

March 1, 2018

The Honorable Deb Fischer
United States Senate
440 N. 8th St.
Suite 120
Lincoln NE 68508



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Dear Senator Fischer:

I am writing in regards to multiple complaints my office has received from Nebraskans who have been blocked from viewing social media content from your official Twitter and Facebook pages.

The First Amendment protects the right to petition the government for redress of grievances, but it also protects our right to receive information and ideas. The U.S. Supreme Court has held that “It is now well established that the Constitution protects the right to receive information and ideas...this right to receive information and ideas, regardless of their social worth, is fundamental to our free society.” *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)

When a government official blocks members of the public from social media, it implicates not only the citizen’s right to speech but their right to receive information that is otherwise made available to the public at large. Elected officials certainly may maintain a private social media page that is not a general public forum, but when a government official creates an official page designed to share information with constituents, that becomes a public forum. A government official may not block those who disagree with her positions; doing so violates the First Amendment.

Social media such as Facebook and Twitter are a public forum such as a bulletin board or an open comment period in a public hearing. See *Packingham v. North Carolina*, 137 S.Ct. 1730, 1735 (2017) (comparing social media to traditional public fora such as parks and streets). In the same way that a city council cannot refuse to allow critical testimony while permitting approving testimony, your official social media pages must be open to all equally--even those who disagree with you.



As you may be aware, there are already lawsuits pending against elected officials who blocked voters from their social media in states as diverse as Kentucky, Maine and Maryland. In the first reported court decision, the federal court agreed that the government official violated the First Amendment when she blocked a critic from her social media. See *Davison v. Loudoun Cty. Bd. Of Supervisors*, 2017 U.S. Dist. LEXIS 116208 (E.D. VA. July 25, 2017). The court ultimately held that the government official acted under the color of state law when she decided to delete the plaintiff's comments and block his access from her page, thereby engaging in viewpoint discrimination and violating the First Amendment. The facts the court found important included the fact the defendant used her official title on the page, included her official capacity address as contact information, her invitation for constituents to engage in dialogue on her page, and the fact she was sharing updates and press releases from the county on the page. Since criticism of officials is "not just protected speech, but lies at the very heart of the First Amendment," the plaintiff's speech was protected.

I write to request you review this matter with your staff. It is possible that someone has been blocking users without your knowledge. We ask you provide guidance to all of your staff that blocking access to receive information from you—or blocking critical comments—constitutes illegal censorship and must be stopped immediately. We request you review those who have been blocked in the past and restore their access as well.

Alternately, there is no requirement that any elected official have a social media presence; you may delete your official Facebook and Twitter accounts. If you continue to maintain an official social media platform, though, you must ensure that our democratic principles and constitutional rights are respected so that all have equal access, regardless of whether they agree with you or not.

Thank you for reviewing this matter. I look forward to hearing from you.

A handwritten signature in blue ink, which appears to read "Amy Miller". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy A. Miller
Legal Director