

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

David J. Groesbeck  
WSBA No. 24749  
David J. Groesbeck, P.S.  
1333 E. Johns Prairie Rd.  
Shelton, Washington 98584  
Tel.: 509-747-2800  
Fax: 509-747-2828  
Email: [david@groesbecklaw.com](mailto:david@groesbecklaw.com)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

PARLER LLC,

Plaintiff,

v.

AMAZON WEB SERVICES, INC.,

Defendant

No. 2:21-cv-00031-BJR

**NOTICE OF  
SUPPLEMENTAL  
AUTHORITY**

**(WITHOUT ORAL  
ARGUMENT)**

Plaintiff Parler LLC, by its undersigned counsel and per Local Rule 7(n), files the following Notice of Supplemental Authority:

NOTICE OF SUPP. AUTH. - 1



David J. Groesbeck, P.S.  
Attorney and Counselor  
1333 E. Johns Prairie Rd.  
Shelton, Washington 98584  
(509) 747-2800

**SUPPLEMENTAL NOTICE OF AUTHORITY**

This Supplemental Notice of Authority serves to correct several misstatements by AWS's counsel from the January 14 hearing. These statements concern mainly the nature of AWS's action against Parler, Parler's ability to replace AWS as a critical service provider, and the proper interpretation of AWS's contract with Parler.

1. During the hearing, AWS's counsel repeatedly stated that AWS was merely "suspending" Parler, as (AWS claims) is allowed under the contract, rather than terminating Parler's account. *See* Hearing Transcript, 12: 14, 22-13:6. And AWS's counsel alleged it was only a suspension because "we're still hosting their data, they still have access to it . . . ." *Id.* 12:22-23. But this ignores that the very email informing Parler that AWS would no longer host its services stated that AWS "will ensure that all of your data is preserved for you to migrate to your own servers, and will work with you as best as we can to help your migration." Parler Complaint Ex. A, at 2. Thus, the email makes clear that although AWS was still preserving Parler's data, it was not doing so to effectuate a future return to AWS. Instead, AWS was looking to give Parler its data so it could find some other way to get back online. That is not a suspension, but a termination.

What is more, AWS's counsel declared that "I can't say what Amazon would do if, you know, if Parler came back and said, here is an effective moderation plan." But Parler had offered to adopt AWS's own artificial-intelligence ("AI")-based content moderation software *before* AWS terminated Parler. *See* Matze Supp. Dec., ¶ 5; Matze Dec., ¶ 12; Peikoff Dec., ¶ 4. If AWS can't say whether it would allow Parler back online with AWS's own content AI systems, then



1 an insufficient content moderation system isn't the real reason why AWS terminated Parler's  
2 account.

3  
4 2. Additionally, AWS's counsel declared that "[t]here's no one from Parler, nobody,  
5 who says right now that they have an effective moderation plan and that this is a problem that  
6 can even be fixed, much less fixed within 30 days, nor is there any reason to believe that would  
7 happen." Hearing Transcript, at 14:8-11. But that is false. As already noted, AWS has known at  
8 least as early as mid-December that Parler had an AI system of its own that it had developed,  
9 successfully tested, and was planning on implanting in 2021—a system AWS has never  
10 expressed concerns about. *See* Matze Dec., ¶ 8; Peikoff Dec., ¶ 4; Matze Supp. Dec., ¶ 6. And  
11 as already noted, Parler even offered to adopt AWS's own AI system for its community guideline  
12 enforcement. *See* Matze Supp. Dec., ¶ 6; Matze Dec., ¶ 12; Peikoff Dec., ¶ 12. It can't be true  
13 that AWS believes its own system lacks the ability to bring Parler's community guideline  
14 enforcement into compliance with AWS's own standards.  
15  
16  
17  
18

19 3. Further, AWS's counsel represented to this Court that "the reality is, Your Honor,  
20 there is no, like—there is nothing—there's no—it would be futile to order the relief because  
21 there is nothing to suggest that they could actually do this within a period of 30 days, 10 days,  
22 or anything like that." Hearing Transcript, at 14:2-6. When there is nothing Parler can do to  
23 satisfy AWS, then AWS cannot rely on the portion of the contract that allows for a "temporary"  
24 suspension. Parler Complaint Ex. B, at 5 (Clause 6). The contract does not allow for permanent  
25 *suspensions*—and a permanent suspension is in law and fact a termination.  
26  
27

28 4. AWS's counsel further stated that "the question about whether this is a  
29 termination or a suspension, it is a suspension, but it's a red herring, it doesn't matter for the  
30



1 court’s analysis.” Hearing Transcript, at 12:13-15. And for this view AWS relies on Clause  
2 7.2(b)(ii), which allows AWS to immediately terminate for any reason for which it could  
3 temporarily suspend under Clause 6. *See* Parler Compl. Ex. B, at 6. But AWS has never actually  
4 shown that it properly invoked its right to suspend or terminate under these clauses. In its  
5 Response, AWS references the portion of the contract that authorizes AWS to suspend an  
6 account when AWS determines that “your or an End User’s use of the Service Offerings . . .  
7 poses a security risk to the Service Offerings or any third party . . . [.]” *Id.* at 5 (quoting Cl.  
8 6.1(a)). But the “security risk” referenced here is not referring to potential physical harm to  
9 others, but is a common industry term-of-art referring to cyber security in relation to hackers and  
10 other sorts of non-physical, internet-only harms. *See* 5 Most Common Network Security Risks  
11 (and What They Do), The Ame Group, [https://www.theamegroup.com/5-common-network-](https://www.theamegroup.com/5-common-network-security-risks/)  
12 [security-risks/](https://www.theamegroup.com/5-common-network-security-risks/). So AWS cannot leverage those grounds for temporarily suspending Parler to  
13 justify an immediate termination.  
14

15  
16  
17  
18  
19 In addition, the contract at issue is a form contract. And form contracts must be construed  
20 “most strongly” against the writer of such contracts—here, AWS. *See Pitts v. Coronado Custom*  
21 *Homes, LLC*, 57 F. App’x 313, 315 (9th Cir. 2003) (“[A]ny ambiguities in the contract between  
22 the parties must be construed most strongly against . . . the drafting party.”) (internal quotation  
23 marks omitted). Also, under AWS’s reading of its form contract, Clause 7.2(b)(ii) would make  
24 7.2(b)(i) superfluous, allowing AWS to never have to worry about providing a thirty-day notice.  
25 This would also violate the Surplusage Canon (or, the Canon against Superfluity).<sup>1</sup> *See In re*  
26  
27  
28  
29

30  
31  
32  

---

<sup>1</sup> “*Verba cum effectu accipienda sunt*. Words must be taken so as to have effect.” Black’s Law Dictionary 1967 (10th ed. 2014).



1 *Crystal Properties, Ltd., L.P.*, 268 F.3d 743, 748 (9th Cir. 2001) (“[A] court must give effect to  
2 every word or term employed by the parties and reject none as meaningless or surplusage.”)  
3 (citation omitted). *See also City of Chicago v. Fulton*, No. 19-357, slip op. at 5 (U.S. Jan. 14.  
4 2021) (rejecting proffered statutory construction based on surplusage canon),  
5 [https://www.supremecourt.gov/opinions/20pdf/19-357\\_6k47.pdf](https://www.supremecourt.gov/opinions/20pdf/19-357_6k47.pdf). Thus, for both these reasons,  
6 AWS’s reading cannot be allowed.  
7

8  
9 5. AWS also appears to claim that it can rely on Clause 6.1(b), which authorizes  
10 temporary suspension if Parler, “or any End User is, in breach of this Agreement,” to invoke  
11 Clause 7.2(b)(ii) to allow immediate termination. But this also runs into the Surplusage Canon  
12 and the requirement that the contract be “most strongly” construed against AWS. That’s because,  
13 under that reading, if one End User did *anything* deemed to breach AWS’s User Guidelines,  
14 AWS could immediately terminate Parler’s account. That would turn the contract into an at-will  
15 contract, and it would render completely superfluous the contractual protections inhering in both  
16 a 30-days’ notice provision and a threshold for material breach. After all, if AWS can  
17 immediately terminate Parler’s account for a breach by a single end user, then Clause 7.2(b)(ii),  
18 which demands 30 days’ notice for a *material* breach, serves no purpose. Parler’s reading of  
19 AWS’s form contract is “[t]he better account of the two provisions . . . .” *Fulton*, slip op. at 5.  
20  
21  
22  
23

24 6. Another allegation of AWS’s counsel during the hearing was that Parler could  
25 easily get back online because Parler “can store the stuff on their own servers.” Hearing  
26 Transcript, at 16:20. This is untrue. Parler does not own its own servers. *See Matze Supp. Dec.*,  
27 ¶¶ 2-3. *See also Owen Williams, How AWS and Other Cloud Providers Became the Internet’s*  
28 *Most Powerful Moderators: In Another Era, Parler Would Have Owned its Servers—and*  
29  
30  
31



1 *Remained Online*, Medium (Jan. 15, 2021), <https://onezero.medium.com/how-aws-and-other->  
2 [cloud-providers-became-the-internets-most-powerful-moderators-9b23a954d68a](https://onezero.medium.com/how-aws-and-other-cloud-providers-became-the-internets-most-powerful-moderators-9b23a954d68a) (“With cloud  
3 providers rejecting them and no physical servers of its own, Parler has nowhere to go and now  
4 says it may never return.”). This is not unusual for companies like Parler. “Amazon Web Services  
5 . . . [and other similar] companies manage vast data centers full of servers, renting them out by  
6 the hours, so you don’t need to think about setting up your own gear. They have centralized  
7 much of the web, which gives them unprecedented power to police it.” Williams, *How AWS and*  
8 *Other Cloud Providers*, *supra*. Thus, “[w]hen Amazon booted Parler from its cloud platform,  
9 there was little the company could have done to stay online, . . . gone are the days when it was  
10 common for small companies to own servers. It’s simply not realistic anymore.” *Id.* Even the  
11 Ninth Circuit’s own video oral argument system is hosted by a third-party private server. *See*  
12 <https://www.youtube.com/user/9thcirc>. There is simply no way for Parler to remain competitive  
13 and therefore viable without using someone else’s servers. *See* Matze Supp. Dec., ¶¶ 2-3. And  
14 AWS knew this when it pulled Parler’s plug. *See* Matze Supp. Dec., ¶ 2.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
AWS also knew that beyond just infrastructure, AWS was providing crucial cyber security and services. *See* Matze Supp. Dec., ¶ 2. There are very few vendors large enough to provide this type of service, severely limiting Parler’s ability to find a replacement. *See id.*

7. Furthermore, in claiming during the hearing that “there is no irreparable harm,” AWS’s counsel alleged that “[t]here’s no showing, for example, that they went to other providers.” Hearing Transcript, at 16:16-17. As stated in the attached Matze Supplemental Declaration, Parler went to six other large potential providers. *See* Matze Supp. Dec., ¶ 5. None would host Parler either because of AWS’s defamation of Parler, or because of AWS’s actions.



1 See Matze Supp. Dec., ¶ 5; Matze Dec., ¶ 15. And none of these providers is now willing to be  
2 publicly known—for fear of the harm AWS has the potential to inflict. See Matze Supp. Dec.,  
3 ¶ 5.  
4

5 For example, as soon as Parler learned that no matter what it did—including adopting  
6 AWS’s own AI system to enforce Parler’s community guidelines—AWS was going to terminate  
7 Parler’s account, Parler found another provider who said it was willing to host it. But after AWS  
8 took Parler offline, it did a very curious thing. Despite shutting down all of its services to Parler,  
9 AWS left open Route 53, “a highly scalable domain name system (DNS) . . . , which conveniently  
10 directed hackers to our backup datacenters and caused them to initiate a sizeable DNS attack.”  
11 Matze Dec., ¶ 14. In other words, AWS essentially illuminated a large neon arrow directing  
12 hackers to Parler’s backup datacenters. And the hackers got the message, launching an extremely  
13 large attack—one 250 times larger and 12-24 times longer than the average DDOS attack.<sup>2</sup> Later  
14 AWS would terminate the Route 53 link, but the damage was done. And this AWS-facilitated  
15 attack “essentially became a threat to all future datacenters that, if they were to host Parler, they  
16 would be attacked by unprecedented hacks.” Matze Dec., ¶ 14. In short, AWS’s highly  
17 publicized break from [its] contractual relationship [with Parler], when coupled with the toxic  
18 notoriety of massive hacking attacks, has driven away nearly all . . . other hosting services that  
19 Parler had hoped to use.” Matze Dec., ¶ 15. AWS didn’t just put Parler up a creek without a  
20 paddle—it banished it up the Columbia River without a boat and made sure no other boats would  
21 be willing to come to the rescue.  
22  
23  
24  
25  
26  
27  
28

29  
30 <sup>2</sup> The hackers launched a DDOS attack of 250 gbps (gigabytes per second) for 12 hours. The average DDOS attack  
31 is only 1 gbps and lasts for 30-60 minutes. See Sam Cook, *DDoS Attack Statistics and Facts for 2018-2020*,  
32 Comparitech (Nov. 10, 2020), <https://www.comparitech.com/blog/information-security/ddos-statistics-facts/>.



1 8. If all this wasn't enough, AWS contends that Section 230 shields it from suit here.  
2 In addition to the reasons Parler explained in its original briefing, the Ninth Circuit has provided  
3 another reason to reject AWS's argument. In *Enigma Software Group USA, LLC v.*  
4 *Malwarebytes, Inc.*, 946 F.3d 1040 (9th Cir. 2019), a software provider brought state and federal  
5 claims against a competitor. The competitor argued that it was immune under Section 230 of the  
6 Communications Decency Act. *Id.* at 1044. But the Ninth Circuit disagreed and held that  
7 "immunity under [§ 230] does not extend to anticompetitive conduct," whether alleged in federal  
8 or state claims. *Id.* at 1054. AWS's federal and state claims all are based on allegations of  
9 anticompetitive conduct. Therefore, under Ninth Circuit precedent, AWS cannot hide behind  
10 § 230.  
11

12  
13  
14 In sum, Parler is an internet company that cannot get on the internet. And the longer  
15 Parler lies dead, the harder it will be to resuscitate. Parler therefore requests that the Court rule  
16 as quickly as possible on what both sides agree has been converted into a request for preliminary  
17 injunction.  
18  
19

20 Dated: January 18, 2021.

21 Respectfully submitted,

22  
23  
24 /s David J. Groesbeck  
25 WSBA No. 24749  
26 DAVID J. GROESBECK, P.S.  
27 1333 E. Johns Prairie Rd.  
28 Shelton, WA 98584  
29 (509) 747-2800  
30 [david@groesbecklaw.com](mailto:david@groesbecklaw.com)

31 *Counsel for Plaintiff*





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

David J. Groesbeck  
WSBA No. 24749  
David J. Groesbeck, P.S.  
1333 E. Johns Prairie Rd.  
Shelton, Washington 98584  
Tel.: 509-747-2800  
Fax: 509-747-2828  
Email: [david@groesbecklaw.com](mailto:david@groesbecklaw.com)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

**AT SEATTLE**

PARLER LLC,

Plaintiff,

v.

AMAZON WEB SERVICES, INC.,

Defendant

No. 2:21-cv-00031-BJR

**SUPPLEMENTAL  
DECLARATION OF  
JOHN MATZE**

**MATZE SUPPLEMENTAL  
DECLARATION - 1**



David J. Groesbeck, P.S.  
Attorney and Counselor  
1333 E. Johns Prairie Rd.  
Shelton, Washington 98584  
(509) 747-2800

1 The undersigned declares as follows:

2 1. I am the CEO at Parler LLC. I am over the age of 18 years and have  
3 personal knowledge, and competence to testify if needed, of the matters set forth  
4 herein through firsthand knowledge and review of corporate documents kept in the  
5 ordinary course of business.  
6

7  
8 2. Parler does not have its own servers or the technical and security  
9 expertise to host the Parler environment on its own. Nor is it feasible for Parler to  
10 do so: Parler is not in the hardware or data center business. And therefore, Parler  
11 does not currently have the hardware or data security infrastructure necessary to  
12 create such a hosting environment. AWS is and has been aware of this, as we  
13 contracted with them and relied on them for these services.  
14  
15

16  
17 3. Indeed, the hardware necessary to host the Parler environment alone  
18 would cost upwards of \$6 million, and it would take weeks just for the hardware to  
19 arrive. Moreover, during exponential periods of growth, it is possible that the  
20 server requirements and additional hardware could take at least twice that  
21 amount of upfront investment, and twice the time to put the hardware in place and  
22 create the new hosting environment. Simply put, it would not be possible for Parler  
23 itself to acquire the necessary servers and related security infrastructure in a  
24 commercially reasonable time frame.  
25  
26  
27  
28  
29  
30

31 MATZE SUPPLEMENTAL  
32 DECLARATION - 2



David J. Groesbeck, P.S.  
Attorney and Counselor  
1333 E. Johns Prairie Rd.  
Shelton, Washington 98584  
(509) 747-2800

1 4. Parler, moreover, does not own a datacenter and does not even own  
2 or lease a building that can host our environment. Purchasing property large  
3 enough to house the Parler environment—with enough redundant power supplies  
4 and internet access—also could not be accomplished in a commercially viable  
5 timeframe.  
6

7  
8 5. Beyond just the infrastructure, before AWS cut off our service, AWS  
9 was also providing our cyber security and other necessary services such as  
10 Distributed Denial-of-Service (DDoS) protection. Because of the publicity  
11 generated by AWS, vendors associated with Parler received Distributed Denial-of-  
12 Service (“DDoS”) attacks on such a large scale that our options for partnership  
13 were limited to just a few vendors—none of whom was willing to provide  
14 replacement service, especially on short notice.  
15  
16

17  
18 6. During our discussions with AWS during the January 6-9 period,  
19 AWS initially communicated that something could be worked out to address AWS’s  
20 concerns about enforcing community guidelines on our platform. But at the last  
21 minute, AWS even refused Parler’s offer to use AWS’s own artificial-intelligence  
22 (AI) system for Parler's community guideline enforcement. So as soon as we  
23 received notice from Amazon that nothing we could do would prevent AMW  
24 from terminating our service, Parler begin trying to find an alternative host  
25 provider. Parler reached out to at least six extremely large potential providers—  
26 all of which refused to host Parler for one of two reasons.  
27  
28  
29  
30

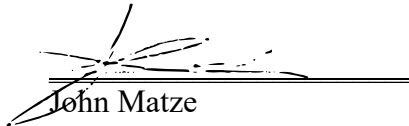


1 First, either these potential providers were worried about another of what  
2 appeared to be an AWS-facilitated DDoS attack, or they believed AWS's publicly  
3 leaked allegations about Parler and refused to do business with us. Further, we  
4 cannot name these service providers in a public court filing to avoid liability or  
5 further ruin the potential for future collaborations.  
6  
7

8 7. AWS knew that Parler was moving to an AI-based system as early as  
9 mid-December 2020 because of our conversations with AWS employees. Further,  
10 AWS knew before they turned off our service that Parler's test of its own AI system  
11 had been promising and had eliminated the existing backlog of compliance issues.  
12  
13

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

15 Executed on January 18, 2021 at [REDACTED].  
16

17  
18   
19 John Matze  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

