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Mayor Curt Ritter
58 Meyersville Road
Chatham, NJ 07928
critter@chathamtownship-nj.gov

Via Postal and Electronic Mail

RE: Unconstitutional Censorship on Facebook

Dear Mayor Ritter:

The American Civil Liberties Union of New Jersey (ACLU-NJ) writes to inform you of the constitutional implications of blocking individuals from public forums on social media such as Facebook, or otherwise limiting their ability to access and engage in public discourse on these platforms. We have concerns about your past use of your Facebook account to make public statements and share information of public importance in your capacity as Mayor of Chatham Township, while simultaneously blocking individuals from your account and thereby depriving them of access to this public information. Such action runs afoul of the First Amendment and Article 1, paragraph 1 of the New Jersey Constitution and may expose you to civil liability.

The ACLU-NJ understands that you administer both the official Chatham Township Facebook page as well as your personal Facebook page under your own name. Of course, the fact of serving in a mayoral position does not in itself limit your right to communicate with, or exclude from communication, whomever you like in your *personal capacity*. However, in practice, you appear frequently to use your personal Facebook account to speak in your public capacity as Mayor on the Facebook pages of local news sources and community forums. Examples of these statements include, but are not limited to, sharing various flyers and informing people how to get involved (or asking people to get involved) in municipal projects or services, and engaging in discussions regarding the same.

The ACLU-NJ has received reports that you had, for a time, blocked approximately one dozen Chatham residents from your account, most or all of whom have viewpoints different from your own. As a result of being blocked, these residents were unable to see your posts in community forums on topics of community concern and were unable to engage in public discourse about them. By contrast, other community members whom you had not blocked have replied to your posts and engaged in back-and-forth conversations with you on these pages. Blocked users have been unable to see your comments in those cases and to participate fully in those comment threads.

Social media has become increasingly central to the political process and public discourse. As the Supreme Court of the United States has recently recognized, “[i]t is cyberspace—the ‘vast democratic forums of the Internet’ in general, and social media in particular,” that is “the most important place[] . . . for the exchange of views” in the modern era. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735, 1743 (2017). Indeed, social media platforms like Facebook provide “perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” *Id.* at 1737. In light of this, courts are increasingly holding that government actors may not engage in any form of viewpoint censorship when they speak in their official capacity on social media. *See, e.g., Davison v. Loudon County*, 2016 WL 4801617 (E.D. Va. Sept. 14, 2016) and 2017 WL 58294 (E.D. Va. Jan. 4, 2017) (finding targeted censorship on government Facebook pages open for public comment unconstitutional).

The ACLU-NJ understands that you have now unblocked most if not all of the dozen individuals, such that they can now view and engage with the public statements you post. However, we write to caution you that if you continue to use your personal Facebook page as a *de facto* podium for mayoral statements, it will remain a forum to which all persons should be entitled to access. Limiting access to this forum, including by resuming the practice of blocking individuals based on their viewpoints, could amount to viewpoint discrimination and constitute a violation of the First Amendment and Article 1, Paragraph 1 of the New Jersey Constitution. Please be advised that the [ACLU of Kentucky](#), the [ACLU of Maryland](#), and the [ACLU of Maine](#) have recently filed suits against their respective governors for censoring critics on Facebook. Additionally, the [ACLU of Utah](#), the [ACLU of Pennsylvania](#), and the [ACLU of Georgia](#) have sent demand letters on this issue. Further, the Knight First Amendment Institute at Columbia University has [sued President Trump](#) for blocking individuals on @realDonaldTrump, a Twitter handle that he uses to speak officially, even though there is another Twitter handle, @POTUS, formally associated with the presidency. In other words, the distinction between a personal and an official social media account depends in large part on how it is used.

While truly personal social media accounts that do not involve official activity would not raise the same speech concerns or requirements, as long as you use your personal social media site at least in part for official mayoral business, you should not block persons from access or commenting.

We thank you for your attention to this matter. Please feel free to contact me at 973-854-1733 or tborden@aclu-nj.org if you wish to discuss this matter further.

Sincerely,



Tess Borden
Staff Attorney

Cc: Committee Members Tayfun Selen, Karen Swartz, Kevin Sullivan, Michael Kelley
Township Attorney Albert Cruz