



1/6/2021

BY MAIL to:

Tate Reeves
Governor of Mississippi
P.O. Box 139,
Jackson, MS 39205

Re: Blocking members of the public on Governor Reeve's official Facebook Page

Dear Governor Reeves:

AMERICAN CIVIL
LIBERTIES UNION OF
MISSISSIPPI
P.O. BOX 2242
JACKSON, MS 39225
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I first want to thank you for your administration's tireless work during the global COVID-19 pandemic. I understand that your attention is currently focused on ensuring that Mississippi is safe and its future protected during this time. There is no time however when the government can censor speech based on its viewpoint. No government official can allow positive commentary and silence the critical. We write regarding allegations that members of the public have been blocked from commenting on the Tate Reeves Facebook Page ("Official Page") (<https://www.facebook.com/tatereeves/>) after posting critical comments. Such action violates the First Amendment and is unconstitutional.

1. Public Officials Cannot Censor Critical Viewpoints on Social Media.

The ACLU of Mississippi received complaints from individuals whose comments – which expressed viewpoints that were critical of you – were deleted and their accounts subsequently blocked and banned from the Official Page. Specifically, these individuals posted critical viewpoints of you by questioning your abilities to be Mississippi's Governor.

2. The First Amendment Protects Speech on Social Media about Public Officials and their Policies and Practices.

The speech censored by you is undoubtedly protected speech under the First Amendment, as it is "speech on matters of public concern," which lies at the core of First Amendment protection of speech. *Engquist v. Oregon Dept. of Agri.*, 553 U.S. 591, 600 (2008). Speech that criticizes the government has long been protected by the First Amendment. *See Texas v. Johnson*, 491 U.S. 397, 405 (holding that flag burning as a form of protest against the Reagan administration is protected by the First Amendment); *see also Tinker v. Des Moines*, 393 U.S. 503, 514 (1969) (holding wearing black armbands by students to protest the Vietnam War is protected by the First Amendment).

The interactive sections of government social media pages – the comment section of the Official Page – are designated public forums, which are public forums

“created by government designation of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects.” *Cornelius v. NAACP*, 473 U.S. 788, 802 (1985); *see also Perry Education Ass’n v. Perry Local Educators Ass’n*, 460 U.S. 37, 45 (1983) (“[P]roperty which the state has opened for use by the public as a place for expressive activity.”); *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 237 (2d Cir. 2019) (holding that the reply/retweet thread on President Trump’s Twitter account is a designated public forum); *Davison v. Randall*, 912 F.3d 666, 682 (4th Cir. 2019), *as amended* (Jan. 9, 2019) (holding that the County opened a forum for speech when the Chair of its Board of Supervisors started a Facebook Page for her role as Chair and solicited public comments). In fact, the Supreme Court has recognized that the internet and social media are among the most important places for speech:

While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the “vast democratic forums of the Internet” in general, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 868 (1997), and social media in particular...In short, social media users...engage in a wide array of protected First Amendment activity on topics as ‘diverse as human thought.’

Packingham v. North Carolina, 137 S.Ct. 1730, 1735-36 (2017). Furthermore, the Supreme Court has recognized Facebook and other social media sites (e.g. Twitter), specifically as places where “users can debate religion and politics” and where “users can petition their elected representatives and otherwise engage with them in a direct manner.” *Id.* at 1735.

3. Governor Reeves Has Intentionally Opened His Social Media Account as a Forum for Speech and Interaction.

The Official Page is the “official” account of you as Governor and managed by you or at your direction. The Official Page is linked on the Governor Reeves’s government website (<https://governorreeves.ms.gov/>). It is dedicated to public use and a tool for you, a public official, to communicate information about the office of Governor, as well as interact with the public for their comments. This public discourse occurs in actuality as well: a poignant example would be an January 4, 2021 post in which you went live on Facebook to give constituents an update on Mississippi’s COVID-19 vaccinations, <https://fb.watch/2Rxslr7arZ/>. That video received over 950 reactions and over 2000 comments. On December 22, 2020, you also posted an update regarding an Executive Order you signed that extends the mask rules to all counties that qualify, <https://www.facebook.com/tatereeves/posts/4193471434003618>. That post received over 2000 reactions and over 2,500 comments. The examples could go on.

4. The Speech at Issue is Not Government Speech.

The kind of speech that the complainants engaged in and the type of access they seek are not covered by the Government Speech doctrine. To be clear, the plaintiffs do not seek to gain control over the Official Page posts on Facebook, but rather the ability to comment, as a member of the public, on your posts. The relevant speech is the public's comments in the interactive spaces on the Official Page. *See Knight*, 928 F.3d at 239 (holding that the interactive space where Twitter users may engage with the content of the President Trump's tweets are not government speech and properly subject to forum analysis).

5. Governor Reeves' Blocking of Online Critics Is Viewpoint Discrimination, Which is Unconstitutional.

Blocking and banning members of the public who provide critical comments about you as Governor of Mississippi is unconstitutional because it is viewpoint discrimination. The Supreme Court of the United States has made clear that viewpoint discrimination is never constitutionally permissible in any type of forum, including designated public forums, as here. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995) (“Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction”); *see also Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) (“[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.”); *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm’n*, 429 U.S. 167, 175-76 (1976) (“To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees.”); *Police Department of Chicago v. Mosley*, 408 U.S. 92, 96 (1972) (“[G]overnment may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.”); *Chiu v. Plano Independent School Dist.*, 260 F.3d 330, 350 (5th Cir. 2001) (“Viewpoint discrimination is a clearly established violation of the First Amendment in any forum.”).

Even in a limited public forum or a nonpublic forum, where the standard of analysis may be more permissive than in a designated public forum, viewpoint discrimination is unconstitutional. *See Good News Club v. Milford Central School*, 533 U.S. 98, 106 (2001) (“The State's power to restrict speech [in a limited public forum] is not without limits. The restriction must not discriminate against speech on the basis of viewpoint.”); *see also Cornelius*, 473 U.S. at 806 (in a nonpublic forum, “the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject”); *Perry*, 460 U.S. at 46 (in a nonpublic forum, “the state may reserve the forum for its

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intended purposes, communicative or otherwise, as long as the regulation is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view").

We understand that your current priority is to keep Mississippi safe during this COVID-19 pandemic, and we appreciate everything that your administration is doing to ensure that. However, blocking constituents on your Official Page is unconstitutional and a court would very likely find as such. It is paramount that your constituents have access to the Official Page, so that they may exercise their First Amendment rights. This is never truer than during a crisis. Please respond to this letter on or before January 21, 2021 by confirming that you have unblocked and unbanned any individuals whom you have blocked or banned from your Official Facebook Page and that you will cease the practice of deleting comments or blocking and banning individuals on your Official Facebook Page based on their viewpoint.

We would be happy to discuss these matters with you further in order to ensure that the Official Page's policy complies with the Constitution.

Thank you again and we look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink that reads "J Tom". The signature is written in a cursive style.

Joshua F. Tom
Legal Director
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