



VIA E-MAIL AND POSTAL SERVICE

October 22, 2020

City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

Re: Social media blocking and deleting by the City of Vallejo and its officials

Dear Mayor, Vice Mayor, Council Members, and City Manager,

The Electronic Frontier Foundation writes on behalf of the news organization Open Vallejo, which is a project of the Informed California Foundation, regarding the social media practices of the City of Vallejo and its officials.

Open Vallejo has been investigating the social media practices of Council Members, other city officials, and the City of Vallejo itself, and has discovered a practice of deleting comments and blocking users from social media pages based on the users' viewpoints. This practice is unconstitutional, and we request that you cease engaging in it.

Every United States Court of Appeal that has addressed this particular issue has made clear that when a government office or official creates a social media page and uses that page to engage in dialogue with the public about government policies and positions, the page becomes a government forum. Blocking users or deleting users' comments from such a social media page based on the viewpoints expressed is unconstitutional viewpoint discrimination. *Knight First Amendment Institute v. Donald J. Trump*, 928 F. 3d 226 (2d Cir. 2019) (holding that President Trump cannot block Twitter users from his Twitter page based on their viewpoints); *Davison v. Randall*, 912 F. 3d 666 (4th Cir. 2019) (holding that a public official who used a Facebook page as a tool of her office engaged in viewpoint discrimination by deleting comments); *Robinson v. Hunt County*, 921 F. 3d 440 (5th Cir. 2019) (holding that deleting comments and banning a constituent from the sheriff's Facebook page was unconstitutional viewpoint discrimination).

Additionally, blocking constituents from City and City officials' social media pages violates the First Amendment rights of the larger public to read the comments of individuals who have been blocked or whose comments have been deleted. *Knight First Amendment Institute v. Donald J. Trump*, 928 F. 3d 226, 233 & n.3 (2d Cir. 2019). This is a separate violation of the constitutional right to access communications from the government.

The First Amendment's prohibition on the government preventing equal access to information is especially critical for Open Vallejo. As an independent, nonpartisan, nonprofit public interest news organization, Open Vallejo plays a surrogate role to communicate news relating to the functioning of government to the public. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980). A burden on a newspaper's right to gather information is effectively a burden on the First Amendment rights of all the newspaper's readers. In this instance, Open Vallejo therefore represents all those who live and work in Vallejo, as well as individuals around the country concerned about the actions of the City of Vallejo and its officials. This demand is thus made on behalf of the readers of Open Vallejo and the community at large.

In light of these constitutional requirements, we urge that the City and its officials unblock all members of the public from government social media pages, allow members of the public to repost their comments and post new comments to government social media pages, and stop engaging in viewpoint discrimination on government social media pages. This includes the public social media pages of all offices and departments of the City of Vallejo, the official social media pages of City of Vallejo officials, and the personal social media pages of City of Vallejo officials that are public and used to share news or information about the officials' government business.

Please advise us of your position on our demand by November 6, 2020. Thank you for your attention to this request.

Sincerely,



Naomi Gilens
Electronic Frontier Foundation
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cc: Mayor Bob Sampayan
Vice Mayor Hermie Sunga
Council Member Hakeem Brown
Council Member Pippin Dew
Council Member Robert H. McConnell
Council Member Katy Miessner
Council Member Rozzana Verder-Aliga
City Manager Greg Nyhoff