

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JAMES LAURENSEN)
5916 Melvern Drive)
Bethesda, Maryland 20817)

MEREDITH PHILLIPS)
7846 River Rock Way)
Columbia, Maryland 21044)

JANICE LEPORE)
1607 Park Grove)
Catonsville, Maryland 21228)

MOLLY HANDLEY)
3658 Whitman Ave. N, Apt. C)
Seattle, Washington 98103)

Plaintiffs,)

v.)

GOVERNOR LAWRENCE J. HOGAN)
In his personal and official capacities)
100 State Circle)
Annapolis, Maryland 21401)

DOUGLASS V. MAYER)
In his personal and official capacities)
100 State Circle)
Annapolis, Maryland 21401)

ROBERT F. WINDLEY)
In his personal and official capacities)
100 State Circle)
Annapolis, Maryland 21401)

Defendants.)

Case No.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND DAMAGES**

JURY TRIAL DEMANDED

Plaintiffs James Laurenson, Meredith Phillips, Janice Lepore, and Molly Handley
complain of Defendants and allege:

I. INTRODUCTION

1. This case arises from repeated and ongoing censorship of Plaintiffs' constitutionally protected speech by Governor Larry Hogan and members of his staff, including Defendants Douglass Mayer and Robert Windley.

2. Governor Hogan and his staff established an official Facebook page for the Governor's office (the "Facebook Page"), creating a forum for the exchange of views and information about the Governor's actions and policies. In connection with the Facebook Page (and other official social media outlets, such as the Governor's Twitter account), the Governor and his staff recently promulgated a vague, broadly-worded "Social Media Policy" that purports to authorize the deletion of comments that are somehow "inappropriate," or that are not "about" something the Governor has posted, and the blocking of posters who make such comments. Ex. A. But even plainly on-topic posts can be deleted, and posters blocked, if comments are "similar" to a poster's prior comments, or if they parallel those made by other posters. *Id.* And, establishing a social media Star Chamber, the policy purports to authorize blocking particular comments, or indeed all comments from a constituent, "at any time without prior notice or without providing justification." *Id.*

3. Prior to the establishment of the Governor's unconstitutional policy, it appears that there was no formal constraint whatsoever on the exercise of unbridled and unconstitutional discretion by the Governor and his staff to censor the speech of Maryland citizens. The policy is scant improvement – on its face, it exerts a profoundly chilling effect on speech and specifically censors constituents who "petition" the Governor. Moreover, such a vague, ill-defined policy – like the prior situation of no policy at all – is an open invitation in practice to arbitrary, viewpoint-based censorship. That is exactly what has occurred here. As described more fully below, Plaintiffs found that they could be, and were, arbitrarily censored by the Governor just for

posting comments on the Facebook Page with which the Governor or his staff apparently disagreed.

4. In acting arbitrarily to censor Marylanders' speech, and in adopting and enforcing a policy that restricts Marylanders' free expression, the Governor and his staff ignore the fact that the First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. U.S.*, 354 U.S. 476, 484 (1957), and that "[p]rotection of the public interest in having debate on matters of public importance is at the heart of the First Amendment." *McVey v. Stacy*, 157 F.3d 271, 277 (4th Cir. 1998). And they evidently fail to grasp that it is "clear" today that "[it] is cyberspace—the 'vast democratic forums of the Internet' in general, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 868 (1997), and social media in particular," that constitute "the most important places ... for the exchange of views." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

5. This civil rights action seeks to protect and vindicate the First and Fourteenth Amendment rights of Plaintiffs James Laursen, Meredith Phillips, Janice Lepore, Molly Handley, and of all Maryland citizens. Governor Hogan's Social Media Policy, both on its face and as applied, unlawfully restricts constitutionally-guaranteed rights of the citizens of this State to free expression, and strikes at core protections for political speech and petitioning the government. Governor Hogan and his staff are engaging in unconstitutional viewpoint discrimination to remove certain ideas or perspectives from a broader public debate. The Supreme Court has "long recognized that when government regulates political speech or the expression of editorial opinion on matters of public importance, First Amendment protectio[n] is at its zenith." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 429 (1992) (internal citations and

quotations omitted). Plaintiffs bring this case to vindicate their right not to be censored by the Governor and thereby to reaffirm these basic constitutional values.

II. JURISDICTION AND VENUE

6. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act, 42 U.S.C. §§ 1983 and 1988.

7. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

8. The Court has authority to grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57, and to issue the requested injunctive relief pursuant to 42 U.S.C. § 1983 and Fed. R. Civ. P. 65. The Court is authorized the award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

9. Venue is proper in the United States District Court for the District of Maryland pursuant to 28 U.S.C. § 1391(b) because the events giving rise to the instant claim occurred within this District and because all defendants reside in this District.

III. PLAINTIFFS

10. Plaintiff James Laursen is, and was at all times relevant to the Complaint, a resident of Bethesda, Maryland.

11. Plaintiff Meredith Phillips is, and was at all times relevant to the Complaint, a resident of Columbia, Maryland.

12. Plaintiff Janice Lepore is, and was at all times relevant to the Complaint, a resident of Catonsville, Maryland.

13. Plaintiff Molly Handley was at all times relevant to the Complaint, a resident of Odenton, Maryland, but recently re-located to Seattle, Washington.

IV. DEFENDANTS

14. Defendant Lawrence J. Hogan, Jr. is Governor of the State of Maryland. He is Maryland's chief executive officer, responsible for administration and policy-making for the state. Governor Hogan has ultimate authority to approve the policies and procedures that are challenged in this case and that were applied to deprive Plaintiffs of their constitutional rights. Governor Hogan acted under color of state law with respect to all actions complained of herein, and is sued in both his personal and official capacities.

15. Defendant Douglass V. Mayer is Director of Communications for the Office of the Governor of Maryland. Defendant Mayer acted under color of state law with respect to all actions complained of herein, and is sued in both his personal and official capacities.

16. Defendant Robert F. Windley is Director of Correspondence and Constituent Services for the Office of the Governor of Maryland. Defendant Windley acted under color of state law with respect to all actions complained of herein, and is sued in both his personal and official capacities.

V. STATEMENT OF FACTS

A. Defendants Censored Plaintiffs by Deleting Their Comments From, and Blocking Them From Participating In, The Governor's Facebook Page

17. Governor Hogan has embraced social media as a key means of communicating with his constituents. To facilitate such communication, Defendants created and maintain the Facebook Page, associated with his public office, available at <https://www.facebook.com/larryhogan/>.

18. The Facebook Page is maintained by Governor Hogan and Defendants Mayer and Windley in the Governor's press office and constituent services office, respectively.

19. Governor Hogan uses the Facebook Page to promote his positions on policy issues, correspond with constituents, criticize political opponents, and highlight his appearances as Governor through commentary, photographs and video.

20. Defendant Mayer has explained that Governor Hogan “views social media, especially Facebook, as a way to talk directly to the people of this state without the interference of traditional media,” and that Governor Hogan “believes that it’s important to have that kind of direct contact and access with people who vote and pay taxes and live in this state.” Ex. B.

21. The Facebook Page was designed to permit and encourage constituents to communicate directly with the Governor’s office and to post comments on public issues. According to the Social Media Policy, the Facebook Page was established to “promote and disseminate information of Governor Larry Hogan’s initiatives, events, and personal announcements,” but also to serve as a “forum[] for constructive and respectful discussion with and among users.” Ex. A.

22. At all times relevant to this complaint, Plaintiffs were Maryland citizens who wish to engage in constitutionally protected speech within the forum created by Defendants to voice their beliefs and viewpoints to the Governor, to the Governor’s staff who view the page, and to other citizens who participate in the forum to debate and comment on issues concerning the State of Maryland.

23. Despite the creation of a forum for public discussion, Defendants have engaged in targeted censorship of the speech of Plaintiffs and other Marylanders on the Facebook Page through a variety of methods.

24. Defendants have censored Plaintiffs and other citizens by deleting their comments from the Facebook Page.

25. Defendants have censored Plaintiffs and other citizens by “blocking” them from making any further posts on the Facebook page and blocking them from expressing an opinion using the reaction feature (*e.g.*, “Likes”).

26. Defendants have censored Plaintiffs and other citizens by temporarily removing the Governor’s posts to the Facebook Page, which has the effect of clearing/removing all previously posted comments, and then re-posting the same post to allow new, more favored comments to be posted by other users.

27. On February 8, 2017, the Washington Post reported that Defendants had blocked 450 people from the Facebook Page since the time Governor Hogan took office in January 2015. *See Ex. C.* The Washington Post relied on figures provided by Governor Hogan’s spokesman, Defendant Mayer, who claimed that about half of the people were blocked for using “hateful or racist” language, and that the rest were blocked after the 2015 protests in Baltimore related to the police-involved killing of Freddie Gray, or immediately after the January 27, 2017 issuance of a Presidential Executive Order banning entry to the United States for 90 days for citizens from Iraq, Syria, Iran, Libya, Somalia, Sudan and Yemen, and indefinitely halting refugees from Syria (the “Muslim Ban”), based on the suspicion that the postings were part of a “coordinated attack.”

28. Even if the stated reasons for censoring the statements of Marylanders were valid under the First Amendment – and they are not – in fact, the stated reasons are pretextual, because Defendants regularly delete comments and block users because of political disagreement with the messages posted.

29. On February 17, 2017, the American Civil Liberties Union of Maryland (“ACLU”) wrote to Governor Hogan on behalf of several Marylanders who were censored by the Governor and/or his staff when they attempted to question the Governor or challenge his policy

positions on the Facebook Page. *See* Ex. D. The ACLU represented the interests of Plaintiff Handley and six other Maryland citizens who had been blocked and/or had their comments deleted from the Facebook page.

30. Although Defendants never responded directly to the ACLU's letter, on February 21, 2017, the Washington Post reported that Defendants "unblocked six commenters" identified by the ACLU "but couldn't find the seventh." *See* Ex. E. The article further reported that "several restored people" already "found themselves blocked again." According to Governor Hogan's representative, those individuals were reblocked because they were "spamming the page with identical and off-topic posts."

31. Notwithstanding public criticism, Defendants continue to censor Marylanders' speech on the Facebook Page without notice or explanation of the grounds for censoring them, and continue to limit their access to the Facebook Page.

32. On information and belief, detailed information regarding the total number of posts made to the Facebook page, the total number of comments made, the number and content of comments that were deleted by Defendants, and the names and number of people who were blocked from posting to the Facebook Page are all facts readily available to Defendants as a result of their role as administrator/owner of the Facebook Page. Based on monitoring the Facebook Page from March 1, 2017, through June 30, 2017, it appears that Governor Hogan and/or his staff made well over 800 posts to the Facebook Page, as to which, in the aggregate many thousands of comments were made on the Facebook Page.

33. Comments (responses to posts or to other comments) can be censored in several ways. First, Governor Hogan and/or his staff can delete an individual comment. Second, Governor Hogan and/or his staff can delete one of the Governor's posts, which also deletes all

the comments made in response to that post. Third, Governor Hogan and/or his staff can block a particular commenter, which has the effect of deleting all of that person's comments on the page, regardless of their content. Finally, a user may choose to delete his or her own comments in order to withdraw from a discussion (a form of self-censorship). Many posts from March 1, 2017, through June 30, 2017, had more than one comment deleted. In total, on information and belief, at least 500 comments were removed from the Facebook Page. On information and belief, based on monitoring the Facebook Page, the overwhelming majority of censored comments were deleted by Governor Hogan and/or his staff, using one of the methods noted above.

34. As explained more fully below, Plaintiffs have all been censored by Defendants when attempting to participate in the Facebook page, either by having comments deleted, by being blocked from commenting at all, or both.

1. James Laurensen

35. Plaintiff James Laurensen visited the Facebook Page for the first time in the fall of 2015. He posted one or two comments seeking to draw Governor Hogan's attention to the Syrian refugee crisis and to engage the Governor in discussion on that issue following the Governor's request to the Obama Administration to not allow Syrian refugees into Maryland.

36. Laurensen's posts addressed the same points as a November 20, 2015 email he sent to the Governor, which stated: "I am ashamed to be called a Marylander. As a recent WSJ commenter recently wrote, turning against Syrians fleeing horror and violence in the Middle East is precisely the wrong response to the terrorist attacks in Paris. In fact, ISIS is looking for proof that the West stands against Arabs and Muslims. You are aiding and abetting the enemy. Please reverse your stance."

37. Neither Governor Hogan nor any member of his staff responded to Laurenson's November 20, 2015 email. However, Defendants deleted Laurenson's comments from the Facebook Page and blocked Laurenson from posting any future comments to that page.

38. Laurenson emailed the Governor's Office twice regarding being blocked from the Facebook Page. On December 13, 2015, he wrote: "I posted a comment in response to your holiday party post. My comment has been taken down, and now I am banned from posting. I suspect this is against the law, as your Facebook page is a public site, and I am a taxpayer. Explain, and reinstate my comment and my posting ability."

39. On June 13, 2016, Laurenson sent a second email to the Governor's Office: "I have been blocked from your publicly funded Facebook page after disagreeing with your position on Muslim refugees several months ago. It was a civil comment. I suspect your banning is illegal, and at a minimum it's ignoring comments from one of your constituents. Please reestablish my use of your, or our, page. Thank you."

40. The December 13, 2015 email and the June 13, 2016 email triggered a form response from the Governor's office, stating: "Thank you for contacting the Office of the Governor. Each piece of correspondence is reviewed on an individual basis to ensure that all concerns expressed by citizens and visitors of Maryland receive full consideration. Please accept this as an acknowledgment that your message has been received." Laurenson received no further response from the Governor's Office.

41. On June 13, 2016, Laurenson sought assistance from the Office of the Attorney General of Maryland, but again only received a form response.

42. As of the date of this Complaint, Laurenson remains blocked from posting comments or using the reaction feature on the Facebook Page.

2. Meredith Phillips

43. On Sunday, January 29, 2017, Plaintiff Meredith Phillips visited the Facebook Page for the first time to voice her concerns regarding President Donald Trump's then-recently-enacted Muslim Ban.

44. Phillips posted a comment to Governor's Hogan's then-most-recent post on the Facebook Page (regarding the Chinese New Year), and asked whether Governor Hogan planned to "speak out on the Muslim ban."

45. A few hours after posting her comment, Phillips returned to the Facebook Page and observed that her comment had been deleted and was no longer visible in the series of comments to Governor Hogan's Chinese New Year post.

46. Phillips posted her same comment again, noting that she "crossed party lines to vote for [Hogan]," and reasserting that she hoped Governor Hogan would "stand up for all Marylanders and not just those that agree with you."

47. A few hours after re-posting her comment, Phillips returned to the Facebook Page and observed that her second comment had been deleted from the Chinese New Year post.

48. Phillips attempted to re-post her comment a third time, but found that her ability to post on the Facebook Page had been restricted, and that she was blocked from posting further comments.

49. On the evening of January 29, 2017, confused and frustrated by the censorship Governor Hogan and his staff were imposing on her, Phillips sought advice from Former Maryland Lieutenant Governor Michael Steele, who prior to being elected Lieutenant Governor of Maryland was Chair of the Maryland Republican Party. Although Phillips did not know Steele personally, she thought he might be in a position to offer advice on this issue, and so she

contacted him via Facebook Messenger (a service that allows Facebook users to send messages to other users).

50. Phillips wrote to Mr. Steele:

Meredith

Mr. Steele, I am a resident of Maryland. This evening I wrote on Governor Larry Hogan's Facebook page questioning him on his stand on the Muslim Ban. I was concerned that we had not heard from him on this issue. My post, along with other similar posts were deleted. I reposted and was removed again. I noticed that posts that were applauding the governor and posts ridiculing those that were concerned about the ban remained. I then found out that I was blocked from posting as were others that posed questions or concerns. Although, I am not a Republican, I have always respected you both as our former Lt. Governor and currently as a political analyst. I know these are not "normal" times but was very surprised to realize that the governor of our state, who I voted for, was so quick to dismiss a constituent who posed a question. As a former Lt. Governor, any advice on how I best reach Governor Hogan with my concerns? Thank you for your time. Meredith Phillips

MAR 4TH, 9:19AM

51. On March 4, 2017, Mr. Steele responded:

Michael Steele accepted your request.



Michael

Hello Meredith, I would suggest you contact the Governor's Communication shop and inquire as to why your posts were removed and your comments/concerns as a citizen were censored from his Facebook page. Now 2 things: if that Facebook page belongs to his campaign, they can control what's posted and who posts just as you can with your own Facebook page. But if it's his official government page that's where unless you were using inappropriate language or spreading false info they should generally allow citizens to post freely. I hope that helps.

52. Phillips replied the same day:

Meredith

Mr. Steele, thank you for taking the time to respond - I know you are very busy. Your advice is helpful and much appreciated!

53. Unbeknownst to Mr. Steele, Phillips had already acted in a manner consistent with his advice. On Friday, February 3, 2017, Phillips called the Office of Governor Hogan, reporting that she had been blocked from posting comments to the Facebook Page and asking to be unblocked. She was told that the Governor's Office was unaware that citizens were being blocked from posting comments on the Facebook Page and that someone in the communications

office would look into the matter. Phillips did not hear anything further from the Governor's Office.

54. As of the date of this Complaint, Phillips remains blocked from posting comments on the Facebook Page.

3. Janice Lepore

55. Plaintiff Janice Lepore started visiting the Facebook Page in late March 2017, in large part because of her interest in education policy and the Protect Our Schools Act ("POSA").

56. Lepore posted several times on the Facebook Page, mostly about the POSA. Her posts were made as part of an ongoing discussion with other posters about Maryland education policy, various pieces of Maryland and federal legislation affecting that policy, and Governor Hogan's views and positions on those issues. *See* Ex. F (setting out Lepore's discussion of these issues with other posters). All of Lepore's posts were well-informed, respectful, and focused on education policy and legislation – a topic that Governor Hogan had himself raised in his own posts.

57. Notwithstanding the nature and tone of Lepore's posts, on or about April 7, 2017, she was blocked from making further posts on the Facebook Page. When she was blocked, all of her past posts were deleted from the Facebook Page.

58. After she was blocked, Lepore emailed the Governor's Office on April 11, 2017 and April 21, 2017 seeking to be unblocked and permitted to post comments to the Facebook Page. After her second email to the Governor's Office, on April 25, 2017, Lepore observed that she was no longer blocked from posting comments to the Facebook Page.

59. As of the date of this Complaint, Lepore is able to comment on the Facebook Page. However, in light of her disturbing experience in having her thoughtful and respectful

posts arbitrarily deleted and in being blocked from posting, Lepore reasonably anticipates that her future posts may be deleted and/or that she may again be blocked from the Facebook Page.

4. Molly Handley

60. Plaintiff Molly Handley was blocked from the Facebook Page on the very first day that she posted a comment. In late January 2017 Handley posted comments to three of Governor Hogan's posts. Her posts dealt with her concern that Governor Hogan should make a public statement regarding the Muslim Ban, and urged other users to call and ask the Governor about his position on that topic. All three of Handley's comments were deleted by Defendants.

61. Handley observed that her comments were being deleted the same day she had posted them, and she observed that other comments regarding the Muslim Ban posted by other users were also being deleted.

62. On January 28, 2017, Handley used her Twitter account to tweet Defendant Governor Hogan's Twitter account (@LarryHogan), stating that she had been blocked from posting comments to the Facebook Page and asking Governor Hogan why she had been blocked.

63. In February 2017, Handley called Governor Hogan's office 5-10 times, speaking with Defendant Windley at least once, requesting that she be unblocked from posting comments to the Facebook Page. Defendants unblocked Handley after she was named in the ACLU's February 17, 2017 letter to Governor Hogan as a Maryland citizen blocked from posting comments to the Facebook Page.

64. A few days later, however, Handley was again blocked from posting comments on the Facebook Page. Handley went onto the Facebook Page and found that Governor Hogan was engaging with constituent comments. Posters were asking questions about the individuals who had been blocked from posting to the Facebook Page. Governor Hogan posted a comment stating that accusations of being blocked were overblown. Handley posted comments

responding to Governor's Hogan's statements, asserting that she had been blocked by Defendants even though her comments regarding the Muslim Ban had not been profane or abusive, that Defendants had failed to unblock her notwithstanding her repeated requests, and that she had only been unblocked after mention in the ACLU letter:



Molly Handley

We have screenshots of the deleted comments governor, and just as concerning, I have screenshots of nasty abusive comments that have been up for three weeks at this point. It's clear it's both arbitrary and partisan. I now live in fear of when my next comment will be deemed "spam" or "abusive" and I am deleted and banned again. I called your office every day for two weeks with no response. I was silenced and shut out of the conversation for asking a question. I'm very uncomfortable with that.

3 minutes ago · Edited · Like · 1



Molly Handley

Governor I called your office for two weeks trying to get an answer to my ban and was never given a reason or response. I was only reinstated after a letter from the ACLU. Not every citizen is comfortable naming themselves in a public document in order to obtain reinstatement. They should be able to call your office and have the reason for their ban given to them/ unblocked if applicable.

3 hours ago · Edited · Like · 1

65. In response to these posts, all of Handley's comments were deleted, and she was once again blocked from posting comments to the Facebook Page.

66. After thus being blocked from the Facebook Page a second time, Handley twice called Governor Hogan's Office seeking to be unblocked.

67. As of the date of this Complaint, Handley remains blocked from posting comments on the Facebook Page.

B. Defendants' Unconstitutional Social Media Policy

68. Defendants have adopted, and purport to enforce, the Office of the Governor's Social-Media Policy (the "Social Media Policy") which sets out certain "guidelines" supposedly applicable to constituents who wish to post comments on the Facebook Page and other social media accounts. *See* Ex. A. The Social Media Policy is accessible through the Facebook Page at https://www.facebook.com/pg/larryhogan/about/?ref=page_internal, and directly from the internet at <https://governor.maryland.gov/wp-content/uploads/2017/03/Doc.pdf>. It does not bear an effective date. On information and belief, the Social Media Policy was adopted by the Governor and posted online sometime between February 21, 2017 (the date of the ACLU's letter) and May 17, 2017.

69. The Social Media Policy was not created in a vacuum. Since at least 2013, the State of Maryland has issued guidance to state departments that wish to establish a social media presence. The State of Maryland Information Security Policy, applicable through January 31, 2017, noted that when state employees managing official social media accounts are responsible for monitoring comments, "[i]f 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* Ex. G. This policy was superseded and replaced in February 2017 by the Maryland Official Use of Social Media Policy, which offers similar guidance. *See*

Ex. H. Furthermore, the Maryland Department of Information Technology handbook for social media instructs “[e]ach department deploying social media” to “develop and post a comments policy,” and that “social media managers refrain from deleting posts or comments unless there is a specific violation of the posted comments policy.” *See* Ex. I. The handbook further advises: “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.”

70. In various respects, these state-wide social media-related documents appear to have First Amendment problems of their own. It is telling, however, that the Social Media Policy actually adopted by Governor Hogan for the Facebook Page – and the Defendants’ practices in operating that page – are not only inconsistent with the First Amendment, as described below, but are also inconsistent with the guidance provided by those state-wide social media-related documents, which clearly counsel that negative comments should not be deleted.

71. The Social Media Policy states that the Facebook Page is intended to “promote and disseminate information about Gov. Larry Hogan’s initiatives, events, and personal announcements” and to serve as a “forum[] for constructive and respectful discussion with and among users” on those topics alone. *Id.*

72. The Social Media Policy purports to ban constituents from posting comments on the Facebook Page that are not “about” the subjects raised by the Governor’s own posts, or that “contain profanity, obscenity, vulgarity, nudity, defamation of character, or advertising.” *Id.*

73. The Social Media Policy also purports to ban commenters from posting comments that are “similar” to their own past posts, and to ban commenters from posting comments that are “similar” to or “repetitive” of comments by other users. *Id.*

74. The Social Media Policy further purports to ban speech that is “deemed inappropriate,” or speech that is deemed to be “a standardized letter or petition.” *Id.*

75. Under the Social Media Policy, comments that run afoul of its restrictions may be “removed” from the Facebook Page.

76. Under the Social Media Policy, citizens may also be “temporarily or permanently restricted from accessing” the Facebook Page if they threaten violence or public safety, post comments that are deemed to be repetitive of other users’ comments, comments that constitute a “Coordinated Effort,” or if, after being blocked and then unblocked, the citizen “continues to violate the Policy.”

77. The Social Media Policy provides that “[c]omments may be removed or access may be restricted at any time without prior notice of without providing justification.” Citizens who wish to be unblocked “must submit to the Governor’s Office of Correspondence & Constituent Services at governor.mail@maryland.gov a written statement providing grounds for reinstatement and the zip code of his or her residence.”

78. The Social Media Policy relies on broad, vague, and undefined terms, and permits the arbitrary censorship of views the Governor disfavors. In operation and effect, the Policy has a chilling effect on the rights of Plaintiffs, and the rights of all Maryland citizens, to engage in free and open speech on the Facebook Page.

79. The Social Media Policy, as well as Defendants’ actions deleting comments and blocking commenters – whether purportedly in compliance with the Social Media Policy or

otherwise – create a hostile atmosphere for free expression on the Facebook Page, chilling the speech of Plaintiffs and other Maryland citizens who are not before the Court.

VI. CAUSES OF ACTION

COUNT I

As-Applied Violation of Plaintiffs’ Rights to Free Speech Under the First and Fourteenth Amendments (42 U.S.C. § 1983)

(All Defendants)

80. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

81. Speech utilizing Facebook and other social media is subject to the same First Amendment protections as any other speech. *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017); *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013).

82. The First Amendment represents “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). Today, “the most important places ... for the exchange of views... is cyberspace ... and social media in particular.” *Packingham*, 137 S. Ct. at 1735 (internal citation omitted). *See also Reno v. American Civil Liberties Union*, 521 U.S. 844, 868 (1997) (acknowledging the “vast democratic forums of the Internet”).

83. “[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993). Therefore, when a government creates a limited public forum for speech, in either a literal or “metaphysical” sense, *see Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995), there are important constitutional constraints on the limitations on speech that the government may apply to such forums. “The State may not exclude speech where its distinction is not reasonable in light of the purpose

served by the forum,” *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 685 (2010), and the government may not “discriminate against speech on the basis of ... viewpoint.” *Rosenberger*, 515 U.S. at 829.

84. “The existence of reasonable grounds for limiting access to a nonpublic forum ... will not save a regulation that is in reality a façade for viewpoint-based discrimination.” *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 811 (1985); *see also Davison v. Loudoun Cty. Bd. of Supervisors*, No. 1:16CV932 (JCC/IDD), 2017 WL 3158389, at *10 (E.D. Va. July 25, 2017). The façade is evident here: Governor Hogan and Defendants did not, in policy or practice, uniformly bar Marylanders from posting off-topic comments that lauded the Governor’s various initiatives, supported his policy initiatives (whether the subject of a post or not), or repeated similar positive commentary. Similarly, Governor Hogan and his staff do not, in practice, delete offensive or insulting comments – particularly when made by posters supportive of the Governor. Instead, the Social Media Policy was drafted to allow Defendants to exercise arbitrary and unfettered discretion to delete comments, or block commenters of which they did not approve, under the guise of deeming them “off-topic,” “repetitive,” or “unacceptable.”

85. The Supreme Court has long recognized that “words are often chosen as much for their emotive as their cognitive force,” and that “we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.” *Cohen v. California*, 403 U.S. 15, 26 (1971). The First Amendment forbids the government from censoring speech based on “personal predilections,” and “the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us.” *Id.* at 21, 25. The Supreme Court has confirmed “time and again that ‘the public

expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (quoting *Street v. New York*, 394 U.S. 576, 592 (1969)).

86. By blocking Plaintiffs and/or by deleting their comments, Defendants have both directly and implicitly chilled Plaintiffs’ free expression, as well as that of all Maryland citizens.

87. Defendants violated a clearly established constitutional right – the right to speak freely on topics relevant to the government in a government-established forum, and particularly an online social-media-based forum – of which all reasonable government officials should have known, rendering them liable to Plaintiffs under 42 U.S.C. § 1983. *See Packingham, supra*, at 1735 (it is “clear” that “the most important places” for the exchange of views are social media sites such as Facebook); *Page v. Lexington Cty. Sch. Dist. One*, 531 F.3d 275, 284 (4th Cir. 2008).

88. The denial of constitutional rights is irreparable injury *per se*, and Plaintiffs are entitled to declaratory and injunctive relief.

89. Additionally Plaintiffs experienced emotional injury as a consequence of being denied their First Amendment rights.

COUNT II

Facial Challenge to Violation of Right to Free Speech Under the Plaintiffs’ First and Fourteenth Amendment Rights (42 U.S.C. § 1983)

(All Defendants)

90. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

91. The First Amendment does not permit the government to subject speech to overly broad regulation. *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). Any regulation that does so is invalid “until and unless a limiting construction or partial invalidation so narrows it as to

remove the seeming threat or deterrence to the constitutionally protected expression[.]” *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003).

92. The Social Media Policy is unconstitutional because it is overly broad and vague. For example, it prohibits “inappropriate” speech, including speech that is deemed “similar” to or “repetitive” of speech that has already occurred. Moreover, it prohibits speech that is not “about” an “initiative, event, or personal announcement” posted by the Governor. These purported criteria for deleting comments or blocking constituents are so vague and indeterminate that they do not provide any meaningful limitation on the ability of the Governor and his staff to censor comments or constituents with whom they disagree for whatever reason.

93. By subjecting speech to review and censorship based on such expansive terms, Defendants’ Social Media Policy stifles robust debate and disregards the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Sullivan*, 376 U.S. at 270. Furthermore, the Social Media Policy impermissibly imposes “special prohibitions on those speakers who express views on disfavored subjects,” namely those whose opinions are believed to be “inappropriate,” off-topic, or “similar” and “repetitive.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992). A law that discriminates based on viewpoint is an “egregious form of content discrimination,” which is “presumptively unconstitutional.” *Rosenberger*, 515 U.S. at 829-30.

94. To permit the government “to pick and choose among the views it is willing to have discussed” in a public forum represents “censorship in a most odious form, unconstitutional under the First and Fourteenth Amendments.” *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 98 (1972).

95. The Social Media Policy is unconstitutional because it explicitly forbids Maryland citizens from engaging in efforts to “petition” Governor Hogan in violation of bedrock First Amendment principles.

96. “[T]he First Amendment, which protects a controversial as well as a conventional dialogue, is as applicable to the States as it is to the Federal Government; and it extends to petitions for redress of grievances as well as to advocacy and debate.” *Whitehill v. Elkins*, 389 U.S. 54, 57 (1967) (internal citations and quotations omitted).

97. The broad and undefined terms of the Social Media Policy vest government officials with unbridled discretion to review and restrict citizen speech.

98. The portions of the Social Media Policy addressing constituent expression are unconstitutionally overbroad, do not serve a significant government interest, are not narrowly drawn, and impermissibly restrict citizen expression. They burden far more speech than is necessary to serve the asserted interest of minimizing vulgarity and coordinated spam attacks on the Facebook Page.

99. The Social Media Policy is also unconstitutionally vague in violation of the First Amendment and of the due process guarantee of the Fourteenth Amendment to the U.S. Constitution, because the prohibitive terms are not clearly defined such that a person of ordinary intelligence can readily identify the applicable standard for inclusion and exclusion. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The terms of the Social Media Policy are generalized, subjective, and incapable of precise definition or application. The Social Media Policy does not define the nebulous terms that it contains that can form the basis of a decision by the Governor and/or his staff to restrict speech.

100. As a direct result of the Defendants' Social Media Policy, citizens of Maryland are deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

101. As a consequence of the Defendants' violation of Plaintiffs' and other similarly situated citizens First and Fourteenth Amendment rights, as alleged above, all of which is irreparable injury *per se*, Plaintiffs are entitled to declaratory and injunctive relief, damages, and the reasonable costs of this lawsuit, including reasonable attorneys' fees.

COUNT III

Declaratory Judgment and Injunction (28 U.S.C. § 2201, et seq.)

102. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

103. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Counts I through II above.

104. Plaintiffs are seeking a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to speak on the Facebook Page without being subjected to unconstitutional policies that impose prior restraints on speech, give government officials unfettered discretion whether to allow expression and under what conditions, and that are vague, overbroad, and not narrowly tailored to serve a substantial governmental interest.

105. To prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring the Social Media Policy to be unconstitutional as applied to the Plaintiffs.

106. To prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring the Social Media Policy to be unconstitutional on its face.

107. Pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, this Court should issue a permanent injunction prohibiting the Defendants from enforcing the restrictions in the Social Media Policy on citizens' expressive activities to the extent they are unconstitutional and to prevent the ongoing violation of constitutional rights. Citizens in the State of Maryland are suffering irreparable harm from continued enforcement of unconstitutional policies, monetary damages are inadequate to remedy their harm, and the balance of equities and public interest both favor a grant of injunctive relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs James Laursen, Meredith Phillips, Janice Lepore, and Molly Handley respectfully request that the Court enter judgment against Defendants and provide Plaintiffs the following relief:

- A. A declaratory judgment stating that Defendants' Social Media Policy is unconstitutional, facially and as applied to Plaintiffs, and that Defendants violated Plaintiffs' rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;
- B. A permanent injunction restraining enforcement of Defendants' unconstitutional Social Media Policy and their underlying enforcement practices;
- C. An injunction requiring the Defendants cease blocking all Plaintiffs currently prohibited from posting comments on the Facebook Page;

- D. A declaratory judgment that Defendants' efforts to block Plaintiffs from posting on the Facebook Page and Defendants' efforts to delete Plaintiffs' comments from the Facebook Page violated Plaintiffs' First and Fourteenth Amendment rights;
- E. Monetary damages in an amount to be determined by the Court to compensate Plaintiffs for the impact of a deprivation of fundamental rights;
- F. Plaintiffs' reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988, and other applicable law; and
- G. All other further relief to which Plaintiffs may be entitled.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues properly triable by jury in this action.

DATED: August 1, 2017

Respectfully submitted,

/s/ Lisa B. Zycherman

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