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August 8, 2017

Representative Mia Love
Utah 4th District Office
9067 South 1300 West Ste.101
West Jordan, UT 84088

Dear Congresswoman Love,

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 Congresswoman, 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 you have blocked them from posting on your social media pages. As discussed further below, from the circumstances, it appears that you blocked them because of their questions and opinions on various issues, such as their concerns about your silence in response to their requests for town halls. Because your social media pages are a public forum, your blocking of these individuals 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 U.S. Representative, 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. In that context, we it is very troubling several individuals have contacted us to say that you have blocked them.

For example, Kathleen Ayala has been blocked from your Rep. Mia B. Love Facebook page. Kathleen had a history of posting comments on your page expressing criticism of you and your policies. While her comments were often scathing and sarcastic, none of them could be reasonably called threatening or obscene. None of her comments violated your Facebook

comment policy. From our understanding, Kathleen is one of many people blocked from your Facebook page.

Similarly, Tom Taylor was blocked by you on Twitter for a time. Tom is running against you in the upcoming election, and noticed he was blocked in May when someone tagged him in a response to one of your tweets. Tom often replied to your tweets and tagged you in tweets that were critical of your positions and official performance. Though Tom expressed disagreement with your positions, he never made any personal attacks or threats. Though Tom was recently unblocked, it was wrong to block him for any period of time.

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. *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.* Further, the county’s Social Media Policy established time, place, and manner restrictions for public expression on the County’s Facebook page. *Id.*

Like the county in *Davison*, you have also opened your official Facebook for public discussion and have implemented a comment policy. Your Rep. Mia B. Love 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.

For these reasons, we urge you to immediately cease unlawfully censoring constituents by blocking their access to your social media pages based on the viewpoints they express there. We encourage you and your staff to continue restoring the posting privileges of all those who have been unlawfully blocked for speaking their minds, including Kathleen.

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