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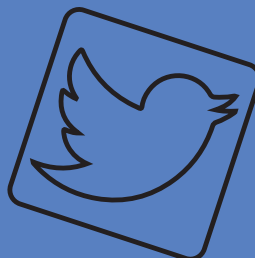
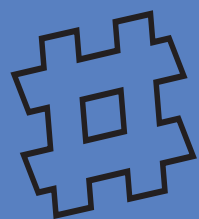


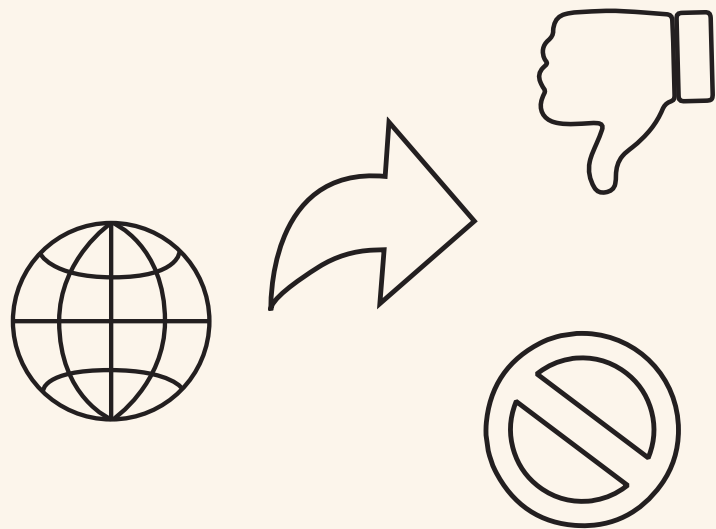
So you've been censored by a government official...



Tweet

Social Media Censorship Toolkit





WHY DOES SOCIAL MEDIA CENSORSHIP VIOLATE THE FIRST AMENDMENT?

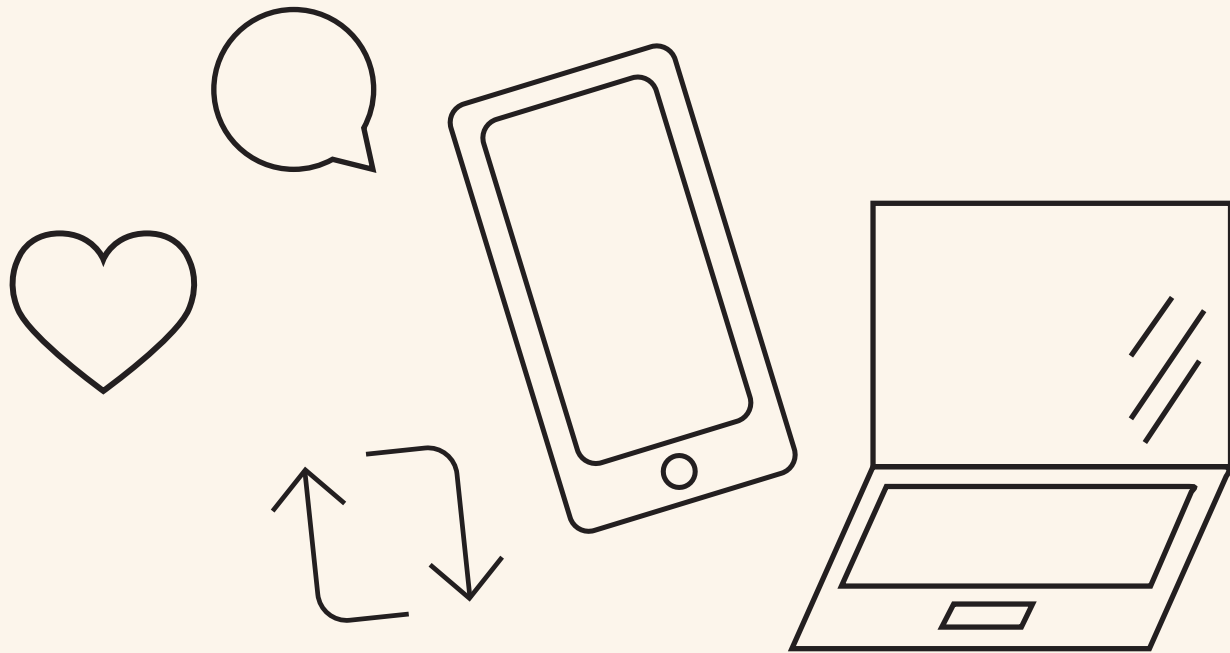
The ACLU of Northern California believes that official social media pages for elected representatives and government organizations, when they allow the public to make comments on the page, are **public forums**. Censoring individuals from these pages through blocking accounts or deleting comments can be an unconstitutional restriction on their right to free speech under the First Amendment.

This applies to **official** social media pages operated by the individual, or offices of elected representatives, or government boards, organizations, agencies, commissions, associations, or any other officially constituted group of a public entity where matters of public policy or governing are discussed. This standard **does not** apply to personal or campaign social media pages, nor to fake or parody pages not managed by the representative or organization.

Why does the First Amendment apply to social media pages?

After all, Ben Franklin and the other authors of the U.S. Constitution didn't use Twitter (if only they did!)

We believe—and the courts agree—that the Constitution's limits on government control of speech apply online as much as they do in newspapers, at marches, and in townhall meetings. In fact, the discussion at an old-fashioned townhall is similar to the discourse found on a social media page. Because it is unconstitutional for an elected representative to block critics from entering a public townhall simply because of their views, it's also not allowable for that representative to create a social media page and then restrict people with critical viewpoints from posting or viewing content.



These restrictions only apply to official social media pages where the elected representative or organization is considered a “government actor.” A mayor’s personal Facebook page, where she posts photos of her kids and reviews of her favorite books or movies, does not qualify as an official government page. Neither does a campaign page primarily focused on her reelection where she discusses her political accomplishments. A mayor can limit access to her personal pages to anyone she wants. But if the mayor’s Facebook page includes references to her official position, links to government phone numbers, email addresses or websites, or allows individuals to either seek government services or access and discuss government information, then the page becomes a space for public speech and First Amendment protections apply.

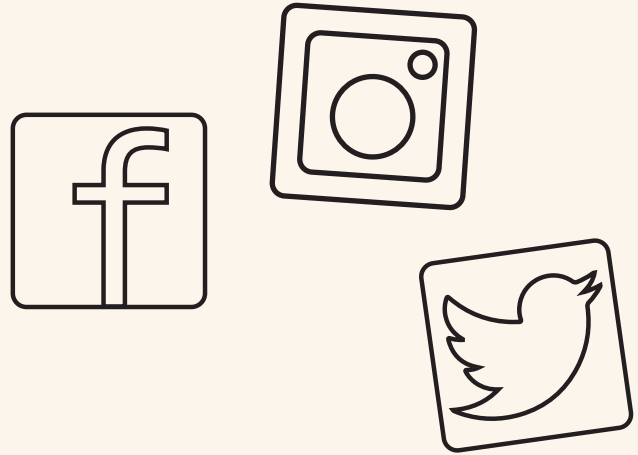
Because the format of every social media page is different, each instance of social media censorship must be evaluated based on its specific facts.

In the several prominent court cases addressing social media blocking, judges have reviewed when and why the social media page was created, the content posted on the page, and the reasons given for why an individual was blocked. This is why taking photos or screenshots of the social media page and any blocked posts or comments is important to proving a civil liberties violation.

Lastly, if elected representatives and government agencies develop standards for communication on their social media pages and platforms, these standards must be posted publicly on the page and accessible to all viewers (e.g., posted in the “Notes” or “About” section of a Facebook page). These standards must also be applied consistently and must not block speech that is critical, unpopular, or negative to the elected official or is considered protected speech under the First Amendment.

For more information, check out [ACLU NorCal's webpage on social media censorship](#). You can also check out [“Can a Government Official Block You on Twitter?”](#), a

November 2017 blog post by an attorney at the national ACLU’s Speech, Privacy, and Technology Project.



SOCIAL MEDIA CENSORSHIP TOOLKIT

This toolkit includes:

- **Censorship Flowchart**
 - Use this flowchart to determine if your rights were violated.
- **Censorship Checklist**
 - Follow these steps to confirm and resolve a potential First Amendment violation.
- **Sample Letter**
 - Fill out this form letter based on your individual situation.

Elected representatives violate the First Amendment when they block individuals or delete their comments for expressing critical opinions on Twitter and Facebook.

So, if you have been blocked from posting or commenting on an official social media page operated by an elected representative or government organization, your critical comments have been deleted, or you've otherwise been restricted from fully accessing official social media pages, this toolkit can help you challenge that censorship.

Published April 2021: Please note that the toolkit is for education purposes only and using the checklist or flow chart does not imply that the ACLU of Northern California is pursuing or would pursue legal action on your behalf or in any case.

CENSORSHIP FLOWCHART

So you've been censored on social media by a government official...

Use this flowchart to determine if your rights were violated.



Please note that the results of this flowchart do not imply that the ACLU of Northern California is pursuing or would pursue legal action on your behalf or in any case.



CENSORSHIP CHECKLIST

Follow the checklist below if you believe you are being censored by a government official.

- Take photos or screenshots of the social media page that blocked you or deleted your comments, including your comments if they are still visible or archived. If you can, also take some photos or screenshots of posts by others that stay up on the page (especially comments on the post you commented on.)

- Use the “So you’ve been censored on social media by a government official” flowchart to determine if your constitutional rights were violated.

- If the flowchart shows your rights were violated, contact the elected official via phone or email and ask to be unblocked (or for the official to stop deleting your comments). This low-key approach resolves many complaints.

- If you receive no response to the above request (or if you remain blocked and/or your comments continue to be deleted), download and personalize the ACLU of Northern California’s DIY Demand Letter and send it to the elected official.

- If you receive no response after 30 days, or if the government official refuses to unblock you or stop deleting your comments, contact the ACLU of Northern California at aclunc.org/our-work/get-help or call 415-621-2488.

SAMPLE LETTER

Letter Instructions:

1. Fill out this form letter based on your individual situation. Delete any unnecessary sentences, including sentences that do not reflect what happened to you.
2. After filling it out, read it through carefully, making sure that everything in the letter is true to your situation.
3. Paste any screenshots you have that prove what happened into the blank pages after the letter.
4. If mailing the letter, print it out, sign it, and send it to your government official.
5. If emailing the letter, digitally sign it (if you can), save it as a PDF file (if you can), and email it to your government official.
6. Wait for a response. If you don't hear back within 30 days or if the government official refuses to unblock you or stop deleting your comments, contact the ACLU of Northern California.

[[Your Name]]
[[Your Address]]
[[Your Contact Information (phone number and/or email)]]

[[Date]]

[[Government Official's Full Name]]
[[Government Official's Title]]
[[Government Official's Mailing Address (if mailing letter) or Email Address (if emailing letter)]]

[[VIA U.S. MAIL / VIA EMAIL]]

RE: Unconstitutional **[[Blocking ((and/or) Comment Deletions)]]** of Social Media Users Who Make Critical Comments

Dear **[[Government Official's Title and Last Name; example: "Councilmember Smith"]]**:

[[As your constituent, ((delete if not applicable))]] I am glad that your Office has embraced social media to interact with the public. However, I am deeply concerned by what looks like your Office's illegal suppression of free speech on your official **[[Facebook/Twitter/Instagram/etc. ((include as many as applicable))]] account[[s]]**. I was able to use social media to voice my views directly to you and your staff until **[[I was blocked by your official account ((and/or) my comments on posts to your official account were deleted)]]** because I criticized **[[your actions / your positions]]** on **[[Type of Issue; example: "unhoused people in our City"]]**. I have attached screenshots proving that **[[my comments were deleted ((and/or) I was blocked)]]**, while other comments that were neutral or praised you remain on your page**[[s]]** with their senders apparently not blocked. Providing different levels of access to official social media pages violates the First Amendment, and I strongly urge your Office to stop unconstitutionally censoring me by preventing me from engaging with your page**[[s]]**.

The **[[Facebook/Twitter/Instagram/etc. ((include as many as applicable))]]** page**[[s]]** I was restricted from using, found at **[[Insert Link(s)/URL(s) to Page(s) Here]], [[is / are]]** your official account**[[s]]**. **[[Use this paragraph to show the page is an official page; for example, use as many of these sentences that apply:]]**

- Your **[[Facebook/Twitter/Instagram/etc.]]** page is called “**[[Name of Page]]**,” an official title. **[[Repeat as necessary for each official social media page.]]**
- You use **[[this official page / these official pages]]** to post about official government business, such as **[[Give an Example from their Posts; example “new construction in our County”]]**.
- You also **[[list your page as an official page ((and/or)) include government contact information on the page]]**.
- You have **[[a separate campaign page ((and/or)) a separate personal profile]]**.

Because you allow public comments on your page**[[s]]**, **[[it is a government forum / they are government forums]]**. **[[In addition, my comments did not violate any comment policy listed on your page. ((delete this sentence unless there is a clear comment policy set forth on the social media page))]]**

For **[[length of time]]**, I have engaged with your official **[[Facebook/Twitter/Instagram/etc. ((include as many as applicable))]]** page**[[s]]**. On **[[Insert Exact or Approximate Date of Incident]]** I posted a comment on one of your posts where **[[Describe your Comment; example: “I criticized your behavior during the last election.”]]**. After **[[Length of Time]]**, **[[my comment was deleted ((and/or)) I was blocked from your page]]**. Since then, I have been deprived of the chance to respond to political posts, even though I hope to continue commenting on posts from your official social media pages in the future.

Blocking users who make critical comments from accessing your social media pages constitutes viewpoint discrimination in an important and widely used forum, which violates the First Amendment. *Robinson v. Hunt Cty., Texas*, 921 F.3d 440, 447 (5th Cir. 2019) (holding that a government official’s act banning a constituent from an official government social media page was unconstitutional viewpoint discrimination); *Davison v. Randall*, 912 F.3d 666, 687-88 (4th Cir. 2019) (same). This principle applies equally to the President of the United States as it does to mayors and city councilmembers. See *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 237-38 (2nd Cir. 2019).

Choosing to simply delete critical comments, as opposed to entirely blocking accounts, is just as viewpoint discriminatory. See *Scarborough v. Frederick County School Board*, No. 5:20-CV-00069, 2021 WL419180, at *4-*5 (W.D. Va. Feb. 8, 2021). This is because, whether blocking or deleting, even minimal discrimination violates the First Amendment. See *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 136-37 (1992) (holding that variations in permit fees based on the content of speech, even when the fee is nominal, is unconstitutional).

Social media is increasingly the site of discussion of important social issues. As the Supreme Court recognized, “[w]hile in the past there may have been difficulty in identifying the most important important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the ‘vast democratic forums of the Internet’ in general . . . and social media in particular.” *Packingham v. N.C.*, 137 S. Ct. 1730, 1735 (2017).

And there can be no doubt that my criticism of your Office is protected speech. “[S]peech on public issues occupies the ‘highest rung of the hierarchy of First Amendment values,’ and is entitled to special protection.” *Connick v. Myers*, 461 U.S. 138, 145 (1983) (quoting *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982)). Indeed, such speech lies “at the heart of the First Amendment’s protection.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978). Moreover, the First Amendment’s protection notably “include[s] vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

By blocking critical users or deleting their posts, your Office impermissibly discriminates against commenters based on the viewpoint of their speech. “When the government targets . . . particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. . . . The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (internal citations omitted).

Your Office must respect the constitutional rights of your constituents and cease **[[deleting critical comments (and/or) blocking individuals]]** who post constitutionally protected, critical comments on your official social media page **[[s]]**. For these reasons, I respectfully request that you and your staff immediately restore my unrestricted ability to view and interact with your social media posts. Please let me know within ten days of receiving this letter how you intend to handle this matter. If you have any questions or wish to discuss this issue with me, please feel free to contact me at **[[Phone Number ((and/or)) Email Address]]**.

Sincerely,

[[Signature]]

[[Name]]

[[ATTACH SCREENSHOTS OF EVIDENCE ON THE NEXT PAGES]]

Our DIY Letter isn't designed for situations where your post includes certain kinds of speech -- threats, inciting language, factual statements you know to be false, or an attempt to sell something -- and the post is only deleted without your account being blocked. This is because, in these situations, we believe officials are allowed to delete such comments. However, if you're blocked after posting these kinds of speech, you are entitled to take action but should adjust our DIY Letter to address only blocking (so you should remove any references to deleting comments).