



February 17, 2017

Governor Larry Hogan
c/o Chief of Staff Sam Malhotra
State of Maryland
100 State Circle
Annapolis, MD 21401

Re: Unconstitutional Censorship of Constituent Facebook Comments

Dear Governor Hogan:

We write on behalf of the American Civil Liberties Union of Maryland and several Marylanders affected by your recent censorship of speech by constituents who attempted to question you or challenge your policy positions as Governor on your official Facebook page. Among the individuals we represent are Molly Handley, Allison Heintz, Amanda Driscoll, Sandra Clark, Sarah Walderop, Molly O'Brien and Rachel Henry, whose comments you have hidden or deleted and most of whom you have also blocked from all future posting on your page, seemingly because you did not wish to address their questions on various issues or respond to their concerns about your silence in the face of violations of civil rights and liberties by President Donald Trump and his administration.

As explained at greater length below, such censorship not only violates the First Amendment to the United States Constitution, it also violates Maryland's own state social media policy, both of which govern your conduct as Maryland's chief executive. Accordingly, we ask you to immediately cease your selective deletion of comments posted by constituents, and reinstate posting privileges to all those individuals who have been improperly blocked.

Social Media and the Nature of the Facebook Page at Issue

In today's world, as both our courts and the Maryland government have observed, social media has become the new "town square" – a forum in which government officials communicate their messages to voters, and in which citizens can voice their views in response. Social media has "emerged as a hub for sharing information and opinions with one's larger community," the United States Court of Appeals for the Fourth Circuit noted recently. Facebook "is a dynamic medium through which users can interact and share news stories or opinions with members of their community in a manner similar to writing a letter to a local newspaper." *Livermore v. City of Petersburg*, 844 F.3d 400, 408 (4th Cir. 2016) (internal cites and quotations omitted).

Likewise, Maryland's Department of Information Technology ("DoIT Maryland") touts the importance of social media use by Maryland officials to inform and engage people in the state's work:

The advent and implementation of social media has provided state government with a highly public and powerful venue for connecting to our

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citizens. The State of Maryland is committed to developing an open and comprehensive relationship with our constituents through the extensive use of social media marketing. Social media thrives on conversation and interaction. These two way dialogues provide citizens with a feeling of ownership of their Maryland state government and a portal through which they can gain information and express their thoughts in a targeted setting. While as a state we are committed to participating in the social media world, it is essential that our departments and agencies incorporate social media tools into their communication activities in a thoughtful and strategic manner and by applying best practices.

See “Social Strategy for the State of Maryland,” Maryland State Government Social Handbook, available at <http://blogs.maryland.gov/handbook/>.

As Governor, you and your office have embraced social media as a key means of communicating with constituents, using your Facebook page to promote your positions on issues, correspond with constituents, criticize political opponents, and highlight your appearances as Governor through photographs and video. The page is set up as a public page in your name as the 62nd Governor of Maryland, and your staff have openly acknowledged that it is an “official” social media site maintained both by you and taxpayer funded-staff in the Governor’s press office.¹ It is an official page tracking your gubernatorial activities and positions, through which you post daily links and commentary and seek responses from members of the public as a means of engaging Maryland voters and keeping constituents informed.

Unlawful Censorship in Administration of Your Facebook Page

Our clients are among the individual Marylanders your social media outreach efforts have reached, and in response they have “liked” your official Facebook page and sought to engage with you on issues of concern to them personally. These women do not know each other and do not coordinate their free speech activities among themselves or with any particular group. They are mothers, teachers, a lawyer, an occupational therapist, a technical writer, and a computer programmer, from Annapolis, Bethesda, Baltimore City, Brookeville, and other parts of Maryland.

Most recently, several of these women raised concerns and asked you to take a stand in opposition to actions being taken by President Trump that they believe to be harmful and

¹ For example, your spokesperson stated to the Washington Post, “We encourage debate and all manners of political discourse on the governor’s page,” but said that members of your office staff actively control the page and took responsibility for blocking numerous posters and deleting messages from the page. *See* O. Wiggins, “Gov. Hogan has blocked 450 people from his Facebook page in two years,” Washington Post, February 8, 2017, available at: https://www.washingtonpost.com/local/md-politics/gov-hogans-office-has-blocked-450-people-from-his-facebook-page-in-two-years/2017/02/08/54a62e66-ed45-11e6-9973-c5efb7ccfb0d_story.html?utm_term=.8622a3c3c952. As such, the page can in no way be described as a “personal” Facebook profile for your private communication with selected friends.

un-American. But because their comments raised concerns about some of your positions, or asked you to speak out on matters about which you have remained silent, their comments have been deleted or hidden from public view, and further, most have been blocked from future comment on your page.

These actions appear to be examples of a consistent pattern of censorship on your Facebook page. In an interview earlier this month with the *Washington Post*, your spokesperson, Douglas Mayer, revealed that hundreds of people have been blocked from your page, many very recently, because, like our clients, they posted comments calling on you to take a stand against President's Trump's Executive Order banning Muslims from entering the United States, an order that has since been enjoined as unconstitutional by numerous federal judges. Outrageously, Mr. Mayer claimed that the many of these Marylanders have been blocked because they are "anarchists" and/or "part of a coordinated attack" led by "Pantsuit Nation," seeking to flood your Facebook page with "spam," or that their comments have been "racist" or "vulgar." See O. Wiggins, *supra* "Gov. Hogan has blocked 450 people from his Facebook page in two years."

Far from being racist, vulgar, disrespectful, or inappropriate in any way, the comments of the ACLU's clients demonstrate exactly the type of constituent engagement and dialogue the Maryland Department of Information Technology recommends public officials like you seek through social media.² For example, in response to a post on your page featuring an official appearance by Maryland's First Lady at a Chinese New Year celebration, Amanda Driscoll wrote:

"Thank you for sharing your wife's participation in this wonderful tradition Governor Hogan! Nearly 1 in 7 Marylanders are foreign born, and they bring such a rich diversity of cultures and perspectives to our state. Please honor Maryland's immigrant and refugee residents by following the lead of other governors in denouncing President Trump's recent immigrant/refugee ban. We are counting on your leadership!"

This respectful plea was deleted without explanation.

In a similar post calling on you to stand up for American values in opposition to Mr. Trump's Executive Orders, Sandra Clark wrote:

"Hoping you speak out for all of us against the Federal Executive orders coming out which will hurt us. ACA, Planned Parenthood defunding as well as the immigration travel ban which affects people who have already gone through vetting and are legally allowed to be in this country."

Ms. Clark's comment was deleted, and further, she was blocked entirely from future posting on your page.

² See Screenshots attached.

When Allison Heintz became aware that you were ignoring concerns posted by others, she raised this issue in response to a post linking to a *Washington Times* article about how you are having a “Grand Old Time” as Governor, commenting:

“Governor Hogan, your constituents have expressed some very real concerns as of late. It seems incredibly dismissive to not address these concerns and to post this instead.”

This comment too was promptly deleted, and Ms. Heintz was blocked from further posts.

These are just a few examples of the many respectful and legitimate comments from Marylanders seeking to petition their Governor to address timely and pressing concerns they have, that you and your staff have unlawfully censored.³

The Censorship at Issue Here Violates Governing Law

Given the prominent place social media has taken as a forum for today’s marketplace of ideas, our courts have “repeatedly affirmed the First Amendment significance of social media, holding that speech utilizing Facebook is subject to the same First Amendment protections as any other speech.” *Davison v. Loudoun County*, 2017 WL 58294, at *5 (E.D. Va. Jan. 4, 2017). As such, the government, and you as Maryland’s Governor, may not legally establish a social media site as a forum for dialogue with constituents, then selectively censor who may speak in that forum based on the viewpoint expressed.

While we understand that your office has informed the *Washington Post* that Maryland has no official policy for regulating your Facebook page, the State does in fact have an official social media policy. This policy, crafted and promoted by the Maryland Department of Information Technology, counsels:

It is important that social media managers refrain from deleting posts or comments unless there is a specific violation of the posted comments policy. If a negative comment is posted, it opens the conversation and more times than not, your followers will respond in a defensive manner or address your concerns for you. Taking down antagonistic comments may open your program up to backlash from your followers and you may lose credibility.

³ We have not tried to capture the full scope of the censorship here, because it is so broad, but many more examples of people whose respectful comments have been hidden or deleted, and who themselves have been improperly blocked from further interaction with the Governor can be found in media interviews, *see, e.g.*, O. Wiggins, “Meet Some People Blocked from Hogan’s Facebook Page,” *Washington Post* (Feb. 9, 2017), available here:

https://www.washingtonpost.com/news/local/wp/2017/02/09/meet-some-people-blocked-from-gov-hogans-facebook-page/?utm_term=.1c18ece23e83.

Indeed, we note that there now exists an entire Facebook group populated by “Marylanders Who Have Been Blocked by Larry Hogan,” <https://www.facebook.com/groups/254061628339792/>.

See “Comments Policy,” Maryland State Social Media Handbook (emphasis added), available at <http://blogs.maryland.gov/handbook/>. Similarly, the State of Maryland’s Information Security Policy includes a Social Media Policy that explicitly addresses the limits that should be employed in moderating comments:

12.1 Moderating Comments

In some social media formats, state employees may be responsible for moderating comments. If user content is positive or negative and in context to the conversation, then the content should be allowed to remain, regardless of whether it is favorable or unfavorable to the State.

See State of Maryland Information Security Policy, Version 3.1 at p. 34 (February 2013), available at <http://doit.maryland.gov/Publications/DoITSecurityPolicy.pdf>

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Plainly, your actions and those of your staff in blocking users, deleting and hiding selected comments or criticisms from Marylanders directly violate these guidelines.

Even more significantly, they violate the Constitution.

Although legal challenges to censorship on government social media sites are a relatively new phenomenon, courts within the Fourth Circuit have addressed this issue recently and have made clear that viewpoint-based censorship of the type at issue here is not permitted under the First Amendment. See *Davison v. Loudoun County*, 2016 WL 4801617 (E.D. Va. Sept. 14, 2016) and 2017 WL 58294 (E.D. Va. Jan. 4, 2017).

In that case, a constituent of the Loudoun County Commissioners sued the County and the Chairperson of the Commission for deleting his comments from two separate Facebook pages – one run by the County itself and the other, similar to your Facebook page, that of the Commission’s Board Chairperson. As with several of our clients, Mr. Davison had also been blocked from making future posts on the page of the Board Chair. The defendants moved to dismiss the case, asserting that the First Amendment does not protect citizens’ rights to post comments on government Facebook page. The Court rejected the motion, both as to the Commission’s page, and that of the individual Board Chairperson.

The court found that, in First Amendment parlance, an official Facebook page like that at issue here is a “limited public forum.” 2016 WL 4801617, *6, citing *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 830 (1995). “Once opened, the public may utilize a limited public forum to the extent consistent with the restrictions placed upon it by the state.” In the *Davison* case, this meant users were allowed to engage in commentary on the government’s Facebook page, consistent with the government’s social media policy. *Id.*

Although the defendants argued that the County’s reservation of the right to moderate comments meant the First Amendment was not implicated, the Court ruled otherwise:

That is not so. “Once it has opened a limited forum, the State must respect the lawful boundaries it has itself set.” *Rosenberger*, 515 U.S. at 829. This rule

applies as much to Defendants' Facebook page as to any other limited public forum. *See Bland v. Roberts*, 730 F.3d 368, 386 (4th Cir. 2013), as amended (Sept. 23, 2013) (noting that speech on Facebook is subject to the same First Amendment protections as speech in any other context.)

Defendants' Policy "encourages visitors to the County's Facebook page "to submit questions, comments and concerns" regarding "matters of public interest in Loudoun County," and provides that only comments violating certain enumerated rules will be removed.

2016 WL 4801617, *7. The *Davison* court further held, in its 2017 decision, that the same First Amendment standards protecting constituent speech on the Commission's Facebook page apply with equal force to the individual page of the Commission Chairperson, notwithstanding her attempts to distinguish the two. 2017 WL 58294, *5.

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The same holds true here. As Governor, you invite your constituents to engage with you through Facebook in precisely the same way that Loudoun County and its officials did in Virginia. Likewise, Maryland's Department of Information Technology has established a clear policy counseling state officials to permit public comments on government pages whether positive or negative, so long as not spam, vulgar, racist, completely off point, or those that advocate illegal activity. *See* "Comments Policy," Maryland State Social Handbook, at <http://blogs.maryland.gov/handbook/>. As is plain from the screenshots attached to this letter, the comments at issue here fall into none of these categories, notwithstanding the insulting public misrepresentations by Mr. Mayer.

For these reasons, we urge you to immediately cease your unlawful censorship of constituent comments on your Facebook page, to restore the posting privileges of each of the individuals named in this letter, and to undertake a review of the 450 people whose posting privileges have been barred in the last two years and restore all those who have been unlawfully blocked for speaking their minds. Furthermore, we specifically request that your spokesperson, Douglas Mayer, issue a letter of apology to each of the complainants for publicly maligning them simply because they sought to petition their Government, as is their First Amendment right.

Please contact us or have your attorney contact us at your earliest opportunity to discuss your intentions in this regard. Debbie can be reached at 410-889-8550 ext. 120. We appreciate your prompt attention to this matter.

Sincerely,

Deborah A. Jeon
Legal Director

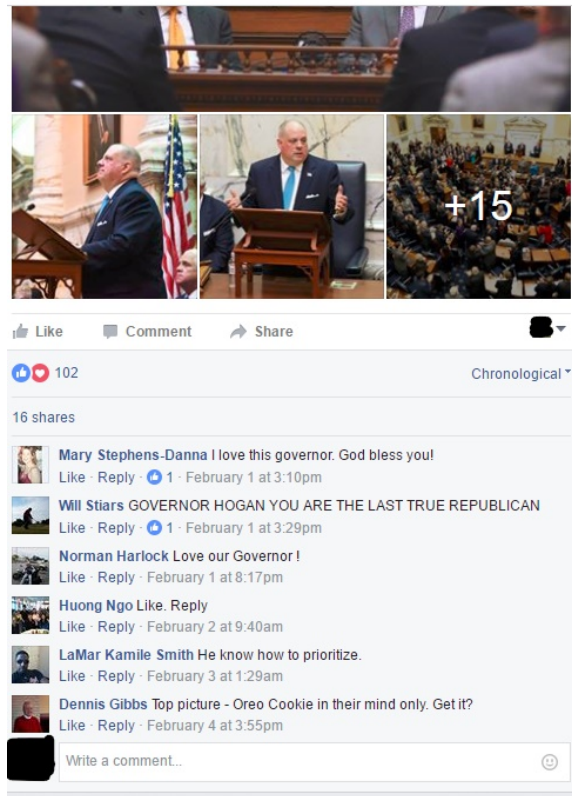
Sam Williamson
Law Clerk

cc: Robert R. Scholz, Esq.

Appendix: Selected Screenshots of Clients' Censored Comments

I. Sandra Clark's Comment (Before and After Censoring)

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II. Amanda Driscoll's Comment (Before and After Censoring)

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Amanda Driscoll commented on this.

Larry Hogan added 20 new photos to the album: Organization of Chinese American Women Lunar New Year Celebration.
5 hrs · 🌐

First Lady Yumi Hogan attended the Organization of Chinese Women's celebration of the Lunar New Year where she spoke and presented a proclamation. She also enjoyed performances by acclaimed opera singers Hai-bo Bai and Hong-fa Chu and Chinese dance by Camilla Ng and the Fairfax Chinese Dance Troupe.



Like Comment Share

👍👎👤 34 Top Comments ↑

1 share

Write a comment...

Amanda Driscoll Thank you for sharing your wife's participation in this wonderful tradition, Gov. Hogan! Nearly 1 in 7 Marylanders are foreign-born, and they bring such a rich diversity of cultures and perspectives to our state. Please honor Maryland's immigrant and refugee residents by following the lead of other governors in denouncing President Trump's recent immigration/refugee ban. We are counting on your leadership!
Unlike · Reply · 1 · 11 mins

Larry Hogan added 20 new photos to the album: Organization of Chinese American Women Lunar New Year Celebration.
January 30 at 4:40pm · 🌐

First Lady Yumi Hogan attended the Organization of Chinese Women's celebration of the Lunar New Year where she spoke and presented a proclamation. She also enjoyed performances by acclaimed opera singers Hai-bo Bai and Hong-fa Chu and Chinese dance by Camilla Ng and the Fairfax Chinese Dance Troupe.



Like Comment Share


👍👎👤 67

1 share


Write a comment...

III. Allison Heintz's Comment (Before and After Censoring)

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 **Larry Hogan**
2 hrs · 🌐

"He navigated an urban crisis, beat cancer, and became America's second-most popular governor—as a Republican in a blue state."




Larry Hogan is standing at a toll booth. The sign on the booth reads "2-AXLE CASH \$4.00 MD \$2.50". There are also signs for "COMPUTER PLANS AVAILABLE" and "TRAFFIC".


Larry Hogan Is Having a Grand Old Time as Maryland's Governor | Washingtonian
washingtonian.com

99 Shares

👍 Like 💬 Comment ➦ Share

👍 🗨️ 🗨️ 2.1K

 **Allison Chetney Heintz**
Governor Hogan, your constituents have expressed some very real concerns as of late. It seems incredibly dismissive to not address these concerns and to post this instead.
1 hour ago · Like · 👍 14 · Reply

 **Chris Leiter**
I'm a self described left leaning, atheist, liberal democrat, and I voted for you. I am very happy with your job performance, and the hard work you have put in for all Marylanders! Keep up the good work!
1 hour ago · Like · 👍 29 · Reply



Larry Hogan Is Having a Grand Old Time as Maryland's Governor | Washingtonian

He navigated an urban crisis, beat cancer, and became America's second-most popular governor—as a Republican in a blue state.

WASHINGTONIAN.COM

Like Comment Share

4.8K

Chronological

272 shares

-  **Erica Cox** You're the best governor that Maryland has ever seen!
Like · Reply · 49 · January 31 at 8:00pm
-  **Tom Nuttle** Hey be carefully leaning out there Governor we need you to slick around awhile.
Like · Reply · 6 · January 31 at 8:03pm
-  **Charles Casey** Yes but, impossible to get answers from.
Like · Reply · 10 · January 31 at 8:03pm
-  **Carly Lynne** I love him!!!!
Like · Reply · 1 · January 31 at 8:06pm
-  **Joanna Reedy** Thank you!!
Like · Reply · January 31 at 8:07pm
-  **Donna Duda** I love our Gov!!!!
Like · Reply · January 31 at 8:07pm
-  **Tina King** I'm not Republican and I tell my husband all the time how much I love Governor Hogan... he's for the people and that's what we needed!
Like · Reply · 21 · January 31 at 8:08pm
2 Replies
-  **Joshua R. Leuschner** Now we just need to throw out the communist Democrats.
Like · Reply · 1 · January 31 at 8:09pm
9 Replies
-  **Tina McDonough Moore** So happy you are our governor. You are doing a great job!
Like · Reply · 1 · January 31 at 8:11pm
-  **Rob Moffat** Luv the Gov!
Like · Reply · 1 · January 31 at 8:11pm
-  **Charles Casey** Can anyone tell me how to get a executive order for remittance.
Like · Reply · January 31 at 8:13pm
-  **Mike Sievers** **Sieverport** He worked hardcore while on cancer treatment!!!! Feel like he definitely loves the citizens and the state 🙌 #HoganStrong
Like · Reply · 38 · January 31 at 8:14pm
-  **Chris Letter** I'm a self described left leaning, atheist, liberal democrat, and I voted for you. I am very happy with your job performance, and the hard work you have put in for all Marylanders! Keep up the good work!
Like · Reply · 111 · January 31 at 8:18pm
1 Reply
-  **Miguel Bobadilla** Still allowed the Corrupt workers of the department of budget and management penalize me for \$6,000 even though they admitted it was their fault !!

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