



March 12, 2024

Rep. Jason Shoaf
222 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

Sent via U.S. Mail and Electronic Mail (jason.shoaf@myfloridahouse.gov)

Dear Rep. Shoaf:

Thank you for acknowledging receipt of FIRE's January 25 letter raising concerns about your office blocking constituent Devin Hardin from the "Jason Shoaf for Florida House District 7" Facebook page, which has been used for government business, for her critical comments on the page's posts. However, we are disappointed to learn the block remains in place. As our previous letter explains, when government officials open forums for public comments, such as on a social media page used as a tool of governance, removal of comments or exclusion of speakers based on their views violates the First Amendment.

FIRE urges your office to unblock Hardin from viewing and interacting with the "Jason Shoaf for Florida House District 7" page and to refrain from hiding or deleting her comments based on disagreement with their views.

We respectfully request a substantive response no later than March 19, 2024.

Sincerely,

Aaron Terr
Director of Public Advocacy

Encl.



January 25, 2024

Rep. Jason Shoaf
222 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

Sent via U.S. Mail and Electronic Mail (jason.shoaf@myfloridahouse.gov)

Dear Rep. Shoaf:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned that one of your constituents has been blocked from the “Jason Shoaf for Florida House District 7” Facebook page after making critical comments on the page’s posts. When government officials open online forums for commentary, such as on a social media page used for government business as appears to be the case here,² the exclusion of disfavored views or speakers from those spaces violates the First Amendment.

Our concerns involve the “Jason Shoaf for Florida House District 7” page, where posts are open to public comment and where, notwithstanding the page’s title, it is used to conduct the business of your office. For example:

- A July 13 post commented on a bill you sponsored that would fund efforts to improve water quality.³
- An August 11 post announced you had joined a state senator in delivering a \$4 million appropriations check to Riveroak Technical College in Live Oak.⁴

¹ You can learn more about FIRE’s mission and activities at thefire.org.

² This letter presents our understanding of the pertinent facts, but we appreciate you may have more information and, if so, invite you to share it with us.

³ Jason Shoaf for Florida House District 7, FACEBOOK (July 13, 2023, 1:40 PM), <https://www.facebook.com/share/p/1b1XLWMNRxTxa8Mt/?mibextid=WC7FNe>.

⁴ Jason Shoaf for Florida House District 7, FACEBOOK (Aug. 11, 2023, 9:45 AM), <https://www.facebook.com/share/p/K6948RGtR93NkW4n/?mibextid=WC7FNe>.

- Several posts in late August communicated information to constituents and updates about a hurricane, including evacuation orders and the number at which constituents could contact your office for assistance.⁵
- A September 25 post announced when and where you and another state lawmaker would be holding legislative delegation meetings, noting, “This is an important opportunity to discuss your concerns directly with elected officials and find out what we’re doing in support of these communities.”⁶
- Several November and December posts relayed information about legislative sessions and bills you had introduced.⁷

Despite having thus opened a public forum in connection with the business of your office, one of your constituents, Devin Hardin, found herself blocked seemingly based on viewpoints of her comments to posts on the account.

On July 26, 2023, your page shared a story about musician Jason Aldean reaching number one on the Billboard country chart with his song “Try That in a Small Town,”⁸ the lyrics and music video for which had generated public debate.⁹ Hardin commented on the post, claiming images in the music video had racial undertones, and wrote:

And let’s look at what Aldean just recently said in defense of his song and video. ‘I love our country, I want to see it restored to what it once was before all this bullshit started happening to us.’ When someone uses the term ‘us’, there is always a ‘them’. Who do you think is the ‘us’, and who do you think is the ‘them’? I’m seeing a pattern here, are you? Ever heard of sundown towns with good ole boys? As your constituent and on behalf of your many black constituents, I look forward to reading your thoughts regarding these questions. Thanks.

On August 2, you posted a link to a story about the Biden administration enforcing nationwide bans on certain types of lightbulbs and wrote, “Wasn’t going after gas stoves enough? The lightbulb ban is just another example of the ridiculous lengths this administration will go to

⁵ See, e.g., Jason Shoaf for Florida House District 7, FACEBOOK (Aug. 29, 2023, 4:00 PM), <https://www.facebook.com/share/JEnWNRzJwsTRqbs0/?mibextid=WC7FNe>; Jason Shoaf for Florida House District 7, FACEBOOK (Aug. 30, 2023, 8:42 AM), <https://www.facebook.com/share/p/gNtsjuWLQVxkjjX9/?mibextid=WC7FNe>.

⁶ Jason Shoaf for Florida House District 7, FACEBOOK (Sept. 25, 2023, 12:57 PM), <https://www.facebook.com/share/p/Wh63m59dXCmAqk1X/?mibextid=WC7FNe>.

⁷ See, e.g., Jason Shoaf for Florida House District 7, FACEBOOK (Nov. 3, 2023, 3:38 PM), <https://www.facebook.com/share/p/tWUMSn5n94fxK9Ee/?mibextid=WC7FNe>; Jason Shoaf for Florida House District 7, FACEBOOK (Dec. 3, 2023, 7:25 AM), <https://www.facebook.com/share/6eWjsbDHYp2EEuRU/?mibextid=WC7FNe>.

⁸ Jason Shoaf for Florida House District 7, FACEBOOK (July 26, 2023, 9:07 AM), <https://www.facebook.com/jasonshoaffl/posts/pfbid02E8GK31ssF85C8431L7RBAcriZRSPomjHPjKciQCV9Zh4K9B7Ab4QABpR14tpjuAul>.

⁹ Emily Olson, *How Jason Aldean’s ‘Try That in a Small Town’ became a political controversy*, NPR (July 20, 2023), <https://www.npr.org/2023/07/20/1188966935/jason-aldean-try-that-in-a-small-town-song-video>.

destroy consumer choice and cost Americans more money. This madness has to stop.”¹⁰ In a comment under the post, Hardin criticized the article for saying the regulation will particularly affect lower-income earners but not mentioning that lower-income earners also have higher energy costs that energy-efficient items could reduce. She accused you of “fear mongering” about the left.

Neither of Hardin’s comments remains visible under the July 26 and August 2 posts. In September, Hardin discovered she was blocked from viewing the “Jason Shoaf for Florida House District 7” Facebook page. She contacted your office to request to be unblocked. On September 18, you replied via email, “I want to thank you for bringing this to my attention. I cannot stress enough how important it is that constituents like yourself express their opinion to help me formulate policy. Please feel free to reach out anytime if you have any more concerns, questions, requests, or if you need assistance in dealing with a state agency.”¹¹ However, the block remains in place.

The First Amendment applies with full force to the “vast democratic forums of the Internet,” and social media, in particular, enables citizens to “petition their elected representatives and otherwise engage with them in a direct manner.”¹² Most courts to address the issue have held that when government actors use social media as a tool of governance, they exercise state power and must comply with the First Amendment.¹³

To be sure, government officials have the right to use social media in their capacity as private citizens without being burdened by constitutional obligations. Blocking constituents from a personal or campaign page does not offend the First Amendment so long as the page is not used to perform public responsibilities. But when officials use personal accounts to conduct public business, they engage in state action. And when they do, the interactive components of the account, such as comment sections where the public may engage with the account’s posts, are public forums where viewpoint-based restrictions on access or content are unconstitutional.¹⁴

Because the “Jason Shoaf for Florida House District 7” Facebook page has functioned as a tool of governance, its administration must comport with the First Amendment. Despite its title, the page notes you are a current Florida state representative and lists your office’s phone number and your government email address. And you regularly use the account to perform functions of your office, such as posting public safety alerts and updates, information on how to receive government resources or assistance (including how to contact your office for

¹⁰ Jason Shoaf for Florida House District 7, FACEBOOK (Aug. 2, 2023, 11:00 AM), <https://www.facebook.com/share/1wm2JdJaPvAptvud/?mibextid=WC7FNe>.

¹¹ Email from Office of Rep. Shoaf to Devin Hardin (Sept. 18, 2023, 2:49 PM) (on file with author).

¹² *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017).

¹³ See, e.g., *Garnier v. O’Connor-Ratcliff*, 41 F.4th 1158, 1170–73 (9th Cir. 2022), cert. granted, 143 S. Ct. 1779 (2023); *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 237 (2d Cir. 2019), vacated as moot sub nom. *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220 (2021); *Davison v. Randall*, 912 F.3d 666, 680–81 (4th Cir. 2019); *One Wis. Now v. Kremer*, 354 F. Supp. 3d 940, 949–51 (W.D. Wis. 2019).

¹⁴ See, e.g., *Garnier v. O’Connor-Ratcliff*, 41 F.4th at 1177–79; *Knight*, 928 F.3d at 237 (2d Cir. 2019); *Davison*, 912 F.3d at 687.

assistance), announcements of public meetings you attend as a state representative, and information concerning legislative sessions and bills you introduced.

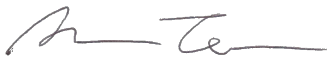
The interactive space below each of the account's posts is accessible to the public for comment, creating a public forum. Hiding or deleting Hardin's comments and blocking her account because those comments were critical of the page's posts violates the First Amendment's bar on viewpoint discrimination.

Of course, government officials may respond to criticism they believe is ill-informed or misguided with counterspeech, or they may choose to ignore it. But the First Amendment limits officials' authority to restrict citizens' speech in a public forum, whether online or off.

FIRE urges your office to unblock Hardin from viewing and interacting with the "Jason Shoaf for Florida House District 7" page and to refrain from hiding or deleting her comments based on disagreement with their views.

Thank you for your attention to this matter. We respectfully request a response by February 8, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Terr", written in a cursive style.

Aaron Terr
Director of Public Advocacy