AMERICAN CIVIL LIBERTIES UNION OF MISSISSIPPI
P.O. BOX 2242
JACKSON, MS 39225
T/601.354.3408
F/601.355.6465
WWW.ACLU-MS.ORG

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Dear Public Official,

You are receiving this letter because you may have blocked a member of the public from accessing your Official Social Media Page ("Official Page") and/or deleted a comment they posted on your Official Page, which expressed critical viewpoints of you. *Public officials cannot censor critical viewpoints on social media*. Therefore, on behalf of the American Civil Liberties Union (ACLU) of Mississippi, I am writing to inform you that such action violates the First Amendment and is unconstitutional.

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

The speech you censored 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 Dep't of Agric.*, 553 U.S. 591, 600 (2008). The First Amendment has long protected speech criticizing the government. *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 to protest the Vietnam War is protected by the First Amendment).

The interactive sections of government social media pages are designated public forums, which are "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 Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985); *see also Perry Educ. 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), *vacated as moot*, 141 S.Ct. 1220 (2021); *Davison v. Loudon Cty. Bd. of Supervisors*, 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,' 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.' (citations omitted).

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.

2. You Have Intentionally Opened Your Social Media Account as a Forum for Speech and Interaction.

The Official Page is the "official" account of you as a public official and managed by you or at your direction. It is dedicated to public use and a tool for you, a public official, to communicate information regarding public matters and interact with the public for their comments.

3. The Speech at Issue is Not Government Speech.

The kind of speech that the member of the public engaged in and the type of access they seek are not covered by the Government Speech doctrine. To be clear, the complainant does not seek to gain control over the Official Page content, but rather the ability to comment, as a member of the public, on your Official Page. The relevant speech is the public's comments in the interactive spaces on the Official Page. *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995) (finding that the same principles of forum analysis apply to forums that exist more "in a metaphysical than in a spatial or geographic sense").

4. The Blocking of Online Critics by a Public Official Is Viewpoint Discrimination, Which is Unconstitutional.

Blocking and banning members of the public who provide critical comments about you as a public official 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*, 515 U.S. at 829 ("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 L.A. 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. Wis. 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 Dep't of Chi. 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 Indep. Sch. Dist.*, 260 F.3d 330, 350 (5th Cir. 2001) ("Viewpoint discrimination is a clearly established violation of the First Amendment in any forum."); *Robinson v. Hunt Cty.*, 921 F.3d 440 (5th Cir. 2019) (finding that the Hunt County Sheriff's Office's actions of deleting plaintiff's Facebook comment and banning her from their official Facebook page constituted viewpoint discrimination).

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 Cent. Sch.*, 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").

Blocking constituents or deleting their comments on your Official Page because they are critical of you or your actions is unconstitutional and a court would 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.

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

Sincerely,

Joshua F. Tom
Legal Director
ACLU of Mississippi
P: (601) 354-3408
jtom@aclu-ms.org

Members of the public: Feel free to use this letter as an advocacy tool if you have been blocked by a Public Official on their Official Page and/or if a comment you posted on a Public Official's Official Page was deleted because it expressed a critical viewpoint of the public official.