



**First Amendment Clinic**  
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**VIA EMAIL** – [a.williams@bcso-ga.org](mailto:a.williams@bcso-ga.org)

Alfonzo Williams  
Burke County Sheriff  
225 Hwy. 24 South  
Waynesboro, GA 30830

Dear Sheriff Williams:

We write on behalf of Burke County Resident Traci Hollingsworth, regarding the Burke County Sheriff's Office ("the Sheriff's Office") having deleted or filtered her critical or negative comments from public view on its official Facebook Page ("the Page") located at <https://www.facebook.com/BurkeCountySheriffGeorgia>, and having blocked her from accessing the Page, both in violation of the First Amendment. We therefore write to request that the Sheriff's Office restore Facebook page access to Mrs. Hollingsworth, and refrain from hiding or deleting critical comments on the Page going forward.

Mrs. Hollingsworth is a concerned citizen who, prior to being blocked, regularly engaged with posts on the Burke County Sheriff's Facebook Page. Before being excluded from the Page, she contributed multiple relevant comments expressing concern or criticism of the Sheriff's Office's policies. As described below, these comments were deleted or have been filtered from the public's view as they can no longer be seen on the Page. Additionally, Mrs. Hollingsworth's access to the Page has been restricted on a number of occasions.

Specifically, on November 15, 2019, Mrs. Hollingsworth's ability to interact with the Page was restricted such that she could only like or share posts made by the Sheriff's Office but could not comment on them. Her access was restored the next day. Then, on September 23, 2020, the Sheriff's Office posted an advertisement of a Citizen's Firearm Class, and Mrs. Hollingsworth left a comment expressing criticism of the lead testing practices in the Sheriff's Office building.<sup>1</sup> The Page subsequently stated that Mrs. Hollingsworth's comment was removed, allegedly for not being "family friendly," although her comment did not contain profanity or anything unsuitable for family readership.<sup>2</sup> Further, on October 26, 2020, the Sheriff's Office posted on the Page an entry titled "Join Our Team!!! We are Hiring!!!"<sup>3</sup> Although Mrs. Hollingsworth left a comment expressing criticism of the Office's employment practices,<sup>4</sup> those comments are no longer visible which suggests they have either been deleted or hidden from view. Mrs. Hollingsworth was subsequently blocked from accessing the Page and her access has not been restored to date.

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<sup>1</sup> See Exhibit 1 (Screenshot of Mrs. Hollingsworth's Facebook comment on Sheriff's Office's post).

<sup>2</sup> See Exhibits 1-3 (Screenshot of Mrs. Hollingsworth's Facebook comments and response from the Sheriff's Office).

<sup>3</sup> See Exhibit 4 (Screenshot the Sheriff's Office's Facebook post).

<sup>4</sup> See Exhibits 4, 5 (Screenshot of Sheriff's Office's post and Mrs. Hollingsworth's comment).

## **Social Media Blocking and Filtering of Negative Comments Constitutes Unlawful Viewpoint Discrimination**

Government officials cannot exclude speakers from a public forum based on disagreement with the speaker's viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Viewpoint discrimination, which targets the particular views of the speaker rather than the subject matter of the speech, is considered “an egregious form of content discrimination” that violates the First Amendment. *Id.* at 829 (“When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”). Applying these principles in the digital context, courts have held that a government official or agency's interactive social media account that is used to communicate with the public about official government business constitutes a designated or limited public forum under the First Amendment. *See Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158, 1177 (9th Cir. 2022) (holding that School Board Trustee's Facebook account constituted a public forum because it was made available for use by the public); *Attwood v. Clemons*, 818 Fed. App'x 863, 867 (11th Cir. 2020) (noting that the state representative operated his social media account acting in his official capacity as an extension of his role in state office and therefore the account may constitute a public forum); *Davison v. Randall*, 912 F.3d 666, 687 (4th Cir. 2019) (“the interactive component of the [County Board Chairperson's] Facebook Page constitutes a public forum”); *Robinson v. Hunt County, Texas*, 921 F.3d 440, 448 (5th Cir. 2019) (finding that the Hunt County Sheriff's Office's interactive Facebook page was a public or limited public forum that is subject to First Amendment protection); *Knight First Amendment Institute v. Trump*, 928 F.3d 226, 237 (2d Cir. 2019) (using a publicly accessible social media account for public governance and discussion creates a public forum), *vacated as moot*, 141 S.Ct. 1220 (2021).

Courts have further held that once a government agency creates a public forum by operating an official social media account where members of the public can interact with the content, the agency engages in unlawful viewpoint discrimination if it then prevents members of the public from viewing the account or expressing themselves on the account because of their critical perspective. *See Davison*, 912 F.3d at 680 (holding that a County Board Chairperson's Facebook Page constituted a public forum because it was used as a “tool of governance” to facilitate public discourse and blocking a critical constituent from the Page “amounted to ‘viewpoint discrimination’ which is prohibited in all forums”); *Knight*, 928 F.3d at 217 (“[W]hen the President creates such a public forum, he violates the First Amendment when he excludes persons from the dialogue because they express views with which he disagrees.”). In sum, government officials and government agencies cannot block users from accessing their official, interactive social media accounts based on dislike or disagreement with the users' comments. *See id.*, 928 F.3d at 237 (“By blocking the Individual Plaintiffs and preventing them from viewing, retweeting, replying to, and liking his tweets, the President excluded the Individual Plaintiffs from a public forum, something the First Amendment prohibits.”); *Attwood*, 818 Fed. App'x at 867 (holding that public officials cannot exclude others based on viewpoint on social media accounts which constitute public fora).

Here, the Burke County Sheriff's Office operates an official, publicly accessible Facebook page that is interactive – i.e., users may comment, “like,” share, and in other ways express themselves on the Page. The Sheriff's Office has therefore created a digital public forum. Blocking

Mrs. Hollingsworth from the Page because she has made comments critical of the Sheriff's Office constitutes viewpoint discrimination and is a clear violation of the First Amendment. *See id.* at 867; *Davison*, 912 F.3d at 680; *Knight*, 928 F.3d at 234; *Robinson*, 921 F.3d at 449.

Additionally, officials cannot choose which comments they suppress or promote based on their own preference for, or dislike of, the viewpoint being expressed, so long as the comments pertain to a subject matter that is reasonably related to the purpose of the account. *See Rosenberger*, 515 U.S. at 828 (concerning the speech of private individuals, "government regulation may not favor one speaker over another"); *Sumnum v. Callaghan*, 130 F.3d 906, 917 (10th Cir. 1997) ("Although content-based discrimination is permissible in a limited [public] forum if it preserves the purposes of the forum, when the government moves beyond restricting the subject matter of speech and targets 'particular views taken by speakers on a subject,' such viewpoint discrimination is 'presumed impermissible.'" (quoting *Rosenberger*, 515 U.S. at 829-830)); *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1226 (11th Cir. 2017) ("Limited public fora likewise do not tolerate viewpoint discrimination."). Thus, when a government agency hides or deletes comments on its official, interactive social media page that are critical of the agency or its policies, those comments are sufficiently on-topic to be consistent with the purposes of the page – even assuming it to be a limited public forum. And censoring those critical comments constitutes viewpoint discrimination in violation of the First Amendment. *See Robinson*, 921 F.3d at 447 (holding that the Hunt County Sheriff's Office deleting critical comments from its official Facebook page amounted to unconstitutional viewpoint discrimination); *Knight*, 928 F.3d at 221 (emphasizing that allowing government officials to "pick and choose" who can comment on their official social media page that will permit censorship violative of the First Amendment) (citing *Se. Promotions, Ltd. v. Conrad.*, 420 U.S. 546, 563 (1975)).

In this case, the comments posted on the Burke County Sheriff's interactive Page by Mrs. Hollingsworth were critical of the Sheriff Office's policies but were still on a subject matter related to the purpose of the account. Since the account constitutes a public forum, suppressing Mrs. Hollingsworth's critical comments by deleting them or filtering them out of public view constitutes viewpoint discriminatory censorship, in violation of the First Amendment. *Robinson*, 921 F.3d at 448 (holding that removing unfavorable comments was unconstitutional and "a policy of deleting 'inappropriate' comments is viewpoint discriminatory"); *Knight*, 928 F.3d at 221 (emphasizing that officials cannot exclude individuals from comment in public forums based on their expressed viewpoint).

In conclusion, we urge the Burke County Sheriff's Office to cure its continuing violation of the First Amendment and limit its current liability by immediately restoring Mrs. Hollingsworth's access to the Sheriff's Facebook Page and restoring all comments on the Page that have been deleted, hidden, or filtered based on their critical viewpoint. To avoid repeating these constitutional violations, we strongly encourage the Sheriff's Office to adopt and follow a policy that it will not hide or delete critical-viewpoint comments on its Page or block the users who post them.

We appreciate your review of this matter and look forward to your response no later than November 30, 2022.

Sincerely,

*Maryam Shokry*

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