

# KNOW YOUR RIGHTS

## SOCIAL MEDIA BLOCKING BY PUBLIC OFFICIALS



Public officials increasingly use social media to communicate with their constituents and the public. As a result, many people are asking about the constitutionality of public officials blocking members of the public on social media.

### **Does the First Amendment prevent government officials from blocking members of the public on social media?**

**Short answer:** Sometimes.

If social media is used by a public official to conduct government business, blocking members of the public from seeing the site or from posting comments may violate the First Amendment. Blocking people from a site used for government business because of the views they hold or express is particularly likely to violate the First Amendment. But the mere fact that a government official is using a social media site does not mean it is being used for government business or that the First Amendment applies.

### **When is a social media site used for government business?**

There is not yet a clear test for when a social media site is used for government business. But the fact that a public figure mentions their job on a webpage is not enough on its own to make the site an official government site. Likewise, the fact that some personal matters are discussed is not enough to make it a private page.

Courts have looked to a variety of factors to determine if a social media account is used for

governmental business and therefore must be open to the public. For example, a site is more likely a site for government business if a public official generally allows individuals to ask for government services through a social media account, links through the account to a public office address, email or phone number, displays government symbols, shares information about government services or meetings, and/or asks for input about how government business should be conducted.

### **Is blocking always illegal on a site used for official government business?**

**Short answer:** No.

Public officials can block comments that are not protected by the First Amendment, including comments that make a true and immediate threat to another person, incite others to imminently violate the law, or contain obscene language as defined by the U.S. Supreme Court.

If the page was created specifically to discuss a certain issue (e.g. schools), officials are allowed to remove comments that are off-topic. But, if comments on a government site that praise the official or government agency on a particular subject are allowed, comments criticizing the official or agency on that same topic cannot be deleted or blocked.

## **Does the First Amendment prevent public officials from “blocking” members of the public from their private social media?**

**Short answer:** No.

People don't lose their free speech rights just by virtue of gaining public office. If public officials are using social media as private persons, the First Amendment protects their right to limit their audience and curate the messages on the page, just like any other private person. Re-election campaign accounts may be either personal or for government business, depending on how the official uses them.

## **What can I do if I believe I have wrongly been blocked by a public official from social media used to conduct government business?**

**Step 1:** Collect any information that shows the social media account is used for government business and proves that you were blocked, including screen shots.

**Step 2:** Contact the office of the elected leader or government agency and politely request that you be unblocked. You can include references to this flyer and/or the information collected in Step 1.

**Step 3:** Contact the Civil Rights Division of the Massachusetts Attorney General's office to file a complaint and/or get advice. <https://www.mass.gov/how-to/file-a-civil-rights-complaint>

**For more information, visit:**

<https://aclum.org/blocked-blog>