



June 22, 2017

VIA MAIL

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Re: Censoring of Constituents on Government-Sponsored Social Media

Dear Congressman Taylor:

On behalf of the ACLU of Virginia, I write regarding allegations that your constituents have been illegally censored and blocked from your government sponsored social media, including your Facebook and Twitter pages.

The ACLU of Virginia received multiple complaints from individuals whose comments were deleted and subsequently blocked and access restricted to your official and unofficial Facebook pages. These individuals' Facebook accounts were then subsequently blocked and all future access to the pages was restricted. Similarly, other complaints allege that they were blocked from your Twitter account after posting countering viewpoints or dissatisfaction with your policies.

Government social media pages are 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).

The individuals whose comments were censored claim that the censored content did not contain any profane, threatening, or discriminatory language. Rather, the comments or tweets expressed countering viewpoints or dissatisfaction with your official actions as Congressman for Virginia's Second District. 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, government officials must not engage in any form of viewpoint censorship in violation of the First Amendment.

The complaints about Facebook we received did not specify on which of your two Facebook accounts the censorship occurred. Though only one account is characterized as an official social media page, both appear to be used in that matter and the unofficial page appears to be used more heavily for your public official work. Your official Facebook page includes a disclaimer specifying and reserving the rights to remove content under certain circumstances. Specifically, content which includes "profanity, name-calling, threats, personal attacks, spamming, or other inappropriate comments or material." Your unofficial Facebook page does not include any disclaimer.

Based on the activity and number of followers, it appears that your unofficial page serves as your primary Facebook presence with over 56,000 followers. This is compared to the only 2,000 followers on your purported "official page." It is also evident that you communicate with your constituents in an official capacity on the unofficial page, discussing voting decisions, policy, and descriptions/photos of public appearances in your official capacity as a Congressman. Thus, though designated differently, your unofficial page appears to be an official congressional social media account.

Moreover, it is unclear whether you use Congressional resources to maintain your unofficial page. According to the *House Ethics Manual*, members are indeed free to maintain non-official social media accounts, such as campaign or personal accounts. However, these non-official accounts cannot utilize official resources: "official resources of the House must, as a general rule, be used for the performance of official business of the House." See U.S. Congress, House, Committee on Standards of Official Conduct, *House Ethics Manual*, 110th Cong., 2nd sess. (Washington: GPO, 2008), p. 123. 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 likely are in violation of House Ethics Rules. *Id.*

We ask that you review your social media policy so that it adheres to your constituent's First Amendment right to freedom of expression – whether on Facebook, Twitter, or other social media – and ensure personnel compliance as well.

I would be happy to speak with you further about these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leslie Menta", is written over the typed name and title.

Leslie Menta
Legal Director