



Georgia

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January 23, 2018

Congressman John Lewis
100 Peachtree Street NW, Suite 1920
Atlanta, GA 30303

Via Certified Mail

Re: Censorship on Your Government Facebook Page

Dear Congressman Lewis:

Our democracy thrives when people can freely criticize elected officials—including yourself—so that the people you answer to can best determine whether you should remain in office. The American Civil Liberties Union of Georgia (ACLU-GA) writes on behalf of Matthew Kramer,¹ who has been blocked indefinitely from posting any comments on your official government Facebook page (“John Lewis, @RepJohnLewis”), which is open to public comment. *See Exhibit A.*²

We are concerned that you may have blocked Mr. Kramer for unconstitutional reasons, especially since, according to Mr. Kramer, you have not provided any explanation for blocking him. Mr. Kramer states that he has called your office repeatedly to request that you allow him to post comments on your government Facebook page as others are able to do, and he states that your office has yet to explain its reasons for blocking him indefinitely.

Because your government Facebook page has been opened for any member of the public to post comments, it is considered a “limited public forum.” *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983). And when a limited public forum has been created, it is unconstitutional for the government to discriminate against certain speakers because of the viewpoints they express. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). Though legal challenges to censorship on government social media sites are a relatively new phenomenon, at least one court has already found that targeted censorship on government Facebook pages open for public comment is unconstitutional. *See Davison v. Loudon County*, 2016 WL 4801617 (E.D. Va. Sept. 14, 2016) and 2017 WL 58294 (E.D. Va.

¹ This revised letter supersedes a prior letter that was sent on this date. In the prior letter, it was mistakenly suggested that Mr. Kramer was a current “constituent.” Mr. Kramer was previously a resident of your district, but has since moved to the 4th Congressional District. It is not clear whether he was blocked before or after the move, but in any event, the First Amendment freedom to criticize public officials is not limited only to those who can vote such officials out of office.

² Exhibit A is a screenshot taken by Mr. Kramer on January 18, 2018. There is no “Comment” option listed for Mr. Kramer, even though it appears for other members of the public.

Jan. 4, 2017). Indefinitely blocking someone from posting comments on your government Facebook page in this manner is like forever banning them from attending all town hall meetings, without explanation, until you no longer occupy public office.

We also have concern about your written policy concerning Facebook posts, posted under the “About” section of your government page. *See* Exhibit B. Your office claims the right to delete any comment that contains “defamatory” language, but overzealous enforcement of this policy can raise serious First Amendment concerns especially when applied to speech directed towards public officials. *See generally Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990) (cautioning against infringing on First Amendment in defamation actions); *United States v. Alvarez*, 567 U.S. 709, 724 (2012) (giving the government the right to ban false speech “would give government a broad censorial power unprecedented in this Court’s cases or in our constitutional tradition[,] . . . cast[ing] a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom”). Debate is often heated and passionate, and the First Amendment provides the breathing room necessary for that robust exchange of ideas. *See generally Watts v. United States*, 394 U.S. 705, 708 (1969) (language consisting of “vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials” as well as language that is “vituperative, abusive, and inexact” are all protected by the First Amendment); *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017) (antidisparagement prohibition is unconstitutional because “[s]peech may not be banned on the ground that it expresses ideas that offend.”).

As social media becomes more integral to the political process and public discourse, government officials must not engage in any form of viewpoint censorship in violation of the First Amendment. As the Supreme Court of the United States has recently said, “[i]t is cyberspace—the ‘vast democratic forums of the Internet’ in general, and social media in particular,” that is “the most important place[] . . . for the exchange of views” in the modern era. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

We respectfully ask that you restore the posting privileges of Mr. Kramer or provide a legal justification for why he has been blocked, undertake a review of all people whose posting privileges have been censored, and restore all of those who have been unlawfully blocked for commenting. Please notify us within 30 days in writing regarding whether you will agree to do so. We look forward to hearing from your office.

Sincerely,



Sean J. Young
Legal Director
ACLU of Georgia

EXHIBIT A



John Lewis



Jan 15 at 11:06 • 🌐

The Martin Luther King, Jr. holiday is a day on, not a day off. It is a day of service to our communities, to our brothers and sisters, and to generations yet unborn so that we all may continue Dr. King's work of building the beloved community. Dr. King was my friend, my brother, my leader. He was the moral compass of our nation and he taught us to...

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566 Comments • 1.9K Shares

➦ Share



John Lewis



Jan 11 at 14:32 • 🌐

EXHIBIT B



About Me

Policy on Comments:

All points of view responsive to posts or comments by visitors are welcome on Rep. John Lewis' website, Facebook, Twitter, Instagram, and other social media pages. As a general matter, content that is not illegal, obscene, profane, defamatory, threatening, infringing of intellectual property rights, invasive of privacy, or campaign soliciting will be posted exactly as received. "Campaign soliciting" refers to any content that directly links to any specific political campaign or organization (for example, but not limited to, a 527 organization), and the exclusion is due to rules of the House of Representatives since these pages are extensions of Rep. Lewis' official office and not his political offices. Any submission that contains personally identifiable information may be publicly displayed on the site(s) at or on other websites beyond our control. If you do not want others to see your personally identifiable information, you should not submit it. Rep. Lewis' Office reserves