



# FIRE

Foundation for Individual  
Rights and Expression

NATIONAL  
COALITION  
AGAINST  
CENSORSHIP

August 16, 2023

Danielle Smith  
City Attorney  
City of Bristol  
801 Anderson Street, P.O. Box 1189  
Bristol, Tennessee 37620

*Sent via Electronic Mail (dsmith@bristoltn.org)*

Dear Ms. Smith:

FIRE and NCAC thank the City of Bristol for revising the terms of service for its social media pages to remove unconstitutional restrictions identified in our previous letter. We greatly appreciate the City's commitment to meeting its legal obligations and its prompt attention to our concerns. However, FIRE and NCAC urge the City to make a few final revisions to the amended policy to resolve some outstanding constitutional issues.

Bristol's revised policy bans the following on the city's social media pages (emphasis added):<sup>1</sup>

- **Personal information of individuals, such as addresses, phone numbers, or email addresses or other information made private by state or Federal law;**
- Nudity, pornography, or other sexual, obscene, or **indecent material;**
- Threats, harassment, or stalking;
- Clearly defamatory statements;
- **Encouragement of immediate illegal activity or violence;**
- Links to malicious or harmful websites or software;
- Content that violates a legal ownership interest, such as a copyright, of any party; or
- Spam.

While the new policy is substantially improved and does not target speech based on viewpoint, the highlighted provisions still raise vagueness and overbreadth concerns.<sup>2</sup> Fortunately, Bristol need only make minor changes to the policy to resolve those issues.

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<sup>1</sup> *Website / Social Media Policies*, BRISTOL, <https://www.bristoltn.org/578/Website-Social-Media-Policies> [<https://perma.cc/Z469-ZGVF>].

<sup>2</sup> Laws and policies are unconstitutionally vague when they fail to give persons of ordinary intelligence reasonable opportunity to know what speech is prohibited or afford city officials too much discretion to

### **Ban on posting personal information**

An absolute ban on posting any “[p]ersonal information of individuals, such as addresses, phone numbers, or email addresses” risks sweeping in a substantial amount of protected speech. The definition of “personal information” is unclear. Does, for example, a person’s age qualify as “personal information”? What about phone numbers or email addresses that are already publicly available?

FIRE and NCAC recognize the risk of a commenter posting someone’s address or contact information as part of a campaign of harassment. But the policy already separately bans threats, stalking, and harassment, so Bristol would retain the authority to remove posts that reveal such information when done in the context of a threat or course of conduct that rises to the level of harassment.

We recommend that Bristol simply limit this category to “information made private by state or federal law.” At a minimum, the city should make clear that “personal information” excludes addresses and phone numbers for public offices in which city officials or employees work, as well as any email addresses assigned by the city to its officials and staff and/or used by them for city business.

### **Ban on “indecent material”**

Bristol’s ban on “indecent” content is vague and could be understood to reach even non-sexual content that some find offensive or profane. While the First Amendment does not protect legally obscene expression,<sup>3</sup> speech “which is indecent but not obscene is protected by the First Amendment.”<sup>4</sup>

In *Cohen v. California*, the Supreme Court overturned the disturbing-the-peace conviction of a man who wore a “Fuck the Draft” jacket in a public courthouse, even though the applicable criminal statute prohibited “offensive conduct.”<sup>5</sup> The Court emphasized that “so long as the means are peaceful, the communication need not meet standards of acceptability,” noting the danger of the government wielding a power to ban particular words “as a convenient guise for banning the expression of unpopular views.”<sup>6</sup>

Bristol can resolve this issue by simply removing the term “indecent” from the policy.

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decide what speech is allowed. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Overbroad regulations prohibit “a substantial amount of protected speech . . . not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep.” *United States v. Williams*, 553 U.S. 285, 292 (2008).

<sup>3</sup> Speech is subject to regulation as obscene only if (1) the average person, applying contemporary community standards, would find that the speech, taken as a whole, appeals to the “prurient interest”; (2) the speech depicts or describes, in a “patently offensive” way, sexual conduct; and (3) the speech, taken as a whole, “lacks serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24 (1973).

<sup>4</sup> *Reno v. ACLU*, 521 U.S. 844, 874 (1997).

<sup>5</sup> 403 U.S. 15, 16–17 (1971).

<sup>6</sup> *Id.* at 25–26 (cleaned up).

**Ban on “encouragement of immediate illegal activity or violence”**

FIRE and NCAC appreciate Bristol’s revision of the previous ban on comments that “[a]dvocate illegal activity.” As we explained in our previous letter, “While the First Amendment does not protect speech that advocates and is likely to result in immediate illegal activity,<sup>7</sup> mere abstract advocacy of unlawful conduct is fully protected.” However, the revised language does not quite track the Supreme Court’s standard for unprotected incitement because it does not require the speech to be likely to result in imminent unlawful action. We recommend Bristol adopt the following language to bring this provision in line with that standard: “Comments that are intended to *and likely to* result in immediate illegal activity or violence.”

Again, FIRE and NCAC commend the City of Bristol for taking seriously its First Amendment obligations. We ask the city to make these few final revisions to its social media policy to resolve outstanding issues of vagueness and overbreadth.

Sincerely,



Aaron Terr  
Director of Public Advocacy, FIRE



Christopher Finan  
Executive Director, NCAC

Cc: Vince Turner, Mayor  
Mark Hutton, Vice Mayor  
Mahlon Luttrell, City Council member  
Margaret Feierabend, City Council member  
Lea Powers, City Council member

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<sup>7</sup> The First Amendment’s exception for incitement encompasses speech “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).