

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

July 17, 2020

SENT VIA EMAIL & U.S. MAIL: billbraswell@polk-county.net

The Honorable Bill Braswell
Chairman
Board of Polk County Commissioners
330 W. Church St.
Bartow, FL 33931

Re: Unconstitutional Social Media Discrimination

Dear Chairman Braswell:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to citizen concerns over your abuse of your official Facebook page. FFRF is a nationwide nonprofit organization with more than 32,000 members throughout the country, including more than 1,600 members in Florida and a local chapter, Central Florida Freethought Community. Our purposes are to protect the constitutional separation between state and church and to educate the public on matters related to nontheism.

Multiple concerned Polk County residents, including members of a local atheist group, have reported that you have deleted their comments from posts on your official Facebook page, and then blocked them from accessing your page. The deleted comments were not threatening, derogatory, or even inflammatory. They simply expressed viewpoints different from your own.

As a county commissioner, you represent a diverse population that consists of not only those who agree with you, but also those who do not. Your constituents have a First Amendment right to receive important information from you and to voice their opinions on your official Facebook page. Your decision to delete their comments and then block them from viewing your page violates their constitutional rights. We request that you immediately cease deleting comments you disagree with and blocking constituents from your official Facebook page. We also ask that any constituents who have been blocked for simply expressing their views be unblocked immediately.

The Supreme Court has described the power of social media sites as “the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017) (internal citations omitted). When a government official opens a channel of communication to the general public, the Constitution has always prevented them from excluding individuals based on their political viewpoints. Blocking individuals from generally accessible government social media feeds is no different. And every federal appeals court that has considered this issue has agreed. *See Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019); *Robinson v. Hunt Cty., Texas*, 921 F.3d 440 (5th Cir. 2019); *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226 (2d Cir. 2019).

A government official may not block citizens from commenting on their official social media page just because the official disagrees with their point of view. Social media can provide “the most powerful mechanisms available to a private citizen to make his or her voice heard. They allow a person with an Internet connection to ‘become a town crier with a voice that resonates farther than it could from any soapbox.’” *Packingham*, 137 S. Ct. at 1737. Blocking a person’s comments based on their viewpoint directly violates that person’s free speech rights. *See, e.g., Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 577 (S.D.N.Y. May 23, 2018) (holding that because the President uses his Twitter account to communicate in his official capacity, he cannot block people who have criticized him from posting replies), *aff’d*, 928 F.3d 226 (2d Cir. 2019). When the government “actively restricts ‘the right of an individual to speak freely [and] to advocate ideas,’ it treads into territory proscribed by the First Amendment.” *Id.* at 576. (quoting *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 286 (1984)).

Even the private social media accounts of people who assume government office can become accounts that speak for the government, unless these officers carefully distinguish their public and private roles. Courts are willing to treat accounts that politicians believe to be private as official government accounts when they are used to disseminate official communications. *See, e.g., Hawaii v. Trump*, 859 F.3d 741, 773 n. 14 (9th Cir. 2017) (noting that the President’s personal Twitter feed is composed of “official statements by the President of the United States”); *Davison*, 912 F.3d 666 (holding that chair of county supervisors acted under color of state law in maintaining “Chair Phyllis J. Randall” Facebook page); *Robinson*, 921 F.3d 440 (finding that a county sheriff acted with final policymaking authority when he created a Sheriff’s Office Facebook page). We see no legal reason why your Facebook would be treated differently.

Finally, your abuse of your official Facebook page needlessly jeopardizes taxpayer dollars by exposing Polk County to legal liability. In 2018, the State of Maryland agreed to pay \$65,000 to cover legal fees after Governor Larry Hogan blocked 450 people for posting critical comments on Facebook.¹ There is no need to expose Polk County to similar liability by continuing to discriminate on your official Facebook page.

We ask that you unblock any constituents you blocked for posting messages from a viewpoint that you disagree with, and that you cease from blocking constituents because of their viewpoint in the future. Please inform us in writing of the steps taken to respect the constitutional rights of all Polk County residents.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

¹ *See* Ovetta Wiggins, *Maryland, ACLU reach settlement over governor deleting critical comments on his Facebook page*, Washington Post (Apr. 2, 2018), available at <https://wapo.st/2K1GdzZ>.