



August 8, 2017

**Via Facsimile (202-225-4382) and U.S. Mail**

The Honorable Robert J. Whittman  
Member, U.S. House of Representatives  
2055 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Whittman:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

**Constitutional Concerns**

As you are aware, the First Amendment affords the right to the public to petition the government to address their concerns and engage in political speech. Government social media pages are likely classified as limited public forums. Limited public forums are characterized by purposeful government action to make a forum accessible for public expression. See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). The Supreme Court of the United States classifies restrictions on speech as either "content discrimination" or "viewpoint discrimination." Content discrimination, such as limiting off-topic, vulgar, or discriminatory language, is permissible to preserve the purpose of the limited forum. Viewpoint discrimination is based on silencing an opposing viewpoint rather than controlling speech which is considered outside the forum's set limitations. Viewpoint discrimination is never permissible since it violates the First Amendment right to free speech. See *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

We have been told by those from whom we've received complaints that officials who blocked them from posting or tweeting have not provided any explanation for that action. Our review of sample posts, messages and Tweets provided by those who say they've been blocked has not found that the messages, posts or Tweets were off-topic, vulgar or discriminatory. Rather, the comments or tweets expressed countering viewpoints or dissatisfaction with the official actions of public officials.

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The Fourth Circuit Court has held that speech online should be afforded the same protections as speech offline under the First Amendment. See *Bland v. Roberts*, 730 F.3d 368, 386 (4th Cir. 2013). As social media becomes more integral to the political process and public discourse, it becomes incumbent on government officials to recognize that they must not engage in any form of viewpoint censorship in violation of the First Amendment in curating their social media accounts.

You may also be aware of Judge Cacheris's July 25 decision on social media free speech. In the U.S. District Court for the Eastern District of Virginia case of *Davison v. Loudoun County Board of Supervisors, et. al.*, a Loudoun County Commissioner blocked for a constituent from her Facebook page for approximately 12 hours. The Court held that the temporary Facebook ban by the Loudoun County Chairwoman had violated the constituent's right to freedom of speech.

Most of you, like the Loudoun Chairwoman, have routinely used your social media accounts as a means of communicating about your official activities and established them as a public channel of communication. On your pages and feeds, you discuss events you attended, bills you support, and often use a hashtag linked to your official duties.

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Some accounts include disclaimers specifying and reserving the right to remove content that includes "profanity, name-calling, threats, personal attacks, spamming, or other inappropriate comments or material." Some don't. Regardless, a disclaimer cannot overcome constitutionally protected rights to engage with you as public officials in a public forum subject only to reasonable time, place, manner restrictions, and not based on content or viewpoint.

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Please do not hesitate to call me if you have questions or concerns. My direct line is 804-523-2146.

Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

Via Facsimile (202-225-4218) and U.S. Mail

The Honorable Taylor Scott  
Member, U.S. House of Representatives  
412 Cannon House Office Building  
Washington, DC 20515

Dear Representative Scott:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

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Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

Via Facsimile (202-225-8354) and U.S. Mail

The Honorable Robert C. Scott  
Member, U.S. House of Representatives  
1201 Longhorn House Office Building  
Washington, DC 20515

Dear Representative Scott:

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Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

**Via Facsimile (202-226-1170) and U.S. Mail**

The Honorable A. Donald McEachin  
Member, U.S. House of Representatives  
314 Cannon House Office Building  
Washington, DC 20515

Dear Representative McEachin:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

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Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

**Via Facsimile (202-225-5681) and U.S. Mail**

The Honorable Thomas Garrett  
Member, U.S. House of Representatives  
415 Cannon House Office Building  
Washington, DC 20515

Dear Representative Garrett:

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2309 Rayburn House Office Building  
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Please do not hesitate to call me if you have questions or concerns. My direct line is 804-523-2146.

Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

**Via Facsimile (202-225-0011) and U.S. Mail**

The Honorable Dave Brat  
Member, U.S. House of Representatives  
1628 Longworth House Office Building  
Washington, DC 20515

Dear Representative Brat:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

**Constitutional Concerns**

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Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

**Via Facsimile (202-225-0017) and U.S. Mail**

The Honorable Don Beyer  
Member, U.S. House of Representatives  
1119 Longworth House Office Building  
Washington, DC 20515

Dear Representative Beyer:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

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Very truly yours,



Claire Guthrie Gastañaga





August 8, 2017

**Via Facsimile (202-225-0076) and U.S. Mail**

The Honorable Morgan Griffith  
Member, U.S. House of Representatives  
2202 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Griffith:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

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Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

**Via Facsimile (202-225-0437) and U.S. Mail**

The Honorable Barbara Comstock  
Member, U.S. House of Representatives  
229 Cannon House Office Building  
Washington, DC 20515

Dear Representative Comstock:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

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Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

Via Facsimile (202-225-3071) and U.S. Mail

The Honorable Gerald E. Connolly  
Member, U.S. House of Representatives  
2238 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Connolly:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

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For example, according to the House Ethics Manual, members are indeed free to maintain non-official social media accounts, such as campaign or personal accounts. These non-official accounts cannot utilize official resources, however: “official resources of the House must, as a rule, be used for the performance of official business of the House.” Official resources include staff time allocated for the use or maintenance of social media accounts, official or unofficial. If you are using your unofficial page in an official capacity or delegating staff members to assist with account maintenance, you could be in violation of House or Senate rules.

Given the number and volume of complaints we are receiving and the rapidly evolving case law, it is past time for you to review the policies that guide you and your staff in administering and curating your social media accounts. We ask that you review your social media policy now and act to ensure that, as written and administered, it protects your constituents’ First Amendment right to freedom of expression (whether on Facebook, Twitter, or other social media) and ensures that no one is blocked from posting, messaging or tweeting based on their viewpoint or the content of their speech unless that speech is vulgar, discriminatory or outside the scope of the sites’ concerns.

Please do not hesitate to call me if you have questions or concerns. My direct line is 804-523-2146.

Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

Via Facsimile (202-228-6363) and U.S. Mail

The Honorable Tim Kaine  
Member, U.S. Senate  
231 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Kaine:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

#### **Constitutional Concerns**

As you are aware, the First Amendment affords the right to the public to petition the government to address their concerns and engage in political speech. Government social media pages are likely classified as limited public forums. Limited public forums are characterized by purposeful government action to make a forum accessible for public expression. See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). The Supreme Court of the United States classifies restrictions on speech as either "content discrimination" or "viewpoint discrimination." Content discrimination, such as limiting off-topic, vulgar, or discriminatory language, is permissible to preserve the purpose of the limited forum. Viewpoint discrimination is based on silencing an opposing viewpoint rather than controlling speech which is considered outside the forum's set limitations. Viewpoint discrimination is never permissible since it violates the First Amendment right to free speech. See *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

We have been told by those from whom we've received complaints that officials who blocked them from posting or tweeting have not provided any explanation for that action. Our review of sample posts, messages and Tweets provided by those who say they've been blocked has not found that the messages, posts or Tweets were off-topic, vulgar or discriminatory. Rather, the comments or tweets expressed countering viewpoints or dissatisfaction with the official actions of public officials.

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The Fourth Circuit Court has held that speech online should be afforded the same protections as speech offline under the First Amendment. See *Bland v. Roberts*, 730 F.3d 368, 386 (4th Cir. 2013). As social media becomes more integral to the political process and public discourse, it becomes incumbent on government officials to recognize that they must not engage in any form of viewpoint censorship in violation of the First Amendment in curating their social media accounts.

You may also be aware of Judge Cacheris's July 25 decision on social media free speech. In the U.S. District Court for the Eastern District of Virginia case of *Davison v. Loudoun County Board of Supervisors, et. al.*, a Loudoun County Commissioner blocked for a constituent from her Facebook page for approximately 12 hours. The Court held that the temporary Facebook ban by the Loudoun County Chairwoman had violated the constituent's right to freedom of speech.

Most of you, like the Loudoun Chairwoman, have routinely used your social media accounts as a means of communicating about your official activities and established them as a public channel of communication. On your pages and feeds, you discuss events you attended, bills you support, and often use a hashtag linked to your official duties.

#### **Other Concerns**

Many of you maintain two social media accounts of each type as an effort to draw a line between your political activities and your official duties as members of Congress and to comply with House and Senate Ethics Rules on the use of public and campaign funds. The Ethics Rules focus on not using official accounts to convey campaign news, and limit use of public resources, including staff, on the political accounts.

The complaints we have received generally do not distinguish between official and political accounts. And, the reality is that, although only one of two social media accounts on the same platform is characterized or designated by your office as an "official social media account," many of you appear to be using your designated political accounts routinely and regularly to report news about your official actions as Representatives and Senators and to engage with your constituents.

Some accounts include disclaimers specifying and reserving the right to remove content that includes "profanity, name-calling, threats, personal attacks, spamming, or other inappropriate comments or material." Some don't. Regardless, a disclaimer cannot overcome constitutionally protected rights to engage with you as public officials in a public forum subject only to reasonable time, place, manner restrictions, and not based on content or viewpoint.

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Very truly yours,



Claire Guthrie Gastañaga



August 8, 2017

**Via Facsimile (202-224-6295) and U.S. Mail**

The Honorable Mark R. Warner  
Member, U.S. Senate  
703 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Warner:

The American Civil Liberties Union of Virginia has and is receiving a significant number of complaints from people across the Commonwealth about being blocked from posting, tweeting or commenting on social media sites maintained by members of Congress and other public officials. Such actions violate the right of free speech under the First Amendment to the United States Constitution and Article I, § 12 of the Constitution of Virginia if they are based on the content of the messages being blocked.

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