



Know Your Rights: When Public Officials Censor You on Social Media

As social media sites have increasingly become go-to platforms for personal and political engagement, our political leaders are turning to Facebook and Twitter to communicate with their constituents.

The ACLU of New Jersey is keeping a close eye on the implications for New Jerseyans' free speech. In particular, when public officials use social media as government actors, the First Amendment prohibits them from censoring differing viewpoints.

Blocking users or deleting comments because they express critical opinions offends the Constitution and principles of transparency.

So, what if public officials block you, delete your comments, or otherwise censor you on social media?

You have free speech rights when you use social media, and this document aims to help you understand them. However, this general guide should not be interpreted as an offer of legal advice for your circumstances.

What are your free speech rights when you use social media?

Both the U.S. and New Jersey Constitutions guarantee your right to free speech. That right doesn't go away when you go online.

The government cannot unjustifiably interfere with your freedom of speech when you use social media to share your thoughts or to engage in discourse with public officials.

What are public officials' obligations to you when they use social media?

The answer depends on whether they're speaking as private individuals or as government actors.

Private individuals can censor you, but government actors cannot generally censor you based on your viewpoint. However, the boundaries are not always cut-and-dry.

People who hold public office still have their own First Amendment rights. When they're speaking as **private individuals**, they can express their views like anyone else, including on social media. The First Amendment protects their right to limit their audience or curate the messages on their personal social media accounts, just like it protects any other member of the public.

But when officials act on behalf of the government, they are subject to the limits that the First Amendment imposes on them as **government actors**. If a public official invites comments on a social media page concerning public matters or otherwise intentionally designates it as a space

for public discussion, the social media page may become a “limited” or “designated” public forum. Where public forums are involved, public officials **cannot** exclude people from accessing the page just because the official disagrees with them.

Here are a few ways to identify whether an account is operating as a government actor:

Although it depends on the facts, there are three basic types of social media usage to watch out for:

If a social media account is clearly maintained as an official page by a government actor, such as using an official title or the name of an agency, it’s generally considered the official account. Example: @POTUS

In other cases, a page can shift from a personal account to an official one when an officeholder and other government actors treat it as an official government account. Example: @realDonaldTrump

Finally, accounts may appear to be personal in name and recognition, but a public official uses it as though it were an official government account. This can occur in at least three different ways:

1. Officials opening up their social media for public discussion.
2. Officials allowing individuals to ask for government services through their social media accounts.
3. Officials using their accounts to publicly announce government information or policy – not just retweeting or sharing other government information, but making an announcement themselves.

When public officials are engaging as government actors, they are not allowed to censor you based on your viewpoint.

If a public official uses social media as a government actor in the above ways, the official cannot exclude people for having differing viewpoints. This means they can’t block users, delete specific comments, or restrict access in other ways on the basis of the viewpoints expressed.

A few principles guide what officials can and can’t do when they use social media as a government actor:

- They cannot stop people from joining a public conversation on the social media account because of the views they express on the topics at hand.
- They cannot block critical voices from asking for government services through the social media account because of those critical viewpoints.
- They cannot prevent people from being able to see social media posts that publicly announce government information or policy because of their viewpoints.

A government actor can’t restrict speech based on viewpoint, but can they limit comments on social media using other criteria?

An official speaking as a government actor cannot limit interactions based on viewpoint, but they can limit other kinds of interactions. Depending on the circumstances, a person can be blocked for posting personal threats or profane language, including in accordance with the social media platform’s terms of service. An official can also preclude all comments or in certain

circumstances limit discussions to certain subjects – in other words, government officials may have no obligation to open the social media account up for public comment, but if they do, they cannot discriminate as to which views get to be expressed in those comments.

What can I do if I'm censored by a public official on social media?

If you believe you have been wrongfully censored by a public official, you can contact the official or their office directly, as well the ACLU-NJ.

Contact the public official to seek corrective action and more information:

Ask for your access to be restored!

Call or email the office of the public official or government organization and request your access be fully restored. You can refer to this document and other materials from the ACLU-NJ and other ACLU entities, linked below.

When contacting the public official or government organization, request a copy of the social media policy or guidelines for the page that blocked you. (You are entitled to the policies, and maybe more (<https://njopra.com/2018/06/15/update-court-orders-disclosure-of-facebook-blocked-users-lists/>), through the state's Open Public Records Act [https://www.aclu-nj.org/download_file/798].) If policies are not available, urge the office to create guidelines and issue them publicly.

Contact the ACLU-NJ so we can keep records:

Please share your story!

Email us at intake@aclu-nj.org with "Social Media Censorship" in the subject line. Include as much of the following information as you can:

- A description of the problem, including if you believe you were censored because of your viewpoint.
- A screenshot or photograph documenting that you were blocked or otherwise censored, or an explanation of how you know you were censored.
- The name and or URL of the social media page.
- Information about any attempts you've made to contact the public official directly, as well as any response you have received.
- Although we may not be able to help, please also let us know if you would like additional corrective action.

We collect information about censorship so we can understand the scope of the problem, but we aren't able to help everyone who contacts us. Please note that the ACLU-NJ will not pursue legal action or other advocacy on behalf of most people who contact us, and nothing in this [post/publication] should give you the impression that we can take your case.

What are other resources or examples I can point to?

ACLU-NJ Letter to Chatham Township Mayor:

https://www.aclu-nj.org/download_file/2464

National ACLU blog post *Can a Government Official Block You on Twitter?*:

<https://www.aclu.org/blog/free-speech/internet-speech/can-government-official-block-you-twitter>

ACLU of Virginia federal friend-of-the-court brief:

<https://www.aclu.org/legal-document/aclu-amicus-brief-davison-v-randall>

ACLU of Maine lawsuit against governor:

<https://www.aclumaine.org/en/press-releases/aclu-maine-sues-lepage-over-facebook-censorship>

ACLU of Kentucky lawsuit against governor:

<https://www.aclu.org/news/aclu-ky-lawsuit-challenges-governor-bevins-social-media-censorship>

ACLU of Maryland lawsuit against governor:

http://www.aclu-md.org/press_room/318

Knight First Amendment Institute at Columbia University lawsuit against President Trump:

<https://knightcolumbia.org/content/knight-institute-v-trump-lawsuit-challenging-president-trumps-blocking-critics-twitter>

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