlying action in this case is against an Executive Agency within the State of Florida. Plaintiff in that action (Movant here) states she requires Libs of Tik Tok's (a journalist's) communications regarding Movant with Defendant itself and two other Executive Branch components, namely the Executive Office of the Governor and the Attorney General of Florida.

In the ordinary course of things, one would expect that Movant would simply seek discovery from the Defendant in the underlying action and, if necessary, would seek discovery from the other Florida Executive Branch components. Afterall, the Executive is unitary and indivisible.

But instead, Movant here seeks massively overbroad discovery against a third-party and a journalist to boot. *See* Subpoena (ECF No. 1-2). This is impermissible four times over.

To start, a third-party subpoena must be appropriately tailored. The Subpoena at issue here was decidedly not. It sought *all* communications on a number of topics regardless of their connection to the underlying action.

A third-party subpoena must also seek information that is relevant to the underlying action. But the information subpoenaed here makes no difference to the resolution of the underlying action. The point in issue in discovery in the underlying action is whether Movant's speech interfered with the ability of the Defendant agency to function. Of course it did! Speech mocking political assassination *always* fits that bill. And in any event, a journalist's communication with a source about a story has no bearing on how the public reacts to that story. So this is all much ado about nothing.

Continuing on, a third party should not be put through the expense and burden of obtaining records that could easily be obtained from the Defendant in the underlying action (or another

Executive Branch component). Such an approach only complicates matters and drives up the cost of litigation (witness this proceeding).

Finally, a third-party journalist *certainly* should not be seen as the source of *first* resort for discovery. Both law and established custom dictate that they are the *last* resort. And that makes sense. Journalists must defend their sources. To seek journalistic source material is almost *per se* to invite satellite litigation over privilege issues.

As to the specifics of the dispute here, they are quite narrow—only four pages of records are in issue. They are communications between Chaya Raichik (“Raichik”), the Chief Executive Officer of Libs of Tik Tok, and a source. They are privileged. And thus, the Subpoena cannot be enforced.

Turning to the specifics of the Motion to Compel (ECF No. 1) (“Motion” or “Mot.”), the Motion mainly relies on a “gotcha” form of procedural argument: Objections were waived. But under established law and on the facts, there *is* no waiver. Movant dumped a third-party subpoena on Libs of Tik Tok during the holiday season. Libs of Tik Tok worked to retain counsel, and counsel worked to engage with the Movant. Counsel worked to confer with the Movant. Movant then all but admitted in the meet and confer process that the Subpoena was *massively* overbroad. Movant then narrowed the Subpoena, but was aware that even as narrowed, the Subpoena implicated serious journalism privilege questions. Respondent worked through intervening holidays and overseas travel and promptly asserted objections. Those objections were conveyed in a precise manner: Respondent objected to the production of a handful of communications between a journalist and a source. Contrary to Movant’s assertion, Movant knows *precisely* what is in issue; providing any more information would have intruded on the journalistic privilege in issue. *Cf.* Mot. at 15.

As to the privilege issues, the point is clear. The information sought is not relevant, and subpoenaing a third-party journalist is the *last* resort; not the *first*.

The Motion should be denied.

I. THERE IS NO WAIVER HERE.

Movant's principal argument is that Respondent waived objections to the Subpoena. See Mot. at 11–13. But that argument relies on an incomplete view of the relevant procedural history; there is no waiver, and thus this Court should reach the merits of the dispute .

1. As this Court has previously observed, Courts decline to deem objections waived where “unusual circumstances” are found. *In re Gurviev*, No. 25-cv-20896, 2025 WL 3280355, at *2 (S.D. Fla. Nov. 25, 2025). As this Court explained:

“Unusual circumstances have been found where” counsel for the non-party and counsel for the subpoenaing party “were in contact concerning” the non-party’s “compliance prior to the time the” non-party “challenged the legal basis for the subpoena.” [Cook v. Palmer, Reifler & Assocs., No. 16-CV-673-J-39JRK, 2019 WL 5697230, at *2 (M.D. Fla. Nov. 4, 2019)] (quotation marks omitted); *see also Miami-Dade Cnty. v. Johnson Controls, Inc.*, No. 10-CV-20881, 2011 WL 1548969, at *3 (S.D. Fla. Apr. 21, 2011) (declining to deem a non-party's right to object waived when it emailed objections to party “within twenty-days from the date of service of the subpoena and on the return date listed on the subpoena”).

Id.; *accord, Yousuf v. Samantar*, 451 F.3d 248, 252 (D.C. Cir. 2006) (court considers: “whether (1) the subpoena is ‘overbroad on its face and exceeds the bounds of fair discovery’; (2) the subpoenaed witness is a nonparty acting in good faith; and (3) counsel for the witness was in contact with counsel for the party issuing the subpoena prior to filing its formal objection.” (citation omitted)).

2. Respondent easily clears this standard. As to the facts, Movant complains that Respondent's initial outreach did not include formal written objections to the Subpoena. *See* Mot. at 11. But that would have been counterproductive. After all, Movant does not really contest that

the Subpoena, as drafted, is massively overbroad. For example, it sought: “*All* Documents concerning, referencing, discussing, or reflecting Communications involving the Executive Office of the Governor of Florida since September 1, 2025”; and “*All* Documents concerning, referencing, discussing, or reflecting Communications involving the Office of the Attorney General of Florida since September 1, 2025.” Subpoena Specifications 4 and 5 (emphasis added). Asking a journalist for *all* communications they had with the Executive Office of the Governor and the Attorney General—*regardless of topic or relation to the underlying action*—is the very definition of an overbroad fishing expedition.

Instead, Respondent raised objections they would be forced to make to the Subpoena as drafted during the meet and confer process, which led to Movant narrowing the Subpoena to allow further discussions. *See* Declaration of Samuel Everett Dewey at ¶ 3 (Jan 16, 2026) (“Dewey Decl.”). To be sure, such anticipated objections were discussed informally. But that suffices. *See In re Guriev*, 2025 WL 3280355, at *6 (“While 777 Partners’ objections were informal via email and in telephone calls, they certainly put Applicant on notice of the objected-to issues. That is enough to preserve Respondent’s right to object.”). Moreover, Counsel for Movant raised no objection to such an iterative procedure. *See* Dewey Decl. at ¶ 3. That iterative process was delayed in part by Raichik being overseas and the Christmas Season. *See* ECF No. 1-4. But that does not change the fact that Movant throughout acted in good faith. And at the end of the day, the parties reached an impasse, but this iterative process led to the Subpoena being narrowed, and one record has been produced.

3. Turning to Movant’s final apparent complaint, Movant accuses Respondent of making a “blanket claim” of privilege and thus failing to make its claim of privilege with requisite specificity. *See* Mot. at 12–13. Neither of those points have merit.

To start, Movant *is* aware of the precise objection raised by Respondent. Counsel for Respondent specifically informed Movant’s Counsel on December 29 “that having reviewed the records in question only a handful of records are involved and the records in issue raised questions of journalistic privilege because they reflect a journalist interacting with a source.” Dewey Decl. at ¶ 4. There is no requirement as to the form by which a privilege objection is conveyed; the test is functional. *See In re Guriev*, 2025 WL 3280355, at *6 (“While 777 Partners’ objections were informal via email and in telephone calls, they certainly put Applicant on notice of the objected-to issues. That is enough to preserve Respondent’s right to object.”). Here, there was no effort to hide the ball; to the contrary, Respondent has always been as forthright as possible.

As to the question of failure to somehow “log” the documents in question, the normal form of a log would reveal the very point in issue—the reporter’s *source*. And again, Respondent has provided sufficient information for precise resolution of the claim of privilege: Is Movant entitled to Respondent’s discussions with a source concerning the story she reported? That is discrete and refined.

II. THE RECORDS SOUGHT ARE IRRELEVANT.

Movant was fired by the Florida Government for her speech and wants to be reinstated. There is no dispute that, accordingly, the underlying action is governed by the multi-factor test set forth in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968). *See* Mot. at 9. The nub of the discovery issue in this case appears to be whether “whether Plaintiff has met her burden on the second step—namely to show that her free speech interest outweighs FWC’s interest in the effective and efficient fulfillment of its responsibilities.” *Brown v. Young*, No. 4:25-cv-419 (MW) (MJF), 2025 WL 3171160, at *4 (N.D. Fla. Nov. 13, 2025). On that point, the evidence appears to turn on whether the Movant’s private speech was disruptive or otherwise impaired agency operations.

Surprisingly, Movant never *really* says how the records in question are relevant to this issue, other than to recount that Movant was fired when Respondent broke the story regarding Movant’s speech and that Respondent broke the story of Movant’s firing. *See* Mot. at 9–10. But that is not enough to show relevance, and “a subpoena issued under Rule 45 should be quashed to the extent it seeks irrelevant information.” *Jordan v. Comm. Miss. Dep’t of Corr.*, 947 F.3d 1322, 1329 (11th Cir. 2020).

To start, whatever Respondent’s communications with her sources are, they are irrelevant to the *reaction* to the story Respondent broke. What is in issue is the *effect of* and *reaction to* that story; not how the story came about. “[I]t is highly unlikely” that Respondent’s private communications with her sources would somehow affect how the public and other agency employees reacted to her public post. *Jordan*, 947 F.3d at 1330. To be sure, they may be of some passing interest, but they are not relevant to the actual issues to be tried. Were the rule otherwise, anytime an action was brought under the *Pickering* test involving public reporting, a Plaintiff would have license to rummage through the newsroom.

Moreover, the speech at issue here (once the case goes beyond the pleading stage) is dispositive on its face:



Britt works for the Florida Fish & Wildlife Conservation Commission. She allegedly posted this disgusting message mocking Charlie's ass*ssination.

Your tax dollars pay her salary.

She should be fired ASAP



How *could* Movant's speech do anything other than disrupt agency operations? She mocked a political assassination!

the whales are deeply saddened to learn of the shooting of charlie kirk, haha just kidding, they care exactly as much as charlie kirk cared about children being shot in their classrooms, which is to say, not at all

Of course reporting on that statement would cause disruption to agency operations and external and internal outrage. We welcome free speech in this Country, but there is a difference between defending free speech and forcing taxpayers to pay for (and be served by) someone who mocks of political assassination. Defending unto death ones right to speak has nothing to with subsidizing that speech.

If there is any doubt on that point, Respondent's case turns on not *what* was said, but *whom* it was said about. The unsaid premise of Movant's entire case is that it is okay to mock a political assassination if the person assassinated is *really* bad. But of course, that is absurd. Political assassinations are political assassinations. Our society condemns them, and endorsement of them is abhorred and disruptive. Does *anyone* think we would be here if we slightly revise the statement: “the whales are deeply saddened to learn of Hitler’s slaughter of Jews in the Holocaust, haha just kidding, they care exactly as much as Israel cares about children being murdered in Gaza, which is to say, not at all.” *Of course not.*

III. JOURNALIST PRIVILEGE APPLIES.

1. The Eleventh Circuit “recognizes a qualified privilege for journalists, allowing them to resist compelled disclosure of their professional news gathering efforts.” *United States v. Caper*, 708 F.3d 1286, 1303 (11th Cir. 2013). “[I]nformation may only be compelled from a reporter claiming privilege if the party requesting the information can show that it is highly relevant, necessary to the proper presentation of the case, and unavailable from other sources.” *Id.* (internal citation and quotation omitted). “Overcoming the standard is a ‘heavy burden’ and the standard must be met by clear and convincing evidence.” *Monarch Air Grp. LLC v. Journalism Dev. Network, Inc.*, 757 F.Supp.3d 1303, 1305 (S.D. Fla. 2024) (internal citation and quotation omitted). “[T]he test for overcoming the privilege remains the same even if the information was

not obtained from a confidential source.” *Id.* at 1306; *accord United States v. Fountain View Apts.*, No. 6:08-cv-891, 2009 WL 1905046, at *2 (M.D. Fla. July 1, 2009).¹

2. The Motion’s central premise is that the privilege does not apply at all here because the Respondent is not a *real* “professional journalist” and was somehow “making news” (not reporting it) in this instance. *See* Mot. at 13–14. Not so.

To start, the Declaration of Respondent’s Chief Executive Officer, Chaya Raichik, demonstrates unequivocally that Respondent *is* a journalistic entity and Raichik *is* a journalist. *See* Declaration of Chaya Raichik (Jan. 16, 2026) (“Raichik Decl.”). Movant may well not like the “new” media, but they are media none-the-less, as the White House itself has recognized with its “new media” pressroom seat. That Respondent publishes via X is besides the point. Plenty of journalists do these days. *See, e.g., Gubarev v. BuzzFeed, Inc.*, No. 17-cv-60426, 2017 WL 6547898, at *4 (S.D. Fla. Dec. 21, 2017) (“There is nothing in the statute that limits the privilege to traditional print media. Because BuzzFeed writes stories and publishes news articles on its website, it qualifies as a “news agency,” “news journal” or “news magazine” and holding regardless the First Amendment privilege would apply). Moreover, Raichik is specific that the documents in question involve reporting—they are communications with a source. *See* Raichik Decl. at ¶ 14.

Movant’s attempts to shoehorn this case into *Popcorned Planet, Inc. v. Lively*, No. 8:25-MC-28 (WFJ) (LSG), 2025 WL 3458601 (M.D. Fla. Dec. 2, 2025) are unavailing. *See* Mot. at 14–15. To start, that opinion does not analyze the First Amendment privilege. Moving on, contrary to the facts in *Popcorned Planet*, Respondent *is* a news organization, and Raichik *is* a

¹ To the extent it is relevant where the underlying claim is federal, Respondent also has a privilege under Fla. Stat. § 90.5015. That standard largely merges with the Federal one. *See Monarch Air Grp. LLC v. Journalism Dev. Network, Inc.*, 757 F.Supp.3d 1303, 1305 (S.D. Fla. 2024).

journalist employed by Respondent. *See generally* Raichik Decl.; *cf. Popcorned Planet*, 2025 WL 3458601, at *5. Moreover, again contrary to the facts of *Popcorned Planet*, Raichik’s Declaration is specific that the records in question here were outreach to a source. *See* Raichik Decl. at ¶ 14; *cf. Popcorned Planet*, 2025 WL 3458601, at *5. And Respondent has already produced an official email request for comment on the underlying story, further underscoring that Respondent was acting as a journalist.

3. Turning to the merits of the privilege under the Eleventh Circuit’s test in *Capers*, Movant has no chance of success.

To start, the information is not even relevant, let alone “highly relevant.” Again, Movant does not really explain even on its own theory how the information is relevant, “[a]nd speculation does not cut it, particularly when Plaintiff bears a ‘heavy burden’ of satisfying this element by ‘clear and convincing evidence.’” *Monarch*, 757 F.Supp.3d at 1307 (internal citation and quotation omitted).

In any event, Movant violated the first rule of third-party subpoenas to journalists: They *started* with the journalist despite the fact that journalists are the *last*—not *first*—resort. *See, e.g.*, *Capers*, 708 F.3d at 1303–4; *Monarch*, 757 F.Supp.3d at 1307. Movant has not even attempted to explain why it could not propound Subpoena Specifications 3–5 to Defendant in the underlying action, the Executive Office of the Governor, and the Attorney General, respectively. And perhaps more to the point, Movant has not explained why (at least to Respondent’s knowledge) it has not done so. That is fatal. *See, e.g.*, *Capers*, 708 F.3d at 1303–4; *Monarch*, 757 F.Supp.3d at 1307.

CONCLUSION

The Motion should be denied.

Dated: January 16, 2026

Respectfully submitted,

/s/ Jared J. Roberts

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CERTIFICATE OF SERVICE

I certify that on January 16, 2026, a copy of the foregoing was filed with the Clerk of the Court using the Court's CM/ECF system, which will send a copy to all counsel of record.

/s/ *Jared J. Roberts*

Jared J. Roberts
Fla. Bar No. 1036550

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT FLORIDA**

DECLARATION OF SAMUEL EVERETT DEWEY

1. My name is Samuel Everett Dewey. I am counsel to Respondent in this matter.
2. I make this declaration to provide additional detail on the meet and confer discussions referenced in the Declaration of Caroline A. McNamara (Jan. 2, 2026) (ECF No 1-5).
3. During the December 18, 2025, meet and confer I raised substantial concerns about the overbreadth of the Subpoena. For example, I noted that Specifications 5 and 6 sought materials completely divorced from the subject matter of the underlying action and implicated multiple First Amendment privileges. I also noted that the entire subpoena as drafted raised questions of journalism privilege. Finally, I noted that records sought could easily be obtained from other State Agencies who although not parties are effectively aligned with Defendant in the underlying action because the Florida Executive is unitary and indivisible. In that context I inquired as to why a third-party was being served. I also specifically noted that I would need time to consult with my client given recent retention and holidays. Counsel for Movant raised no issue with such consultation.

4. During the December 29 conferral, I specifically noted that having reviewed the records in question only a handful of records are involved and the records in issue raised questions of journalistic privilege because they reflect a journalist interacting with a source.

I declare under the penalty of perjury that the foregoing is true and correct.

January 16, 2026

/s/ Samuel Everett Dewey
Samuel Everett Dewey

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

BRITTNEY BROWN)
)
)
<i>Movant,</i>)
)
v.)
)
LIBS OF TIK TOK LLC,)
)
<i>Respondent.</i>)
)

DECLARATION OF CHAYA RAICHIK

1. My name is Chaya Raichik. I am the Chief Executive Officer of Libs of Tik Tok LLC, Respondent in this matter.

2. I make this Declaration to respond to suggestion made by Movant that Libs of Tik LLC is not in new entity and that I am somehow not a journalist.

3. I work full time as a journalist and am a W2 employee of Respondent. Respondent has one other employee. Respondent is in the business of reporting the news, principally via its X account. See <https://x.com/libsoftiktok>. It is common for so-called “new” media to publish via X.

4. As a young, independent journalist running my own news channel on social media, my approach to reporting is fast-paced, dynamic, and deeply rooted in a commitment to delivering the truth. Every day, I engage with the world of breaking news, viral moments, and trending stories to ensure my audience receives timely and relevant updates. My goal is to keep my followers informed with the most accurate, up-to-the-minute content available.

5. I start my day by scanning various news sources, including social media platforms, news outlets, user-generated content. I go through my messages for tips and reach out to various sources for information. I look for stories and information that is underreported, new, and relevant.

I focus on issues that need attention and narratives that might otherwise go unnoticed. From political developments to social movements, my aim is always to break the stories that matter and provide my audience with a comprehensive view of the world.

6. Once a story catches my eye, I dive deep into research. Whether it's reaching out to sources for interviews or comment, or cross-checking facts, I make sure the information I share is both accurate and thorough. I often add my own insights, offering analysis that helps my audience understand the broader context of events. It's essential for me to ensure the news I report is not only timely but also responsible and interesting.

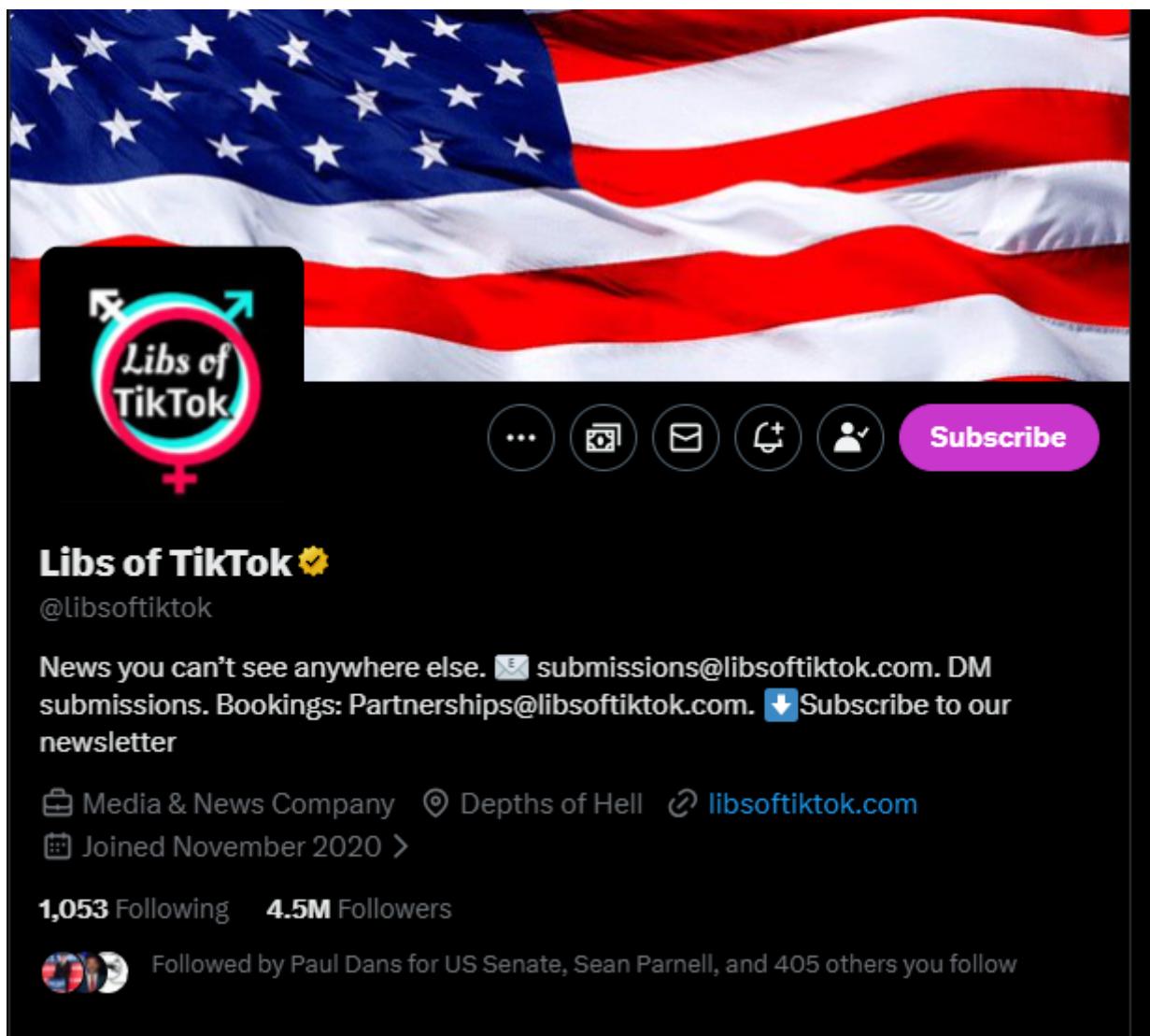
7. The speed of social media is a powerful tool for an independent journalist like me. Once a story is ready to go live, I can share it instantly with my followers, whether through a tweet, an Instagram post, or a more detailed video report. This real-time reporting allows my audience to stay ahead of the news cycle, often before traditional outlets have a chance to weigh in.

8. My work has earned the attention of major legacy outlets like *The New York Post*, Fox News, and *The Daily Mail*, where I'm frequently quoted for my insights and breaking news. Being cited by these well-known platforms speaks to the credibility and impact my work has in the larger media landscape. I pride myself on the fact that my voice is heard alongside mainstream journalists, contributing to the ongoing conversation in media.

9. I also play a significant role in curating viral clips that capture the public's attention. Whether I'm commenting on a political scandal or breaking down a viral social media trend, my ability to provide sharp commentary and quick insights helps me stay at the forefront of the conversation. In this fast-moving digital age, being able to turn a trending clip into a story is a key skill, and it's one I've honed to connect with my growing audience.

10. Being an independent journalist allows me the freedom to cover the stories that matter to me and my followers. The feedback I receive from my community and the positive effects I've had, is what fuels my passion for this work. Every story I share, every viral moment I dissect, and every breaking news report I cover, contributes to a larger mission: to inform, engage, and empower my audience with the news they need to know.

11. My public facing materials are very clear as to the primacy of my role as a journalist. Witness the “header” of my X feed:



12. When questioned about my work I have always been quite clear that I am in fact a journalist.

 **Chaya Raichik**   @ChayaRaichik10 · Oct 10, 2023  ...

Does anyone else find it alarming that the White House is criticizing a citizen **journalist** for posting about and discussing a government employee?



White House Slaps Back at Libs of TikTok Account For 'Cruel and Unacceptable' Attacks on Biden Staffer

Jamie Frevele | Oct 9th, 2023, 12:00 pm

645 comments

 Tweet  Share  reddit

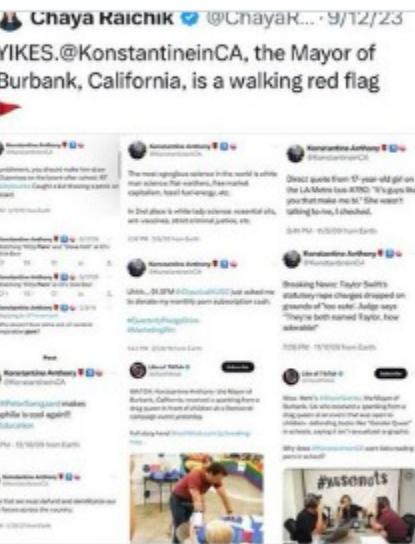


 1.1K  3.6K  21K  1.5M  

Hey @KonstantineinCA, just wanted to follow up on your comments about me not being a “real journalist”

Chaya Raichik  
@ChayaRaichik10

YIKES. @KonstantineinCA, the Mayor of Burbank, California, is a walking red flag



119 485 2,516 80.8K

@libsofttiktok

BREAKING: I went with @TPUSA to Burbank, CA to ask **#MayorSpanky** about the public spanking he got from a drag queen at an event that was open to children and why he lied about it.

Watch what happens next!



3:02 PM · Sep 27, 2023 · 16.3K Views



Chaya Raichik  

@ChayaRaichik10

Subscribe



...

As a jewish journalist I want her to know that if she shows up to my home and threatens me, I will do everything to defend myself as is my constitutional right.



Seth Dillon   @SethDillon · Oct 23, 2023

Imagine writing this and thinking you're the good guy.



SRS-One   
@jemmaisOKeh

...

one group of ppl we have easy access to in the US is all these zionist journalists who spread propaganda & misininformation

they have houses w addresses, kids in school

they can fear their bosses, but they should fear us more    

8:34 PM · 10/10/23 from Earth · 516 Views

1:04 PM · Oct 23, 2023 · 440K Views



Chaya Raichik   @ChayaR... · 2/25/24 

Nothing to see here... just a massive nonprofit organization accusing a citizen **journalist** of being responsible for a de*th because I post tiktoks they don't like



Nex's life was taken due to anti-trans hatred peddled by Chaya Raichik (Llibs of TikTok), bigoted school leaders and extremist state legislators.

These adults must be held accountable for their actions and words. Hate speech, especially when enshrined into law as demonstrated by Oklahoma's transphobic bathroom ban, not only brainwashes children to commit atrocious acts of violence but also desensitizes the adults in their environment, fostering a culture of callousness and disregard for human life.

glsen.org 

13. I encourage anyone with questions to review my X feed: <https://x.com/libsoftiktok>

14. As concerns the documents in issue here, all reflect me communicating with a source for comment and information. That is typical journalistic practice and something I do routinely.

I declare under the penalty of perjury that the foregoing is true and correct.

January 16, 2026

/s/ Chaya Raichik
Chaya Raichik