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August 8, 2017

Wallace F. Bennett Federal Building
125 South State, Ste. 4225
Salt Lake City, UT 84138

Dear Senator Lee,

You and your office have embraced social media as a key means of communicating and interacting with constituents and the public. You use your Facebook and Twitter pages to promote your positions on issues, correspond with constituents, criticize political opponents, and highlight your political appearances through photographs and video. These official social media pages are set as public in your name and role as a U.S. Senator, tracking your political positions and official activities. You post frequent links and commentary and seek responses from members of the public as a means of engaging Utah voters and keeping constituents informed. Likewise, your constituents and the public are able to post their own comments, questions, and links to your pages.

We write because we have heard from several individuals who report that government officials have blocked them from posting on official government social media pages. It appears to be a common practice for officials to block users because of their questions and opinions on various issues and criticisms of specific policy positions. Because government-run social media pages are public forums, blocking people for these reasons is an unconstitutional restriction on their right to free speech under the First Amendment.

Given the prominent place social media has taken as a forum for today's marketplace of ideas, courts have "repeatedly affirmed the First Amendment significance of social media, holding that speech utilizing Facebook is subject to the same First Amendment protections as any other speech." *Davison v. Loudoun County*, 1:16v932 (JCC/IDD), slip op. at *5 (E.D. Va. Jan. 4, 2017). As such, the government, and you as a Senator, may not legally establish a social media site as a forum for dialogue with constituents, then selectively prohibit people from speaking in that forum based on the viewpoints they express. Accordingly, blocking users, deleting, and hiding selected comments or criticisms from Utahns and others violates the Constitution.

The Supreme Court has held that the government creates a public forum when it opens a nontraditional forum for public expression. *Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 45 (1983). Moreover, the government may reserve a public forum for use by certain groups "or for the discussion of certain topics." *Rosenberger v. Rector*, 515 U.S. 819, 830 (1995). These public forums can be physical or metaphysical spaces and can be publicly or privately owned. *Id.* During the time that the forum is open for public expression, the government may set reasonable time, place, and manner restrictions, though any content-based limitations "must be narrowly drawn and effectuate a compelling state interest." *Perry Educ.*

Ass'n, 460 U.S. at 45. However, the government cannot set content-based restrictions that censor private speech based on viewpoint in any public forum. *Id.*

Several federal courts have held that interactive, government run Facebook pages constitute limited public forums. *Hawaii Defense Fund v. Honolulu*, No. 1:12-CV-00469, (D. Haw. Jan. 21, 2014); *Odermatt v. Way*, 188 F. Supp.3d 198, 213 (E.D. N.Y. 2016). In *Davison v. Loudoun*, a Virginia District Court held that Loudoun County's Facebook page constituted a limited public forum. *Davison*, slip op. at *5. The court stated that the county's Social Media Comment Policy, where the county reserved a right to remove comments or block individuals whose comments included prohibited speech, demonstrated the county's intent to open its Facebook page for public expression. *Id.*

Like the county in *Davison*, you have also opened your official Facebook for public discussion. Your Facebook page is a privately owned, metaphysical space which you and your staff have opened for public expression. Additionally, you have opened your official Twitter page (a privately owned metaphysical space) for public discussion and public expression of any kind, on any topic. It is thus unconstitutional for you or your staff to block private users based on the viewpoints they express.

We would be happy to discuss any questions you may have on this issue. Please free to contact us by email at jmejia@acluutah.org or lfarrell@acluutah.org or by telephone, (801) 521-9862. Thank you for your time and consideration of this important issue.

Sincerely,



John Mejia

Legal Director

American Civil Liberties Union of Utah