

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**CHRISTY STADIG,**

**Plaintiff,**

**v.**

**Civil Action No.**

**STEVEN STOLIPHER, in his official  
capacity as Jefferson County Commissioner,**

**Defendant.**

**COMPLAINT**

COMES NOW the Plaintiff, Christy Stadig, by and through her counsel Nicholas Ward, and Aubrey Sparks, of the American Civil Liberties Union Foundation of West Virginia (“ACLU-WV”), brings this Complaint against Defendant Steve Stolipher, in his official capacity as a Jefferson County Commissioner, for violations of her right to participate meaningfully in government processes by communicating with her elected representative. Ms. Stadig was unjustly banned from interacting with one of the Jefferson County Commissioners, Mr. Steven Stolipher, when he unlawfully blocked her on social media. In support of these claims, Ms. Stadig alleges as follows.

**I. JURISDICTION**

1. This action arises under Article III Sections 7 and 16 of the West Virginia Constitution.

2. This Court has jurisdiction over these claims pursuant to §51-2-2 of the West Virginia Code.

3. Venue is proper in this Court pursuant to §51-1-1 because the events giving rise to the instant claim occurred within this County and because Defendant Stolipher resides in this County.

## II. STATEMENT OF THE FACTS

4. Ms. Christy Stadig is a resident of Harper's Ferry, West Virginia.

5. When she first moved to the area, Ms. Stadig used social media to familiarize herself with the area, including local politicians. Ms. Stadig continues to use social media to stay informed of what is happening in her local community. This includes "following" her elected officials on Facebook to receive information on municipal, county, and state matters. Ms. Stadig also uses the Facebook pages of her elected officials as platforms for engaging with her fellow constituents and learning about the positions of local politicians.

6. Facebook.com ("Facebook") is a social media platform that allows users to create and maintain user-specific pages to "post" – and thereby disseminate – videos, photographs, messages, or other information to persons identified as their "friends" on Facebook and to other individuals or to the public at large. A user's Facebook page is occasionally referenced as that user's "profile" or "timeline."

7. Facebook allows government organizations, elected officials, political organizations, candidates for office, and advocacy organizations to create "pages" that are distinct from personal Facebook pages in that they enable elected officials and others similarly situated to advertise and provide tools to measure the effectiveness of the content shared.

8. Facebook also allows users to interact with personal profiles or pages by "commenting" on users' Facebook posts or on other comments that have been made on Facebook posts. Users may also "share" Facebook posts that have been made by other individuals or organizations, thereby causing someone else's Facebook post to appear on a user's own Facebook page and thus increasing the number of persons who view that Facebook post.

9. Commissioner Stolipher operates, or an agent operates on his behalf, a Facebook page titled “Steve Stolipher County Commissioner.” The Steve Stolipher County Commissioner Facebook page is described as a “Government Official” page.

10. On or around the first week of May 2022, Commissioner Stolipher used the Steve Stolipher County Commissioner Facebook page to comment on and share an article from the Jefferson County Perspective covering a controversy concerning an audit of the Jefferson County Commission.

11. Commissioner Stolipher shared the post, along with the following comment: “Mark Everhart the sole manager of JCP [referencing the Jefferson County Perspective] does not like it when you go against his false narrative. That is why it important [sic] for everyone to read the auditor's report themselves.”

12. On May 27, 2022, Ms. Stadig commented on Commissioner Stolipher's post asking the Commissioner to explain what parts of Mark Everhart's narrative were false.

13. On May 27, 2022, Ms. Stadig received a notification that Commissioner Stolipher had responded to her comment. However, the content of his response is unknown to her because before she was able to view the comment thread both Ms. Stadig's original comment and Commissioner Stolipher's response had been deleted.

14. Ms. Stadig then posted a second comment on Commissioner Stolipher's page inquiring why her original post and the Commissioner's response had been deleted.

15. Receiving no response, Ms. Stadig asked a third time why Commissioner Stolipher deleted her question, this time including a screenshot of the deleted comment.

16. Seeing that Commissioner Stolipher had responded to other user's comments in the time she had posted her comments, Ms. Stadig commented on Mr. Stolipher's response to another

Facebook users' comment, asking if Commissioner Stolipher deleted comments that challenge his point of view and if he "welcomed discussion on these matters."

17. Receiving no response, Ms. Stadig commented on another user's comment on the Steve Stolipher County Commissioner page, advising the commenter to take screenshots and warning that Commissioner Stolipher had been deleting comments.

18. In her final effort before being blocked by Commissioner Stolipher, Ms. Stadig commented on Facebook user Ada Henlsey's post, again asking Commissioner Stolipher why he is selectively deleting "people's questions and comments." Ms. Stadig advised Commissioner Stolipher that his actions are "not a good look for a public servant."

19. Less than two hours later, Ms. Stadig discovered she had been blocked from viewing or interacting with the Steve Stolipher County Commissioner page.

20. That same day, Ms. Stadig filed a complaint with the West Virginia Ethics Commission to make the Commission aware that Commissioner Stolipher had blocked her from viewing or interacting with his official government Facebook page. Ms. Stadig's complaint was thereafter dismissed by the Ethics Commission and she was informed that it does not resolve issues of this nature.

21. On June 7, 2022, Ms. Stadig attended a Jefferson County Republic Executive Committee meeting in order to request Commissioner Stolipher unblock her from the Commissioner's official Facebook page. Ms. Stadig attended the meeting because it was the first available opportunity for her to communicate with Commissioner Stolipher in person and request that she be unblocked.

22. After the Commission meeting concluded, Ms. Stadig made Commissioner Stolipher aware that she was blocked from viewing or interacting with the Steve Stolipher County

Commission Facebook page, and that he was not permitted to block a constituent. Commissioner Stolipher did not commit to unblocking Ms. Stadig, and instead laughed following Ms. Stadig's request.

23. The conversation ended with Commissioner Stolipher telling Ms. Stadig to email him and he'll take care of it. However, at that time he did not have a publicly posted email address that Ms. Stadig was able to locate. Given that she did not have his email address, she emailed the Republican Executive Committee, but received no response.

24. Before leaving the meeting, an Executive Committee member called Ms. Stadig rude for speaking to Commissioner Stolipher concerning her being blocked, and she was informed that she would not be permitted to attend Jefferson County Republican Executive Committee meetings in the future.

25. As of the date of this filing, Ms. Stadig remains blocked from viewing or interacting with the Steven Stolipher County Commissioner Facebook page.

26. As a result of being blocked, Ms. Stadig now has had her access to information about her political representatives limited and is no longer able to interact with Commissioner Stolipher concerning pressing community issues.

### **III. CAUSES OF ACTION**

#### **COUNT I VIOLATION OF PLAINTIFF'S RIGHTS TO FREE SPEECH**

##### *Violations of Article III Section 7 of the West Virginia Constitution*

27. Plaintiff restates and incorporates by reference all previous allegations.

28. As a direct and proximate result of his actions, Defendant Stolipher, while acting under color of law, deprived Ms. Stadig of certain civil rights secured under Article 3, Section 7 of the West Virginia Constitution ("No law abridging the freedom of speech, or of the press, shall

be passed” W. Va. Const. Art 3, § 7), by wrongfully chilling and infringing upon Ms. Stadig's freedom of speech, expression and association without due process of law.

29. The West Virginia Supreme Court of Appeals has repeatedly held that the West Virginia Constitution should be interpreted to award equal, if not greater, rights when compared to the Federal Constitution. The Court has stated, “[w]e agree with the principle that ‘we may interpret our own Constitution to require higher standards of protection than afforded by comparable federal constitutional standards.’” *Morrissey v. W. Virginia AFL-CIO*, 842 S.E.2d 455, 470 (2020) citing *Pauley v. Kelly*, 162 W. Va. 672, 679, 255 S.E.2d 859, 864 (1979).

30. As it relates to protections concerning free speech, the Court has affirmed that the protections of the West Virginia Constitution are greater than those contained in the Federal Constitution, stating, “... in view of our state constitutional provision regarding the right of the majority to ‘reform, alter, or abolish’ an inadequate government, we think that the West Virginia Constitution offers limitations on the power of the state to inquire into lawful associations and speech more stringent than those imposed on the states by the Constitution of the United States.” *Pushinsky v. W. Va. Bd. Of Law Exam’rs.*, 266 S.E.2d 444, 449 (W. Va. 1980).

31. The United States Supreme Court has referred to social media platforms in the digital age as a “modern public square.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1732 (2017). The Supreme Court has further held that platforms like Facebook have become “the principal sources” for public discourse. *Id.* at 1737. As such, these platforms provide “perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” *Id.*

32. The Fourth Circuit has held that this sort of government censorship by an elected official in a public forum – censorship based on the speaker’s viewpoint – is strictly forbidden by the First Amendment. *See, e.g., Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019); *See also,*

*Windom v. Harshbarger*, 396 F.Supp.3d 675 (N.D. W. Va. 2019); *Woolsey v. Ojeda*, 363 F.Supp.3d 688 (S.D. W. Va. 2019); *One Wis. Now v. Kremer*, 354 F.Supp.3d 940 (W.D. Wis. Jan. 18, 2019).

33. Ms. Stadig’s comments constituted speech on matters of public concern, and were not vulgar, obscene or threatening. As such, her comments are protected by the First Amendment. See *Scarborough v. Frederick Cty. Sch. Bd.*, 517 F.Supp.3d 569, 576 (W.D. Va. 2021) citing *Enquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 600 (2008).

34. The Supreme Court has recognized two categories of public forums, “traditional public forums” and “limited (or designated) public forums.” *Am. Civil Liberties Union v. Mote*, 423 F.3d 438, 443 (4<sup>th</sup> Cir. 2005). A “limited” or “designated” public forum is one the government “has opened for expressive activity to the public or some segment of the public.” *Warren v. Fairfax County*, 196 F.3d 186, 193 (1999). A designated public forum “can only be created by ‘purposeful government action’ in which ‘the government must intend to make the property generally available.’” *Harshbarger*, 396 F.Supp.3d at 680 (quoting *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998)). If the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny. *Id.* at 681.

35. The United States Court of Appeals for the Fourth Circuit has held that a government official’s Facebook page constitutes a public forum if certain factors are met. *Davison v. Randall*, 912 F.3d 666, 681 n.3 (4<sup>th</sup> Cir. 2019). The Fourth Circuit looks to several different factors when determining whether a social media platform constitutes a designated public forum: 1) whether the official created the Facebook page to further their duties as an elected official, (2) used the page as a tool of governance, (3) whether the title of the page included the official’s title,

(4) whether the page is categorized as that of a government official, (5) whether the page lists the contact information of the government official in their professional, instead of personal, capacity, (6) whether the page includes the web address of the official; (7) whether the posts are addressed to constituents; and (8) whether the content posted has a strong tendency towards matters related to the [official's] office. *Id.*

36. The facts contained herein establish that the “Steve Stolipher County Commissioner” Facebook page meets the threshold of the forum analysis test in *Davison* and is subject to forum analysis.

37. Commissioner Stolipher banned Ms. Stadig from his official Facebook page and deleted her comments because of the critical viewpoints she expressed on his Facebook page. In doing so, Commissioner Stolipher controlled and limited her access to a public forum in an impermissible manner. *See Cornelieus v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985).

38. By acting under the color of state law to deprive Ms. Stadig of her rights, Commissioner Stolipher has violated and continues to violate Article 3, Section 7 of the West Virginia Constitution.

39. Commissioner Stolipher engaged in this conduct intentionally, knowingly, willfully, wantonly, maliciously, and in reckless disregard of Ms. Stadig’s constitutional rights.

40. Commissioner Stolipher’s continuing refusal to restore Ms. Stadig’s ability to participate on Commissioner Stolipher’s social media accounts entitles her to declaratory and injunctive relief.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff, Christy Stadig, requests that this Court enter judgment in her favor and against Defendant and award the following relief:

- (a) Declare that Commissioner Stolipher violated Plaintiff's rights under the First Amendment to the United States Constitution and Article III, Section 7 of the West Virginia Constitution when he blocked and banned her from his Facebook account on the basis of her viewpoint, and that those constitutional violations are continuing.
- (b) Enter an injunction requiring Commissioner Stolipher to unblock Plaintiff from Facebook and prohibiting him from blocking, banning, or similarly denying Plaintiff access to his official social media discussions in the future on the basis of her viewpoint.
- (c) Award Plaintiff all the costs and reasonable attorney fees incurred in this action;
- (d) Schedule this matter for a hearing at the earliest practicable date, and
- (e) Grant such other relief as this Court may deem just and proper.

Respectfully submitted,  
CHRISTY STADIG  
*by Counsel,*

*/s/ Aubrey Sparks*

Aubrey Sparks (WV Bar No. 13469)  
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American Civil Liberties Union of  
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