



March 12, 2018

Hon. Ryan Costello
Member of Congress

21 West Market Street, Suite 105
West Chester, PA 19382
BY FAX TO: (610) 696-2985

840 North Park Road
Wyomissing, PA 19610
BY FAX TO: (610) 376-7633

Re: Blocking of Constituents on Facebook and Prohibiting Entry at Town Halls

Dear Congressman Costello:

We write on behalf of several of your constituents whom you have blocked from posting on your congressional Facebook page,¹ prevented from attending a recent public town hall meeting, or in some cases, both. Although we commend your creation of these online and in-person forums for engaging with your constituents, your suppression of their voices because they have criticized or disagreed with you is a form of viewpoint-based censorship that violates the First Amendment to the U.S. Constitution. We ask that you immediately unblock everyone from your congressional Facebook page and also confirm that you will no longer prevent constituents from attending your town hall meetings.

The individuals we represent include, among others:

- **M. Christine Crooke.** Ms. Crooke is a kindergarten teacher approaching retirement, and a resident of Downingtown. She has regularly called your office to ask why you weren't addressing issues she felt were important, and has participated in a few protests outside the Historic Courthouse in West Chester. Many of her communications to you related to the threatened repeal of the Affordable Care Act ("ACA"), which concerned Ms. Crooke greatly because her daughter relies on the ACA for health insurance. Around January 2018, Ms. Crooke posted a critical

¹ See Congressman Ryan Costello, Facebook, <https://www.facebook.com/CongressmanRyanCostello/>.

comment in response to one of your posts on your official Facebook page in which you accused your opponent, Ms. Houlahan, of sending protesters to your home. After Ms. Crooke criticized your post, you blocked her on Facebook, and denied her tickets to your town hall in Downingtown (which was ultimately snowed out).

- **Alice Hall.** Ms. Hall is a retired resident of West Chester. Ms. Hall has occasionally attended rallies outside your West Chester office. On or around March 28, 2017, she posted a comment on your congressional Facebook page regarding net neutrality and your acceptance of contributions from broadband providers. That same day, you deleted her comment and blocked her from posting anything further.
- **Tammy Harkness.** Ms. Harkness is an electrical engineer living in Hereford Township. Throughout the past year, she has met with members of your staff and attended weekly protests (mostly outside your Wyomissing office) where she criticized your views on a range of issues, including your support for the tax bill. On April 8, 2017, Ms. Harkness attended your town hall meeting at the Historic Courthouse in West Chester. Later that month, she met with you at your D.C. office to discuss environmental concerns. In December 2017, Ms. Harkness was part of a peaceful sit-in in your West Chester office where approximately a dozen people expressed their opposition to the tax reform bill to your staff. You then denied Ms. Harkness a ticket for your January 6, 2018 town hall held at Wyomissing Junior/Senior High School.
- **Michael Naimoli.** Mr. Naimoli is a healthcare and life sciences consultant, and a resident of Wayne. Over the past year, he wrote multiple comments on your congressional Facebook page criticizing your support for President Trump and his policies. You subsequently blocked him from posting any comments.
- **Erin Rodgers.** Ms. Rodgers is a chemist living in Downingtown. In the spring of 2017, she posted a comment on your congressional Facebook page noting the amount of campaign contributions you accepted from a broadband cable provider. After this, you blocked her from further posting. Ms. Rodgers requested to be unblocked in April 2017, but she still cannot post any comments.
- **Beth Sweet.** Ms. Sweet is a mother of three children and resident of West Chester. She has regularly organized and attended protests outside of your local congressional office and on or around March 2017, posted a comment on your congressional Facebook page criticizing your views on net neutrality. You then blocked Ms. Sweet from posting any more comments on your Facebook page.
- **Sherry Thrash.** Ms. Thrash is a mother residing in Wyomissing. In late 2017, after you held a telephonic town hall, Ms. Thrash wrote a comment on your congressional

Facebook page and also sent you an email regarding your refusal to condemn racist alt-right rhetoric. After this, you denied Ms. Thrash's request to attend your January 6, 2018 town hall at Wyomissing High School.

- **Claire Witzleben.** Ms. Witzleben is a resident of Wayne and a mother of two. Since January 2017, she has protested your stance on a wide array of issues on a weekly basis outside of your West Chester office. When you first met Ms. Witzleben, you indicated that you did not hear often from people in the district who shared her views on healthcare and other issues. She has continued to regularly communicate with your office to ensure that you hear the diverse viewpoints of your constituents. On March 31, 2017, she met with one of your staffers at your West Chester office, where she expressed concern that repealing the ACA would be devastating to her son because of his pre-existing condition of Type 1 diabetes. You then blocked Ms. Witzleben from posting on your congressional Facebook page and did not allow her to attend your January 6, 2018 town hall in Wyomissing.
- **Kate Young.** Ms. Young is a resident of West Chester. She has protested outside your West Chester office nearly every Friday since January 2017. In the spring of 2017, she posted a comment on your congressional Facebook page criticizing your stance on net neutrality and noting your receipt of campaign contributions from a broadband provider. She was then blocked. Our understanding is that you informed Ms. Young that you blocked her because, in your view, her comment about your campaign contributions implicitly accused you of committing a crime. To date, Ms. Young continues to be unable to post any comments on your congressional Facebook page.

We have spoken with other individuals not named above who have reported similar problems accessing your social media platforms and gaining admission to town hall meetings.

Retaliating against constituents who criticize or disagree with you by blocking them on social media or barring them from attending your events violates the First Amendment.

With respect to your social media accounts, it is evident from a review of your congressional Facebook page that you use the page as a forum to engage in discourse with your constituents. In fact, most of your posts on your congressional Facebook page contain reply comments from constituents. As the Supreme Court has explained, “[s]ocial media allows users to gain access to information and communicate with one another about it on any subject that might come to mind.”² Indeed, social media “can provide perhaps the most powerful

² *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017).

mechanisms available to a private citizen to make his or her voice heard.”³ It violates the First Amendment to block individuals from engaging with you and others on your congressional Facebook page because they criticized you or voiced opinions you disagree with.⁴ It is a fundamental principle of the First Amendment that the government cannot discriminate based on viewpoint “even when the . . . forum is one of its own creation.”⁵ It therefore should be no surprise that one federal court recently deemed unconstitutional the exact same type of social-media censorship in which you are engaging.⁶

For all of the same reasons, your decision to deny certain constituents access to your town hall meetings—which, of course, are physical rather than digital forums—based on their viewpoints also violates the First Amendment.⁷ We recognize that there may be situations where space constraints make it impossible to provide access to every constituent who wants to attend. But given the number of empty seats at your January 6, 2018 Wyomissing town hall, it is clear

³ *Id.*

⁴ See, e.g., *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (“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.”); *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011) (“The right to petition allows citizens to express their ideas, hopes, and concerns to their government and elected representatives”); *Pittsburgh League of Young Voters Educ. Fund v. Port Auth. of Allegheny County*, 653 F.3d 290, 296 (3d Cir. 2011) (“[I]f the government allows speech on a certain subject, it must accept all viewpoints on the subject even those that it disfavors or that are unpopular.”) (internal citations omitted).

⁵ *Rosenberger*, 515 U.S. at 828.

⁶ *Davison v. Loudoun Cty. Bd. of Supervisors*, No. 1:16cv932, 2017 U.S. Dist. LEXIS 116208, at *31-32 (E.D. Va. July 25, 2017) (holding that the chair of the County Board of Supervisors violated the First Amendment by engaging in viewpoint discrimination and banning the plaintiff from the chair’s Facebook page, a “digital forum,” for criticizing her colleagues in the County government).

⁷ *Monteiro v. City of Elizabeth*, 436 F.3d 397, 404 (3d Cir. 2006) (holding that it is clearly established that when a public official excludes someone from a public meeting based on their viewpoint, this violates the First Amendment).

that capacity was not the reason you prevented some of the above-mentioned individuals from attending.⁸

Simply put, the First Amendment does not allow you to create a forum—be it digital or physical—for your constituents to express themselves, but then close that forum to constituents based on the opinions they have expressed.

Please respond to this letter on or before **Monday, March 19, 2018** by confirming that you have unblocked the above-mentioned constituents and any other individuals whom you have blocked from your congressional Facebook account, and that you will no longer prohibit constituents from attending your town hall meetings.

We would be happy to discuss these matters with you further. If we do not receive a response by March 19, we will interpret your silence as a rejection of this request and will take appropriate steps, including litigation, to protect our clients' constitutional rights.

To that end, please consider this letter notice not to destroy, conceal, or alter any documents or other records (including, but not limited to, e-mails, letters, social media posts or messages, notes, reports, voicemails, or text messages) that might be relevant to the matters discussed herein. In order to assure that your obligation to preserve records will be met, please forward a copy of this letter to everyone who may have custody of responsive records.

We look forward to hearing from you.

Respectfully,

Witold J. Walczak

Witold J. Walczak
Legal Director
ACLU of Pennsylvania

⁸ See Ryan Costello (@RepRyanCostello), Twitter (Jan. 6, 2018, 10:34 AM), <https://twitter.com/RepRyanCostello/status/949710886364696576> (showing empty seats at January 6, 2018 Wyomissing town hall).