{{Your Name}}
{{Your address}}
{{Contact information}}

{{Date}}

{{Name Address of elected official}}

Dear {{Name of official}},

You and your office have embraced social media as a crucial means of communicating and interacting with your constituents and the public. As a constituent of yours, I was once able to take advantage of this medium to have my views on issues heard directly by you and your staff—until I was blocked from viewing and replying to posts by your official [[ Select one Twitter/Facebook ]] account at [[ Insert Official Page Name, i.e, “John Smith’s Facebook Page,” and URL here ]] on or about [[ Insert exact or approximate date here ]] because I had questioned and criticized the positions you take on various issues. I assert and can prove that the comments I posted prior to my blockage did not violate any of the terms of the Comment Policy on your official [[ Select one Twitter/Facebook ]] account.

This restriction, as several federal courts have recently held, violates my right to free speech under the First Amendment. This restriction is similarly violative of rights guaranteed under the Kansas Constitution to instruct representatives, petition government, and publish sentiments on all subjects. Kan Const. B. of R. §§ 11 (LexisNexis 2016). As a result, I demand that you immediately cease this unconstitutional action and restore without delay my access to your social media posts and page.

While your [[ Select one: Twitter/Facebook ]] account is privately owned, it is a forum where you routinely discuss governmental matters such as legislation, policies, and votes, and thus must comport with the First Amendment. Like the county official in *Davison v. Loudoun Cty. Bd. of Supervisors*, 26 F. Supp. 3d 702 (E.D. Va. 2017), you (1) made “efforts to swathe [your [[ Select one Twitter/Facebook ] ] page in the trappings of your offices” by prominently displaying your official title, website, and other contact information on it; (2) have been “us[ing] it as a tool of governance” by engaging your constituents and keeping them informed with frequent links and commentaries; and (3) have devoted “[government] resources to support[ing]” and maintaining the [[ Select one Twitter/Facebook ]] page. *Id.* at 713–14; *see also* *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 567 (S.D.N.Y. 2018) (concluding that because, *inter alia*, President Trump’s Twitter account is presented as presidential and is used for official business, his control over it “is governmental in nature”); *Garnier v. Poway Unified Sch. Dist.*, No. 17-cv-2215-W (JLB), 2018 WL 2357151, at \*3 (S.D. Cal. May 24, 2018). In July 2019, the Second Circuit Court of Appeals confirmed the lower court ruling in *Knight*, reaffirming that “the President violated the First Amendment when he used the blocking function to exclude the Individual Plaintiffs because of their disfavored speech,” *Knight First Amendment Inst. at Columbia Univ. v. Trump,* No. 1:17-cv-5205 (S.D.N.Y.), No. 18-1691 (2d Cir.).

At the state level, in August 2018 a federal judge in Maine dismissed an attempt by former Gov. Paul LePage to halt a lawsuit brought by two constituents banned from his “Paul LePage, Maine’s Governor” Facebook page; *Leuthy et al v. LePage (1:17-cv-00296-JAW)*. The judge noted that the governor’s page “is linked to the Governor’s blog on his government site, it is deemed his “official” page in the “About” section of his page, and when asked, his office has classified it as his official Facebook page.” *Id.*

You, therefore, like the official in *Davison*, “acted under color of state law” *Davison*, 26 F. Supp. 3d at 714; and like Gov. LePage in *Leuthy*, with the “imprimatur of governmental connection and authority,” in both running your Facebook/Twitter account and banning me from viewing it.[[1]](#footnote-1) *[[Leuthy citation, page 19]]*

And since the part of your social media account to which I am demanding access is not government speech, the First Amendment applies to this situation with full force. Granted, the content of your social media posts and your account’s timeline are government speech, thus exempt from First Amendment scrutiny. But the “‘interactive space’ associated with each [post] in which other users may directly interact with [its] content” is not. *Knight*, F. Supp. 3d at 566, 572. It does not bear any of the hallmarks of government speech as (1) you have not “long” used social media to “convey [official] messages”; (2) *my* comments and replies in the “interactive space” are not—indeed, cannot—be “closely identified in the public mind” with *your* office; and (3) you do not “maintain[] direct control over the messages conveyed” in my comments. *Matal v. Tam*, 137 S. Ct. 1744, 1760 (2017) (citation omitted); *see also* *Knight*, 302 F. Supp. 3d at 572; *Price v. City of New York*, 15 Civ. 5871 (KPF), 2018 WL 3117507, at \*14 (S.D.N.Y. June 25, 2018). Your regulation of the “interactive space” associated with your social media posts, therefore, must be consistent with the First Amendment.

[[ Note: Use this space to write a personal statement on why your value the free exchange of ideas with your elected lawmakers, and why being denied that opportunity is harmful to you and the issues you care about. ]]

Blocking me from that interactive space solely due to the content of my critical comments violates the First Amendment. The Supreme Court has recognized three types of fora—“traditional public forum,” “public forum by designation,” and “nonpublic forum”[[2]](#footnote-2)—that afford different degrees of constitutional protection to expressive activities. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802–03 (1985).

While the federal courts that have considered the issue did not agree on the proper forum classification for official social media accounts,[[3]](#footnote-3) they were nevertheless unanimous in concluding that viewpoint discrimination is impermissible *regardless of the type of forum*. *See* *Knight*, 302 F. Supp. 3d at 575 n.22 (Viewpoint discrimination is “impermissible ‘regardless of how the property is categorized under forum doctrine.’” (citation omitted)); *Davison*, 26 F. Supp. 3d at 717 (“Viewpoint discrimination is ‘prohibited in all forums.’” (citation omitted)); *Price*, 2018 WL 3117507, at \*16 (“[V]iewpoint discrimination that results in the intentional, targeted expulsion of individuals from [any type of forum] violates the Free Speech Clause of the First Amendment.”); *see also* *Matal*, 137 S. Ct. at 1763 (stating that “‘viewpoint discrimination’ is forbidden” in government-created fora). Because your “suppression of [my] critical commentary regarding [my] elected official[] is the natural form of viewpoint discrimination,” *Davison*, 26 F. Supp. 3d at 717, it violates the First Amendment.

This same analysis holds true in Kansas state courts which have confirmed that content-based speech (e.g., forum restriction of *all* political speech) in public forums may only be restricted when it is “narrowly drawn to achieve a compelling state interest.” *State v. Bartell*, 2019 Kan. App. Unpub. LEXIS 90, at \*22 (2019) (citing *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45–46 (1983)). In nonpublic forums, “[t]he State may restrict speech . . . as long as: (1) the restriction is reasonable; and (2) the restriction is viewpoint neutral, i.e., the State is not suppressing speech merely because of opposition to the speaker’s viewpoint.” *Bartell*, 2019 Kan. App. Unpub. LEXIS 90, at \*22–23 (citing *Perry*, 460 U.S. at 46; *Lower v. Board of Dir. of Haskell Cty. Cemetery Dist.*, 274 Kan. 735, 746, 56 P.3d 235 (2002)). In this instance, blocking me from your official [[ Select one Twitter/Facebook ]] page is clear viewpoint discrimination which is impermissible under Kansas law, regardless of forum designation.

Today, “the ‘vast democratic forums of the Internet’ in general”—and “social media in particular”—are “the most importance places . . . for the exchange of views.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (citation omitted). Among these views, as the Supreme Court has for decades emphasized, “[p]olitical speech . . . is ‘at the core of what the First Amendment is designed to protect.’” *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quoting *Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality opinion)); *see also* *Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011); *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 377 (1997); *Friedman v. Rogers*, 440 U.S. 1, 11 n.10 (1979); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 759 (1985) (plurality opinion) (quoting *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978)). These “First Amendment protections for free speech extend to internet communications.” *State v. Bell*, 2017 Kan. App. Unpub. LEXIS 959, at \*7 (2017) (citing *Reno v. ACLU*, 521 U.S. 844, 870 (1997). And this protection applies whether or not the views were expressed in a refined manner. *See* *Cohen v. California*, 403 U.S. 15, 25 (1971) (“[O]ne man’s vulgarity is another lyric.”). None of the communication I exhibited on your [[ Select one Twitter/Facebook ]] meets this high bar allowing government to withhold rights guaranteed under the First Amendment.

For these reasons, I demand that you and your staff immediately restore my unrestricted ability to view and interact with your [[ Select one: Twitter/Facebook ]] posts, not only to fulfil your duties as my elected representative to hear my views, critical or not, but also to fulfil your duties as a public servant to uphold the United States Constitution.

Sincerely,

{{SIGNATURE}}

{{Your name}}

1. In *Knight*, the court declined to analyze the state action requirement “separately” when the “government control-or-ownership requirement” is satisfied. 302 F. Supp. 3d at 568. [↑](#footnote-ref-1)
2. Traditional public fora are “places which by long tradition or by government fiat have been devoted to assembly and debate,” such as “streets and parks.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). Designated public fora consist of “public property which the [government] has opened for use by the public as a place for expressive activity.” *Id.* And finally, nonpublic fora are “public property which is not by tradition or designation a forum for public communication.” *Id.* at 46. [↑](#footnote-ref-2)
3. *See* *Knight*, 302 F. Supp. 3d at 574 (classifying the “interactive space” associated with President Trump’s tweets as “a designated public forum); *Davison*, 26 F. Supp. 3d at 716 (refusing to “pass on the [classification] issue”); *Price*, 2018 WL 3117507, at \*15–16 (declining to “resolve the [classification] issue” but observing that defendant “City’s official Twitter pages share many characteristics of public forums”). [↑](#footnote-ref-3)