



1/6/2021

**VIA US MAIL TO:**

Congressman Steven Palazzo  
2349 Rayburn House Office Building  
Washington, DC 20515

*Re: Blocking members of the public on Rep. Steven Palazzo's official Facebook Page*

Dear Representative Palazzo:

On behalf of the ACLU of Mississippi, I write regarding allegations that members of the public have been unconstitutionally censored and blocked from Congressman Steven Palazzo's Official Facebook page ("Official Page") (<https://www.facebook.com/stevenpalazzo>).

**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 were subsequently blocked and banned from the Official Page. Specifically, these individuals posted critical viewpoints of you by: posting a comment, and sharing a news story, criticizing how you allegedly used campaign funds to pay rent to a business you own.

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

The speech censored by you, which alleges governmental waste and abuse, 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

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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. Rep. Steven Palazzo Has Intentionally Opened His Social Media Account as a Forum for Speech and Interaction.**

The Official Page is meant to be the “official” account of Rep. Steven Palazzo and managed by you or at your direction. It states, “Welcome to Congressman Steven Palazzo's Official Facebook!,” and says, “The purpose of this page is for Congressman Steven Palazzo to communicate with the residents of Mississippi’s Fourth Congressional District regarding matters of federal policy.” It is dedicated to public use and a tool for you, a public official, to communicate information about the office of a U.S. Congressman, as well as interact with the public for their comments on matters of public concern. The Official Page is used as a public forum in actuality as well: a poignant example would be a December 28, 2020 post from the Official Page about you signing a letter to the Attorney General asking for a reversal of a proposed rule regarding stabilizing braces. This post received almost 300 reactions, 375 comments and over 100 shares. See Congressman Steven Palazzo, Facebook, <https://www.facebook.com/stevenpalazzo/posts/4036853523009256>  
Another example is a post made on December 22, 2020 in which you describe the passing of the DEFEND Act into law. This post has over 150 reactions, almost 300 comments and several shares. See Congressman Steven Palazzo, Facebook, <https://www.facebook.com/stevenpalazzo/posts/4022846364409972>

A third example is an address regarding a COVID-19 relief bill. This was posted to Congressman Palazzo's on December 21, 2020. It has over 500 reactions and over 1,000 comments. See Congressman Palazzo, Facebook, <https://www.facebook.com/stevenpalazzo/posts/4020784491282826>

#### **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's 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. Steven Palazzo's Blocking of Online Critics Is Viewpoint Discrimination, which is Unconstitutional.**

Blocking and banning members of the public who provide critical comments about you 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 (5<sup>th</sup> 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 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”).

**It is paramount that your constituents have access to the Official Page, so that they may exercise their First Amendment rights. This is never more true than during a crisis, such as the current COVID-19 Pandemic. 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 Page and that you will cease the unlawful practice of deleting comments or blocking and banning individuals on your Official 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.

We look forward to hearing from you.

Sincerely,



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