

September 2, 2026

Office of Communications  
Polk County Sheriff's Office  
1891 Jim Keene Blvd  
Winter Haven, Florida 33880

Sent via U.S. Mail and Electronic Mail (PIOs@polksheriff.org)

Dear Office of Communications:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, has concerns with the constitutionality of the Polk County Sheriff's Office (PCSO) social media policies and moderation of official PCSO and Polk County Animal Control (PCAC) Facebook pages. When a government entity opens online forums for public comments, as PCSO has, it may not restrict or punish speech the First Amendment protects. We therefore urge PCSO to bring its policies and practices into constitutional compliance.

### **Social Media Policies**

The Sheriff's Office's "Social Media Posting Policy," which applies to its Facebook, Instagram, X (formerly Twitter), Nextdoor, YouTube, and LinkedIn pages, reads in part:<sup>1</sup>

These social media platforms are monitored and managed by the PCSO Office of Communications. They are considered limited public forums and therefore the following policies and conditions apply:

- Postings and comments on these platforms constitute acceptance of these terms.

...

- The Polk County Sheriff's Office reserves the right to remove and/or block anyone, with or without notice, who posts inappropriate material or violates these posted social media content policies as determined by the Office of Communications staff.

---

<sup>1</sup> *Social Media Posting Policy*, POLK COUNTY SHERIFF'S OFFICE, <https://www.polksheriff.org/news-investigations/public-information-office/social-media-posting-policy>.

- The Polk County Sheriff's Office does not allow posting of photos or videos by anyone other than members of the Polk County Sheriff's Office.

...

The Polk County Sheriff's Office welcomes a person's right to express his/her opinion and encourages posters to keep comments civil and related to the posted content. The Polk County Sheriff's Office reserves the right to hide or remove any comments, or block or ban users who violated the Polk County Sheriff's Office social media posting policies.

The following types and categories of comments and posts are not allowed on PCSO social media pages:

- Inappropriate, offensive, or sexually explicit
- Defame, abuse, harass, stalk, threaten or violate the legal rights of others
- Include racism, hatred, slander, threats, obscenity, violence, vulgarity
- Constitute trolling (deliberately provoking others or maliciously harassing, attacking, or cyberbullying others)

...

- Could harm the safety or well-being of one of our employees, including personal attacks
- Are off-topic or not related to the content within the post, or any content posted on the platform
- Contain links to websites

Users may be restricted from accessing our social media platforms if they repeatedly violate this policy, with or without notice.

The PCSO and PCAC Facebook pages each link to this policy and separately summarize it with substantially similar moderation rules in their "Privacy and legal info" sections on the "About" tab.<sup>2</sup> Each summary also contains an additional restriction against "copyrighted material that belongs to another person."<sup>3</sup>

---

<sup>2</sup> Polk County Sheriff's Office, FACEBOOK, [https://www.facebook.com/polkcountysheriff/directory\\_privacy\\_and\\_legal\\_info](https://www.facebook.com/polkcountysheriff/directory_privacy_and_legal_info); Polk County Animal Control -Florida, FACEBOOK, [https://www.facebook.com/polksheriffanimalcontrol/directory\\_privacy\\_and\\_legal\\_info](https://www.facebook.com/polksheriffanimalcontrol/directory_privacy_and_legal_info).

<sup>3</sup> *Id.*

## **PCSO's Social Media Policies Violate the First Amendment**

As the Sheriff's Office recognizes, the interactive portions of its social media pages are, at a minimum, limited public forums.<sup>4</sup> Although the government can require comments in a limited public forum to relate to a particular topic, it may not under the First Amendment "discriminate against speech on the basis of viewpoint," and even viewpoint-neutral limits "must be 'reasonable in light of the purpose served by the forum.'"<sup>5</sup> Several of the Sheriff's Office's social media rules violate these constitutional requirements, and the government cannot evade the First Amendment with a notice that commenters accept other terms.

### **Viewpoint discrimination**

The bans on "[i]nappropriate" or "offensive" comments, comments that "abuse" or "[i]nclude racism, hatred," or "vulgarity," comments that "[c]onstitute trolling," and "personal attacks" are all unconstitutionally viewpoint discriminatory.

A rule discriminates based on viewpoint if, as here, it regulates speech "based on the 'specific motivating ideology or the opinion or perspective of the speaker.'"<sup>6</sup> This includes when a restriction "reflects the Government's disapproval of a subset of messages it finds offensive."<sup>7</sup> It is a "bedrock principle underlying the First Amendment" that officials cannot restrict speech simply because some find it "offensive or disagreeable."<sup>8</sup> This includes speech deemed racist or hateful.<sup>9</sup> Even a rule that "evenhandedly prohibits disparagement of all groups" is viewpoint discriminatory because "[g]iving offense is a viewpoint."<sup>10</sup>

Similarly, targeting comments based on perceived tone, hostility, or intent to provoke is necessarily viewpoint-based and therefore unconstitutional.<sup>11</sup> Federal courts across the country have invalidated similar rules banning "personal attacks" or "antagonistic," "abusive,"

---

<sup>4</sup> See *Davison v. Randall*, 912 F.3d 666, 682–87 (4th Cir. 2019) (holding interactive portion of government social media page where public can comment is a public forum); *Garnier v. O'Connor-Ratcliff*, 136 F.4th 1181, 1187 (9th Cir. 2025) (reaffirming that sections of government officials' social media pages are public forums).

<sup>5</sup> *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001) (quoting *Cornelius v. NAACP Legal Def. & Ed. Fund., Inc.*, 473 U.S. 788, 806 (1985)).

<sup>6</sup> *Reed v. Town of Gilbert*, 576 U.S. 155, 168 (2015) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)).

<sup>7</sup> *Matal v. Tam*, 582 U.S. 218, 249 (2017) (Kennedy, J., concurring).

<sup>8</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

<sup>9</sup> See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (invalidating ordinance that prohibited placing on any property symbols that "arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender").

<sup>10</sup> *Matal*, 582 U.S. at 243.

<sup>11</sup> See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (explaining the First Amendment reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials").

“derogatory,” “offensive,” “rude,” “insulting,” or “personally directed” public comments—even in limited public forums.<sup>12</sup>

For these reasons, the government may not restrict speech—whether by hiding comments, deleting them entirely, or blocking users—simply because it subjectively finds the speech inappropriate, offensive, racist, vulgar, disrespectful, or trolling.

### Vagueness

Separately, the rules are also unconstitutionally vague as they fail to provide persons of ordinary intelligence reasonable notice of what speech is prohibited, while also affording officials too much discretion to decide what speech to allow.<sup>13</sup> Without clear, precise definitions, such restrictions invite arbitrary and viewpoint-discriminatory enforcement.

And several of the terms notably defy simple definition detached from the subjective judgment of whoever enforces the policy. “Inappropriate” and “offensive,” for example, turn almost entirely on such subjective judgment with no clear way for someone to know where the line is. Nor is there any clear way for someone to know when harsh criticism crosses the line into “abuse” or a “personal attack.” The terms “racism” and “hatred” likewise offer no sufficiently objective standard for determining what speech does or does not fall within their scope, leaving speakers uncertain what expression the policy prohibits and officials substantial discretion to decide what qualifies. Would the policy prohibit, for example, a commenter from saying that “illegal immigration is destroying this country,” or endorsing the concept of white privilege?

The ban on “vulgar” comments fares no better. The policy does not define the term, leaving speakers to guess whether it applies to broadly crude expression or to only specific profanities. Even if limited only to a narrow—but still undefined—set of four-letter words, those words receive the First Amendment’s protection. The Supreme Court has protected, for instance, the right to wear a jacket bearing the words “Fuck the Draft” inside a courthouse where children were present,<sup>14</sup> in part because communication involves not only the “precise, detached explication” of ideas, but also “inexpressible emotions.”<sup>15</sup> Thus, even a narrow reading of “vulgar” to refer to certain profanities would not render the restriction constitutional.

---

<sup>12</sup> See, e.g., *Moms for Liberty – Brevard Cnty. v. Brevard Cnty. Pub. Schs.*, 118 F.4th 1324 (11th Cir. 2024) (restrictions on “abusive,” “personally directed,” and “obscene” public comments was unconstitutional); *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 894–95 (6th Cir. 2021) (bans on “antagonistic,” “abusive,” and “personally directed” comments violated First Amendment as effectuating “impermissible viewpoint discrimination” by prohibiting nondisruptive speech “purely because it disparages or offends”); *Mejia v. Lafayette Consol. Gov’t*, No. 6:23-CV-00307, 2025 U.S. Dist. LEXIS 52868, at \*24–25 (W.D. La. Mar. 20, 2025) (library board had no authority to restrict public comments on grounds they were “vile,” “derogatory,” or “confrontational”); *Mama Bears of Forsyth Cnty. v. McCall*, 642 F. Supp. 3d 1338, 1350 (N.D. Ga. 2022) (school district’s public comment protocols that “attacks of a personal nature . . . will not be allowed or tolerated” was evidence of viewpoint discrimination).

<sup>13</sup> See *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

<sup>14</sup> *Cohen v. California*, 403 U.S. 15, 16, 26 (1971).

<sup>15</sup> *Id.* at 26.

## Overbreadth

Several of the policy’s terms, even though they encompass *some* speech the Sheriff’s Office may constitutionally restrict, go too far and are unconstitutionally overbroad because they prohibit “a substantial amount of protected speech . . . not only in an absolute sense, but also relative to [their] plainly legitimate sweep.”<sup>16</sup>

The ban on “sexually explicit” comments is one such example. The policy already bans off-topic comments as well as photos, videos, and links to websites. The ban is therefore relevant only to on-topic, purely text-based comments. And because law-enforcement matters may involve sexual conduct, on-topic discussion may sometimes involve addressing that conduct in a direct, “explicit” manner. Banning such on-topic, non-obscene<sup>17</sup> comments is unreasonable in light of the pages’ purpose of facilitating public discussion about PCSO-related matters.

The ban on comments that “harass” or “threaten” likewise raises constitutional overbreadth concerns. While the First Amendment does not protect true threats, the restrictions are not limited to that narrow and well-defined category.<sup>18</sup> Other provisions reinforce the concern that the policy uses such terms too broadly. For example, it identifies “maliciously harassing” posts as a form of “trolling,” suggesting that “harassing” encompasses offensive or annoying speech that remains constitutionally protected. And the policy prohibits comments that “[c]ould harm the safety or well-being” of Sheriff’s Office employees but also expressly includes “personal attacks”—again sweeping in speech that need not constitute a true threat or otherwise fall into a First Amendment exception. As written, these restrictions encompass protected speech, including “jests, ‘hyperbole,’ or other statements that . . . in context do not convey a real possibility that violence will follow.”<sup>19</sup>

The ban on comments that “defame” likewise risks sweeping in protected speech. Whether a statement is defamatory requires a fact-intensive legal analysis that courts must perform under constitutionally prescribed standards.<sup>20</sup> The term does not simply refer to any harsh, “abusive,” or allegedly false criticism. A moderator cannot constitutionally remove speech as

---

<sup>16</sup> See *United States v. Williams*, 553 U.S. 285, 292 (2008).

<sup>17</sup> Speech is legally obscene only if (1) the average person, applying contemporary community standards, would find that the speech, taken as a whole, appeals to the prurient interest; (2) the speech depicts or describes, in a patently offensive way, sexual conduct defined specifically by the applicable state law; and (3) the speech, taken as a whole, lacks serious literary, artistic, political, or scientific value. *Miller v. California*, 413 U.S. 15, 24 (1973).

<sup>18</sup> “True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (citing *Virginia v. Black*, 538 U.S. 343, 359 (2003)).

<sup>19</sup> *Id.*; see also *Watts v. United States*, 394 U.S. 705, 708 (1969) (man’s statement after being drafted to serve in Vietnam War that, “If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.” was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

<sup>20</sup> Those include requirements that a plaintiff prove (1) the speaker made a false statement of fact, as opposed to a true statement or opinion; (2) unprivileged publication of that statement to a third party; (3) fault, which in the case of speech about a public figure or official means the speaker knew the statement was false or recklessly disregarded the truth; and (4) damages. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008).

defamatory without regard to whether it is true, privileged, opinion rather than fact, or subject to heightened constitutional protections, as with speech about public figures or officials.<sup>21</sup>

The ban on “copyrighted material that belongs to another person,” as noted on the Facebook pages, is also overbroad. Notably, the restriction is not limited to copyright *infringement*. Instead, it categorically prohibits posting copyrighted material, regardless of whether the commenter has permission to use it or whether the use is otherwise lawful, such as under the “fair use” doctrine.<sup>22</sup> For example, a commenter could be barred from quoting a news article. The rule therefore suppresses a substantial amount of protected speech.<sup>23</sup>

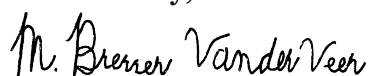
### **Moderation on Facebook pages**

These concerns are not merely theoretical. FIRE understands that users have had comments hidden or have even been blocked from the Sheriff’s Office and Animal Control Facebook pages. To the extent those moderation decisions rested on unconstitutional restrictions—whether as part of a written policy or not—they likewise violate the First Amendment.

### **Conclusion**

For these reasons, FIRE calls on PCSO to revise its social media policies—both as listed on its website and as listed on its individual social media pages. We also call on the Sheriff’s Office to refrain from hiding comments or blocking users based on constitutionally protected speech as well as to unblock any user who has been improperly blocked. FIRE would be pleased to assist the Sheriff’s Office, at no cost, in ensuring its policies are constitutionally compliant. We respectfully request a substantive response to this letter no later than September 16, 2026.

Sincerely,



M. Brennen VanderVeen  
Program Counsel, Public Advocacy

Cc: Grady Judd, Polk County Sheriff

---

<sup>21</sup> See *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 728 n.6 (C.D. Cal. 1996) (noting that a policy proscribing only defamatory speech “would still contain a fatal flaw” because it “would leave the determination of what is ‘slandorous’ or ‘false’ up to one person . . . apparently without regard for such niceties as whether the statement, though critical, is true, or whether, though false, is privileged, or whether, though couched as fact (e.g., ‘X is a racist’), is legally an expression of opinion rather than a statement of fact and hence not actionable as slander”—“the very evil the rule against censorship and prior restraint of speech seeks to prevent”).

<sup>22</sup> In applying the fair-use test, courts consider “(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.” *Brammer v. Violent Hues Prods., LLC*, 922 F.3d 255, 262 (4th Cir. 2019).

<sup>23</sup> Among other less restrictive alternatives is reliance on the Digital Millennium Copyright Act’s notice and counter-notice provisions that allow copyright holders and those who post potentially infringing material online to stake out their respective positions, while immunizing the host(s) of the material. See 17 U.S.C. § 512.