



July 11, 2017

Matthew G. Bevin, Governor
Commonwealth of Kentucky
700 Capital Avenue, Suite 100
Frankfort, Kentucky 40601
fax: (502) 564-2517

Via first-class mail and facsimile transmission

RE: Request pertaining to use of social media

Dear Governor Bevin,

On behalf of the ACLU OF KENTUCKY and several affected Kentuckians, we write concerning your practice of permanently banning or blocking individuals from accessing or commenting on your official social media accounts. We believe that this practice, even if unrelated to the viewpoints expressed by those individuals, violates the free speech guarantees of the First Amendment to the U.S. Constitution and § 8 of the Ky. Constitution. Accordingly, we ask that you immediately cease permanently blocking or banning individuals from being able to engage in political speech on your official social media pages (your official "Governor Matt Bevin" Facebook page and your official @GovMattBevin Twitter account), *and* that you reinstate access to the hundreds of individuals who have already been blocked from those forums.¹

Specifically, while the use of social media is a relatively new phenomenon, it has quickly become a platform for individuals "to engage in a wide array of protected First Amendment activity on topics as diverse as human thought."²

¹ PHILLIP M. BAILEY AND MORGAN WATKINS, *Gov. Matt Bevin Blocks Hundreds on Facebook and Twitter*, <http://www.courier-journal.com/story/news/politics/2017/06/15/kentucky-gov-matt-bevin-blocks-hundreds-twitter-and-facebook/361281001/> (last visited July 7, 2017).

² *Packingham v. North Carolina*, 136 S.Ct. 2073, 2080 (U.S. June 19, 2017) (internal quotations and citation omitted).

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WILLIAM E. SHARP, LEGAL DIRECTOR

Recognizing the popularity and power of social media, you yourself have stated your intention to use it to connect with the public directly *in lieu of* utilizing traditional media outlets.³

However, in this medium, as in other public forum contexts, the Constitution protects individuals' speech rights and conversely limits government's ability to engage in content or viewpoint discrimination.⁴ This is particularly true for those individuals who access your social media pages to engage in political speech, which lies at the heart of the First Amendment's protections as does their right to receive the information you disseminate.⁵ Thus, because your official Facebook and Twitter pages are government-created public forums⁶ set aside for individuals to engage in and receive speech, you lack the authority to censor or otherwise block individuals from participating in these public forums simply because you disagree with the viewpoints they express.

Your spokesperson, Woody Maglinger, has indicated to a senior reporter for ProPublica that the decision to block individuals from these official online forums is not based on their expressed viewpoints, but rather because of posts that contain "obscene and abusive language or images, or repeated off-topic comments and

³ See e.g. GOVERNOR MATT BEVIN, "Media Exposed (Part One)" and "Media Exposed (Part Two)" videos, posted on June 15, 2017, both available at https://www.facebook.com/pg/GovMattBevin/videos/?ref=page_internal.

⁴ See *Packingham*, 198 L.Ed.2d at 282 ("In sum, to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights."); *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37 (1983); *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1994).

⁵ *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011) ("[S]peech on matters of public concern . . . is at the heart of the First Amendment's protection."); *Stanley v. Georgia*, 394 U.S. 557 (1969) (First Amendment protects right to receive information); *Neinast v. Bd. of Trs. of the Columbus Metro. Library*, 346 F.3d 585 (6th Cir. 2003).

⁶ Though some have argued that government-created social media accounts do not constitute designated or limited public forums for which First Amendment protections would apply, we disagree. See *Davison v. Loudoun County*, 2016 WL 4801617 at *7 (E.D. Va. Sept. 14, 2016) ("Once it has opened a limited forum, the State must respect the lawful boundaries it has itself set'...This rule applies as much to Defendants' Facebook page as to any other limited public forum.").

spam.”⁷ First, even if true, we do not think that has always been the case. Take, for example, the case of Drew Morgan. In early February, 2017, news broke regarding the property taxes owed on your Cherokee Gardens home.⁸ Mr. Morgan, a Kentuckian and former follower of your official Twitter account, commented on a number of your Twitter posts and inquired about the status of those property taxes.⁹ Then, on February 8, 2017, you (or someone acting on your behalf) permanently blocked him from your official Twitter account,¹⁰ and he remains blocked as of this date. None of Mr. Morgan’s comments on your Twitter account were obscene, abusive, or defamatory, nor were they “off-topic.” Instead, it appears that your office permanently blocked Mr. Morgan from your official Twitter account simply because of his viewpoint and the questions he posed. This resulted in Mr. Morgan being unable to engage in political speech on your official account, and being unable to share (or re-Tweet) your officials posts.

Similarly, Tristan Williams was blocked from your official Twitter account in early January, 2017. Just prior to being blocked, Ms. Williams had expressed her concerns about your policies about women’s health, particularly concerning reproductive health care. And in response to your Tweet encouraging protection for the unborn, Ms. Williams criticized, in a non-threatening, non-obscene, and non-defamatory way, your administration’s policies relating to children who have already been born.¹¹ Ms. Williams first noticed that she was blocked from your official Twitter account on January 7th, and she, too, has been blocked ever since.

Moreover, *Kentuckians Against Matt Bevin* is a public Facebook page on which political articles, blogs, and commentary are gathered. Currently, 1,827 people “like” the page, which means they follow this page and its posts appear in their timelines. The page began on April 1, 2016, but it was blocked from your official Facebook page less than a month later. Although quite clearly critical of

⁷ Posting of CHARLES ORNSTEIN to Twitter, <https://twitter.com/charlesornstein/status/874707071572168704> (June 13, 2017, 12:26 EST).

⁸ See e.g. MATTHEW GLOWICKI, *Records: Gov. Bevin, Wife Owe \$11K in 2016 Property Taxes*, *Courier-Journal*, Feb. 8, 2017. Available at <http://www.courier-journal.com/story/news/politics/2017/02/08/kentucky-governor-matt-bevin-wife-owe-11k-2016-property-taxes/97652528/> (last accessed July 6, 2017).

⁹ See attached Exhibit 1.

¹⁰ *Id.* at 2.

¹¹ See attached Exhibit 2.

your administration, the posts on this page were not (and are not) vulgar, obscene, or abusive.¹² Rather, this page engages in core political speech that is fully protected by the Constitution notwithstanding that it is critical of your administration's policies.

We think these examples fairly establish your office has, in fact, blocked individuals' access to your official social media accounts because of a disagreement with the messages they expressed. However, even crediting your office with blocking individuals for reasons wholly unrelated to the viewpoints they have expressed, permanently banning those individuals from engaging in the public forum nonetheless violates the First Amendment because a permanent ban lacks the requisite narrow tailoring for any legitimate speech restriction, and because it is tantamount to an unlawful prior restraint on speech.¹³

As Governor, you have made clear how highly you value direct engagement with constituents across the state. You certainly can appreciate, therefore, the importance of not unlawfully (or permanently) blocking individuals' access to the very platforms that you use to do so. Where public forums such as your Facebook and Twitter pages have been opened, traditional First Amendment protections apply and must be protected. Permanently blocking or banning users such as Mr. Morgan, Ms. Williams, and *Kentuckians Against Matt Bevin* (whether based on the viewpoints they express or for any other reason) violates the First Amendment, and we ask that you immediately unblock these three, and the hundreds of others who have likewise been blocked. We further request that your office adopt, and publicize, a constitutionally-sound policy regarding the moderation of these online public forums.

¹² See attached Exhibit 3.

¹³ See *Barna v. Bd. of Sch. Dirs.*, 143 F. Supp. 3d 205, 216 (M.D. Pa. 2015) (“Those courts that have confronted this issue in the context of a challenge to a prohibition on future expression because of past unlawful conduct have found such prohibitions unlawful.”); *Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 548 (D. Vt. 2014) (“A categorical ban of a single individual from open school board meetings, however, is not narrowly tailored and does not leave open ample alternative channels of communication.”); *Brown v. City of Jacksonville*, 2006 U.S. Dist. LEXIS 8162, 2006 WL 385085 (M.D.Fla. 2006) (granting preliminary injunction barring City Council from enforcing three-month attendance ban against plaintiff from attending City Council meetings). See also *Huminski v. Corsones*, 396 F.3d 53, 92 (2d Cir. 2004) (“categorical ban on expressive speech singling out an individual does not even satisfy the lower threshold of reasonableness review” for a nonpublic forum).

Because of the importance of individuals' speech rights, we request that you notify us, in writing, within ten (10) days of the date of this letter regarding whether (or not) your office will: 1) unblock *all* of the hundreds of individuals who have been blocked from your official Twitter and Facebook forums; 2) abandon the policy of permanently blocking individuals from these forums; and 3) develop and publicize written criteria for how your administration will moderate these online forums moving forward. Failure to respond within that timeframe will be construed as a rejection of our requests. Thank you in advance for your attention to this matter, and we look forward to your reply.

Sincerely,



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Drew Morgan February 8, 2017, Twitter comments and block

Governor Matt Bevin @GovMattBevin · Feb 8
If we are to be the best version of ourselves it is going to take us doing simple things like living by the golden rule. #SOTC17 #WeAreKY



14 22 55

Drew Morgan @GoBigBlueDrew
Following

Replying to @GovMattBevin
and paying our property taxes

8:30 PM · 8 Feb 2017

3 Likes

14 3

Governor Matt Bevin @GovMattBevin · Feb 8
Take pride in your state. Take pride in your community. #SOTC17 #WeAreKY



15 14 55

Drew Morgan @GoBigBlueDrew
Following

Replying to @GovMattBevin
take pride in paying the taxes on your house

8:43 PM · 8 Feb 2017

3 Likes

14 3

Governor Matt Bevin @GovMattBevin · Feb 8
Repealing the prevailing wage has already saved Kentuckians so much taxpayer money. #SOTC17 #WeAreKY



8 13 38

Drew Morgan @GoBigBlueDrew
Following

Replying to @GovMattBevin
would it be enough to cover what you owe on your house?

8:33 PM · 8 Feb 2017

4 Likes

4

Governor Matt Bevin @GovMattBevin · Feb 8
Charter schools are coming to Kentucky, and this will be good for the state. #SOTC17 #WeAreKY

33 20 96

Drew Morgan @GoBigBlueDrew
Following

Replying to @GovMattBevin
what would be better would be to stop cutting funding to schools and oh yeah pay your taxes on your house

8:32 PM · 8 Feb 2017

1 Retweet 3 Likes

1 3



Governor Matt Bevin @GovMattBevin · Feb 8
I would challenge the media to focus on things that matter. Things that will elevate KY. #SOTC17 #WeAreKY

29 8 57



Drew Morgan
@GoBigBlueDrew

Follow

Replying to @GovMattBevin

Jefferson County Sheriff's Office Property Tax Search Page

JEFFERSON COUNTY SHERIFF
Louisville, Kentucky

Property Tax Search
Search by the Property ID

Property ID: 05274030620000	Owner's Name: BEVIN MATTHEW G & GLENNA B	Lot: 0318
County/Parish Address: 521 BASSBERRY LN	LOUISVILLE KY 40205	Parcel Number: 2142400
County's Taxable Assessment: \$499920	Assessed Value: \$11080.83	Market/Change Amount: \$11080.83

Scan Lines: 05 6746 0082 0000 110100 81 0008733961 0009137028 0009614810

Assessment Period	Assessed	By Paid By
08/07/15	8873.9	11/05/16
08/07/16	8717.08	11/25/16
08/07/17	89614.91	01/20/17
08/07/18	81390.93	04/23/17

Market Value: \$3
Market Price: \$6206.0000
Market Date: \$11080.83

Do you want to pay for this property's taxes with a credit card? Pay Now

Would you like to run another Property ID search?
Property ID: 05274030620000 Search

* When searching by Property ID, you must have at least 14 digits exactly right with 48 spaces or hyphens in between the numbers. Partial searches will not produce any results.

Disclaimer: The tax data found on this site is official. For official property tax information call: (502) 574-5476.

8:45 PM - 8 Feb 2017 from Buechel, KY

18 Retweets 20 Likes



Drew Morgan @GoBigBlueDrew · Feb 8

Replying to @502eirs

guess he didn't like me telling him to pay his taxes on every tweet tonight or posting the screen shot of his tax bill



1 8 57

Tristan Williams January 4-7, 2017, Twitter comments and block

Governor Matt Bevin @GovMattBevin · Jan 5
We must continue to be vigilant in our efforts to protect the rights of the unborn child.

Tristan @_thesilence9 · Jan 6
what measures are you taking to help prevent unwanted/unintended pregnancies? Great access to birth control?

Tristan @_thesilence9 · Jan 6
Right. You have it out for planned parenthood programs. Stats show access to birth control reduces abortions. You care? Nah.

Tristan @_thesilence9 · Jan 6
you are a joke of a governor and care only about your political ambitions, not the people who are struggling to get by.

Tristan @_thesilence9
Following

Replying to @_thesilence9 @GovMattBevin

you've done absolutely nothing to help them & try to take away what little they have by taking their healthcare & cutting ed.

2:26 AM - 6 Jan 2017

1 Like

Governor Matt Bevin @GovMattBevin · Jan 4
There is nothing more American than the freedom of choice. #RightToWork #kyga17

Sally @seedysal · Jan 4
how about some choice for Kentucky women, while you're at it??? #kyga17

D Diddy @ddiddy171 · Jan 4
how about protecting unborn babies

Tristan @_thesilence9
Following

Replying to @ddiddy171 @seedysal @GovMattBevin

how about protecting the ones that are already here? Food? Healthcare? Education?

7:11 PM - 4 Jan 2017

5 Retweets 145 Likes

Governor Matt Bevin @GovMattBevin · Jan 5
We must continue to be vigilant in our efforts to protect the rights of the unborn child.

Tristan @_thesilence9
Following

Replying to @GovMattBevin

again. How are you going to help them once they're born?? Snap? #Education? #Healthcare? What are you doing for them?

2:22 AM - 6 Jan 2017

1 Like


Tristan @_thesilence9 · Jan 7
I guess talking about something I feel strongly about gets me blocked by the governor.



Governor Matt Bevin @GovMattBevin

You are blocked from following @GovMattBevin and viewing @GovMattBevin's Tweets. Learn more

Kentuckians Against Matt Bevin Facebook posts and block



Kentuckians Against Matt Bevin
@KentuckiansAgainstGovernorMattBevin

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Kentuckians Against Matt Bevin
April 19 · 🌐

Excellent piece. A must read.

"Sometimes I feel discouraged, but Kentucky deserves better. I know that Kentuckians have the solutions. People want to connect, they want to build new economies in their communities and get things done. But no one has enough money to make a real difference, and budgets keep getting cut. If we want to really address these issues, then we need a bigger budget.

Gov. Matt Bevin and many of our legislators want to pass a plan that gives more tax breaks to corporations and the 1 percent. They also want to tax groceries, which will hurt Kentuckians who already don't have enough to eat.


Our Governor wants to attract business and bring improvements to the economy that we desperately need. But instead of bringing in outsiders, we have the option to invest in ourselves. We can write a budget that puts our tax dollars to work in our local towns, where everyday Kentuckians can take the lead in shaping our communities.

Take a look at your neighbors—Together we have the solutions to our communities' challenges. We need our state government to write a tax code that invests in us and values us; one that puts our tax dollars back into our communities and not into corporations' profits. As we all file our taxes, we need to remember what our tax dollars fund that make our communities better for everyone. Pay attention, because this fall our Governor wants to re-write our tax structure, and it may hurt you and me.

If this concerns you, I encourage you to make your voice heard. Calling your legislators is a place to start. So is talking with your families, friends, and neighbors about what you'd like to see happen in the state of Kentucky. Get to know your city councils, or join grassroots groups like Kentuckians for the Commonwealth. Kentuckians are doing amazing things every day, and I know we have the ability to create thriving communities.

Here's to a better future."

<http://www.nkytribune.com/.../lauren-gabbard-kentucky-has-pr.../>



Lauren Gabbard: Kentucky has problems, people need to get involved, work together to find

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Kentuckians Against Matt Bevin

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Kentuckians Against Matt Bevin
April 18 · 🌐

Matt Bevin was one of 2 Republican governors who signed the letter to Pruitt which resulted in the reversal of course. Bevin proving once again that corporations, like big oil & gas, matter more to him than our people or our planet.

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Kentuckians Against Matt Bevin was 😄 feeling amused. April 19, 2016 · 🌐

I've officially been banned from commenting on Governor Matt Bevin's official Facebook page. Surely there's been a mistake! :p #Bevin #kygov #oopsies #LOL

84 people reached **Boost Post**

Linda McLeod, Charles Caldwell and 6 others 2 Comments

Like Comment Share