

August 14, 2017

The Honorable Senator Kevin Grantham, President
c/o Committee on Ethics
Colorado State Senate
200 E. Colfax, Room 346
Denver, CO 80203

RE: Formal Complaint against Senator Ray Scott, District 7

Dear Senator Grantham,

This letter represents our formal complaint under Rule 43 of the Senate Rules Committee on Ethics which states “Any person may file a complaint with the President [of the Senate] alleging misconduct involving legislative duties by a member of the Senate.”

We allege legislative misconduct by our state senator, Ray Scott, in regard to his duties and improper handling of his communication with constituents. We are all Colorado residents, constituents of Senator Scott and reside in his district.

Description of the alleged misconduct:

Senator Scott has blocked all of us from one or more of his official social media accounts solely as a result of opinions we expressed about his policies and political stances. This amounts to viewpoint discrimination, which is illegal under the First Amendment.

Rules, Constitutional Provisions and Ethical Principles Senator Scott has Violated:

It is clear that Senator Scott blocks constituents from accessing his official social media forums whenever they criticize him and or express opinions that differ from his. His actions violate our and other constituents’ rights of free speech guaranteed under the First

Amendment to the United States Constitution and Article II, Section 10 of the Colorado Constitution.

Senator Scott's actions also violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, which prohibits states from denying any person within its territory the equal protection of the laws. The Equal Protection Clause means a state ***must treat an individual in the same manner as it treats others under similar conditions and circumstances.***

In addition, Senator Scott blocking constituents on social media violates the July 25, 2017 federal court ruling in *Davidson v. Loudoun County Board of Supervisors* which concluded that ***public officials cannot block social media users because of their criticism.***

Facts Constituting Senator Scott's Alleged Misconduct:

1) Senator Scott's actions are state actions.

In his capacity as a State Senator, Ray Scott operates a Facebook page and Twitter account under color of state law. Rep. Scott's Twitter account, @SCOTTFORCOLO, describes him as "Colorado Senator and a strong voice for Colorados (sic) energy producers." Many of his tweets discuss policies he has proposed or supports. Likewise, Senator Scott's Facebook page describes him as "Colorado State Senator." Senator Scott uses his Facebook and Twitter accounts to update constituents and engage them in conversation about matters of public policy. Many of Senator Scott's posts contain photos of him inside the state legislative chambers and in his office carrying on official business.

We all are constituents of Senator Scott and active in local politics. As our representative in the Colorado Senate, Ray Scott's duties include communicating with constituents. This communication legally cannot be limited only to those constituents with whom Senator Scott agrees.

2) The state funds Senator Scott to serve his constituents.

The state pays Senator Scott a taxpayer-funded salary to represent all of his constituents, including us and others with whom he disagrees. Colorado taxpayers provide Senator Scott with an office, a Capitol phone number and an official email account. Senator Scott maintains his Facebook page and Twitter accounts under the aegis of his position as a state elected official for the purpose of interacting with members of the public. He uses his Facebook page to share policy-related information with constituents, like progress on road construction projects, updates on water law and state investments in roads and bridges. Senator Scott also uses his social media accounts as platforms from which he attacks local and national institutions, like the news media, including the local newspaper, the *Grand Junction Daily Sentinel*. Notwithstanding his occasional posts on personal matters like fishing trips, concerts and his dog, Senator Scott primarily uses his social media accounts as tools of governance, keeping constituents abreast of his official activities as state senator.

3) Senator Scott is the sole arbiter of constituents who will be blocked, and must intentionally take multiple steps to block specific constituents with whom he disagrees politically.

It is clear that Senator Scott operates his social media accounts by himself and thus is the sole person who determines which constituents to block and for what reasons. Since several steps are required to block specific people from both Facebook and Twitter, it is clear that Senator Scott himself has gone to definitive lengths to prevent specific constituents from seeing and/or commenting on his posts.

4) Senator Scott has no policy regulating access to his social media accounts.

Senator Scott has provided no policy or guidelines describing specific behaviors on social media that can result in restriction of interaction on his accounts. Rather, it has become abundantly clear that Senator Scott makes unilateral decisions about whom he will block in the heat

of the moment after becoming aware which people have opinions that differ from his own. Public officials blocking any members of the public from their social media accounts based on their opinions has been ruled illegal in federal court. Senator Scott clearly disapproves of the viewpoints of people he has blocked, calling them names like “foolish,” “idiot” and saying they “don’t know what their (sic) talking about.”

5) Senator Scott is engaging in viewpoint discrimination, which is against the law.

6) Senator Scott has been deleting his own responses to constituents’ postings as well as constituents’ responses from his social media. Senator Scott’s posts, responses and comments made by his constituents are all part of the official public record and as such must not be deleted.

Constitutional and Ethical Principals Senator Scott has Violated:

Senator Scott blocking constituents from his official social media accounts infringes our Constitutional right to express our views to our elected representative in forums of his own choosing and that he created for this purpose.

The U.S. Supreme Court’s First Amendment jurisprudence has made it abundantly clear that speech may not be disfavored by the government or its representatives simply because it is disagreeable to them or does not comport to an elected official’s point of view.

Senator Scott’s suppression of critical commentary is the quintessential form of viewpoint discrimination against which the First Amendment guards. By prohibiting us from participating in online forums he himself established to keep in touch his constituents, Senator Scott has committed a cardinal sin under the First Amendment of the U.S. Constitution. Moreover, Justice Anthony Kennedy wrote in the Supreme Court’s June 19, 2017 ruling in *Packingham vs. North Carolina* that social media, and Facebook in

particular, have become vital platforms for speech of all kinds, and that social media may now be “the most important” modern forum for the exchange of views.

Public officials are not forbidden from moderating comments on their social media sites, but blocking constituents from their sites or curtailing their ability to have input based solely on their viewpoints, and deleting comments he finds unfavorable, clearly runs afoul of free speech protections conferred by both the State and Federal Constitutions.

Remedy

We ask the Senate Ethics Committee to immediately instruct Senator Ray Scott to set the privacy settings on his Facebook page to “Public” and maintain them there so all citizens can view his posts whether or not they have a Facebook account. Senator Scott needs to unblock all constituents whom he has blocked from his social media accounts and allow them to comment freely. Senator Scott should be instructed to immediately cease deleting any of his own posts as well as responses to his posts, whether he agrees with the points of view of responders or not. He also needs to be instructed not to delete any of his own posts or responses. We have evidence that Senator Scott has deleted posts in large numbers, including some of his own responses to constituents who disagree with him, leaving inexplicable gaps in online conversations that renders the conversations unintelligible.

We further ask that Senator Scott be ordered to post a clear policy describing unacceptable behaviors on his social media sites and that he be **ordered to stop blocking participants in the future from any of his official social media sites based solely on their viewpoints.**

We want to be notified as soon as the Senate Ethics Committee has so instructed Senator Scott, and to be informed of the exact date when our lawful access and that of the rest of the public will be restored to all of Senator Scott’s social media accounts.

Thank you for your consideration in this important matter.

Sincerely,

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cc: Erin McIntyre, Grand Junction Daily Sentinel

Enclosures