FIRE
Foundation for Individual Rights and Expression

November 4, 2026

Chief William H. Holbrook
Columbia Police Department
1 Justice Square
Columbia, South Carolina 29201

Sent via U.S. Mail and Electronic Mail (chiefholbrook@columbiasc.gov)

Dear Chief Holbrook:

On August 6, 2026, we wrote regarding FIRE's concerns with the Columbia Police Department's (CPD) unconstitutional restrictions on comments on its Facebook page. We are disappointed the Department has failed to respond to or address our concerns.

As we explained, the First Amendment applies with full force to the "vast democratic forums of the Internet," including social media, which enables citizens to engage directly with elected representatives and other government officials.[1] When government actors use social media for official business, they must comply with the First Amendment.[2] Yet CPD's formal rules for its Facebook page,[3] and its June 25 post stating its "ZERO TOLERANCE FOR HATE SPEECH,"[4] violate this requirement by unlawfully restricting First Amendment-protected expression.

CPD's ban on "hate speech" and on "inappropriate," "offensive," "racist," or "disrespectful" comments unconstitutionally discriminates based on viewpoint, "reflect[ing] the Government's disapproval of a subset of messages it finds offensive."[5] And its bans on "vulgar" comments, copyrighted material, and "personal information about another person or that violate a person's privacy interests" are also unconstitutional, representing content-based

[1] *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017) (quotation marks and citation omitted).

[2] *Lindke v. Freed*, 601 U.S. 187, 202 (2024). The facts in Lindke concerned a government official's mixed use of a social media account for personal and government business. But the Court noted that in some cases, as when an account belongs to a government subdivision (e.g., a "City of Port Huron" Facebook page), state action is "clear." That is the case here.

[3] Columbia Police Department, SC, FACEBOOK, https://www.facebook.com/columbiapdsc/directory_privacy_and_legal_info.

[4] Columbia Police Department, SC, Facebook, https://www.facebook.com/share/p/1ETHgFFTVu/.

[5] *Matal v. Tam*, 582 U.S. 218, 249 (2017) (Kennedy, J., concurring).

restrictions that fail to meet the stringent constitutional requirement of being "narrowly tailored to serve compelling state interests."[6]

CPD's rules also suffer from unconstitutional vagueness, because they fail to provide persons of ordinary intelligence reasonable notice of what speech the rules prohibit, and they afford officials too much discretion to decide what speech to allow.[7] Without clear, objective definitions, such restrictions invite arbitrary and viewpoint-discriminatory enforcement, as with the undefined restrictions on "vulgar" and "threatening" comments and on "personal information about another person or that violate a person's privacy interests." The same is true of the bans on "hate speech" and "inappropriate," "offensive," "racist," or "disrespectful" comments. These terms are "irreparably clothed in subjectivity"—their meaning varies from "speaker to speaker, and listener to listener."[8] And the policy provides no "guidance or other interpretive tools to assist in properly applying" the rules,[9] leaving enforcement to the whims of whoever happens to be moderating the page on a given day.

Be advised that government officials are not entitled to qualified immunity—and therefore may be held personally liable—when they violate clearly established constitutional rights.[10] FIRE calls on CPD to respond to our August 6 letter and revise its Facebook comment policy to comply with the First Amendment, to remove or update the June 25 post, and to commit to refraining from deleting comments, hiding comments, or blocking users over constitutionally protected speech. We reiterate that we would be pleased to assist CPD—at no cost—in ensuring its policies are constitutionally compliant.

Sincerely,



Aaron Terr, Esq.
Vice President of Public Advocacy

Encl.

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[6] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

[7] *See Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

[8] *Marshall v. Amuso*, 571 F. Supp. 3d 412, 424 (E.D. Pa. 2021).

[9] *Id.*

[10] *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

FIRE
Foundation for Individual Rights and Expression

August 6, 2026

Chief William H. Holbrook
Columbia Police Department
1 Justice Square
Columbia, South Carolina 29201

Sent via U.S. Mail and Electronic Mail (chiefholbrook@columbiasc.gov)

Dear Chief Holbrook:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the Columbia Police Department's (CPD) unconstitutional restrictions on comments on its Facebook page. When government entities open online forums for public comments, as CPD did on its Facebook page, they may not restrict or punish speech the First Amendment protects. We therefore urge the Department to immediately bring its policies and practices into constitutional compliance.

CPD's Facebook policy and June 25 post

Our concerns arise from a June 25 post by the "Columbia Police Department, SC" Facebook account that reads:[1]

> The Columbia Police and the City of Columbia value public feedback and constructive dialogue. We have seen an increase in vulgar, racist, threatening, bullying, and disrespectful comments under reels and other posts. This type of language and behavior will not be tolerated on our social media platforms. Comments that violate these standards may be hidden, removed, or handled accordingly. We encourage everyone to keep the conversation respectful, productive, and focused on the safety and well-being of our community. #togetherwearecolumbia

The post is accompanied by an image with the text "WE HAVE ZERO TOLERANCE FOR HATE SPEECH" and a photo of a police officer holding what appears to be a phone with the text "BLOCK LIST LOADING" on its screen.

The "Privacy and legal info" part of the "About" section of CPD's Facebook page states that CPD created it "to provide people who live and work in the Columbia Area, or others with an interest

[1] Columbia Police Department, SC, Facebook, https://www.facebook.com/share/p/1ETHgFFTVu/.

in the CPD, access to information about the CPD and a platform to interact with the CPD," and "welcomes a person's right to express his/her opinion and encourages posters to keep comments related to content on this page."[2] It also contains rules providing, in relevant part:

> CPD reserves the right to remove and/or block anyone who posts inappropriate material as determined by CPD. Those continually violating the terms of service will be banned. CPD reserves the right to remove any comments that are inappropriate, threatening or offensive, include personal information about another person or that violate a person's privacy interests, or include copyrighted material belonging to another person.

Both the CPD's formal rules for the page and those in the June 25 post unlawfully restrict First Amendment-protected expression.

CPD's Facebook page is subject to the First Amendment

The First Amendment applies with full force to the "vast democratic forums of the Internet," including social media, which enables citizens to engage directly with elected representatives and other government officials.[3] As the Supreme Court recently made clear, when government actors use social media for official business, they must comply with the First Amendment.[4]

While what CPD posts on its social media accounts constitutes its own speech not subject to First Amendment rules,[5] the interactive parts of those accounts are different: by allowing public comments on its posts, CPD created a designated public forum, where "any restriction based on the content of the speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest and restrictions based on viewpoint are prohibited."[6] The government cannot evade these constitutional requirements with a notice that commenters accept other terms.

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[2] Columbia Police Department, SC, FACEBOOK, https://www.facebook.com/columbiapdsc/directory_privacy_and_legal_info.

[3] *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017).

[4] *Lindke v. Freed*, 601 U.S. 187, 202 (2024). The facts in *Lindke* concerned a government official's mixed use of a social media account for personal and government business. But the Court noted that in some cases, as when an account belongs to a government subdivision (e.g., a "City of Port Huron" Facebook page), state action is "clear." That is the case here.

[5] *Shurtleff v. City of Bos.*, 596 U.S. 243, 247–48 (2022) (when the government creates a forum for expression, the First Amendment prevents it from discriminating against speakers based on their viewpoint, but "when the government speaks for itself, the First Amendment does not demand airtime for all views").

[6] *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (cleaned up). Courts have also recognized that the government "may create a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects," in which case restrictions must be "reasonable and viewpoint-neutral." *Id.* at 470. But while CPD's page "encourages posters to keep comments related to content on this page," it does not require as much, nor does it limit the ability to comment to certain groups. Therefore, CPD has not created a limited public forum. Even if it had, the restrictions would still fail First Amendment scrutiny, as explained below.

CPD's Facebook rules are viewpoint-discriminatory

CPD's ban on "hate speech" and on "inappropriate," "offensive," "racist," or "disrespectful" comments unconstitutionally discriminates based on viewpoint because "the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[7] A rule discriminates based on viewpoint if, as here, it "reflects the Government's disapproval of a subset of messages it finds offensive." [8] And it is a "bedrock principle underlying the First Amendment" that officials cannot restrict speech simply because some find it "offensive or disagreeable."[9] That includes speech deemed racist or hateful.[10] Even a rule that "evenhandedly prohibits disparagement of all groups" is viewpoint discriminatory because "[g]iving offense is a viewpoint."[11]

Similarly, the ban on "bullying" comments targets speech based on tone and perceived hostility towards its subject, which is itself a viewpoint-based judgement.[12] Federal courts across the country have invalidated similar rules banning "personal attacks" or "antagonistic," "abusive," "derogatory," "offensive," "rude," "insulting," or "personally directed" public comments—even in limited public forums.[13]

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

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[7] *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

[8] *Matal v. Tam*, 582 U.S. 218, 249 (2017) (Kennedy, J., concurring).

[9] *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

[10] *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").

[11] *Matal*, 582 U.S. at 243.

[12] *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").

[13] *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 stating that "attacks of a personal nature . . . will not be allowed or tolerated" constituted evidence of viewpoint discrimination).

CPD's restrictions on "vulgar" comments, "personal information," and copyrighted material are content-based restrictions that fail strict scrutiny

The prohibitions on "vulgar" comments, copyrighted material, and "personal information about another person or that violate a person's privacy interests" are unconstitutional content-based restrictions.[14] Regulations that "target speech based on its communicative content . . . are presumptively unconstitutional."[15] They must survive strict scrutiny,[16] the "most demanding test known to constitutional law."[17] Thus, "[i]t is rare that a regulation restricting speech because of its content will ever be permissible."[18] Such restrictions are upheld "only if the government proves that they are narrowly tailored to serve compelling state interests."[19]

The ban on posting any comments that include "personal information about another person or that violate a person's privacy interests" fails strict scrutiny. Even assuming the city's presumed interest in protecting privacy is compelling in the abstract,[20] the restriction is not narrowly tailored because the lack of clarity regarding the definition of "personal information" risks sweeping in a substantial amount of protected speech. While CPD might have intended to restrict only highly sensitive information about an individual (such as Social Security numbers or medical records), the rule's plain language is not so limited, as "personal information" could reach virtually any identifying fact about another human being. The separate, undefined term "privacy interests" presents the same problem. Do comments about others, including public officials like CPD officers, violate privacy interests if they include facts those individuals would prefer to keep private, even if that information is lawfully obtained and concerns a matter of public interest? Such an open-ended restriction cannot survive strict scrutiny.

The ban on comments that are "vulgar," the definition of which is also unclear, fares no better. Does CPD intend to ban any irreverent or crude speech or is the ban limited only to certain swear words? And even if only the latter, those words receive First Amendment protection. The Supreme Court upheld, for instance, the right to wear a jacket with the words "Fuck the Draft" inside a courthouse, noting that "words are often chosen as much for their emotive as their cognitive force."[21] If the government cannot ban profanity in a courthouse, it surely cannot ban it on a social media page open for public discussion.

CPD's ban on "threatening" comments likewise raises constitutional concerns. While "true threats" is an unprotected category of speech, the restriction here is not clearly limited to that

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[14] They are content-based because they "cannot be justified without reference to the content of the regulated speech." *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015) (cleaned up).

[15] *Id.* at 163.

[16] *Id.*

[17] *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

[18] *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799 (2011).

[19] *Reed*, 576 U.S. at 163.

[20] A compelling interest is one "of the highest order," *Reed v. Town of Gilbert*, 576 U.S. 155, 172 (2015), such as protecting national security, *In re Nat'l Sec. Letter v. Sessions*, 863 F.3d 1110, 1123 (9th Cir. 2017).

[21] *Cohen v. California*, 403 U.S. 15, 16, 26 (1971).

narrow and well-defined category.[22] As written, it could encompass protected speech, such as "jests, 'hyperbole,' or other statements that . . . in context do not convey a real possibility that violence will follow."[23]

And CPD's ban on "copyrighted material belonging to another person" also fails strict scrutiny. 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.[24] For example, a commenter could be barred from quoting a news article about CPD to comment on it. The rule therefore suppresses a substantial amount of protected speech and is far from narrowly tailored to any interest CPD might have in preventing copyright infringement.[25]

CPD's Facebook rules are unconstitutionally vague

CPD's rules also separately violate the First Amendment as unconstitutionally vague, because they fail to provide persons of ordinary intelligence reasonable notice of what speech the rules prohibit and they afford officials too much discretion to decide what speech to allow.[26] Without clear, objective definitions, such restrictions invite arbitrary and viewpoint-discriminatory enforcement, as with the undefined restrictions on "vulgar" and "threatening" comments and on "personal information about another person or that violate a person's privacy interests." The same is true of the prohibitions on "hate speech" and "inappropriate," "offensive," "racist," or "disrespectful" comments. What, exactly, do the CPD employees who monitor the page find

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[22] "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)).

[23] *Id.*; *see also Watts v. United States*, 394 U.S. 705, 708 (1969) (man's statement, after being drafted to serve in the Vietnam War—"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).

[24] 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).

[25] 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.

Also, as to all these restrictions, even if the comment sections on CPD's posts were treated as a limited public forum, where speech restrictions must be viewpoint-neutral and reasonable in light of the forum's purpose, the rules would violate the First Amendment. Under this standard, the "government's means and ends must both be reasonable." *Good News Club*, 533 U.S. at 106 (2001). Consequently, it "must be able to articulate some sensible basis for distinguishing what may come in from what must stay out." *Minn. Voters All. v. Mansky*, 585 U.S. 1, 16 (2018). Doing so requires "objective, workable standards," *id.* at 21, not "subjective or overly general criteria." *Hopper v. City of Pasco*, 241 F.3d 1067, 1077 (9th Cir. 2001). CPD's policy provides no such standards. Undefined prohibitions on "personal information" and "vulgar" and "threatening" comments fail to identify with necessary precision what speech is prohibited. And both those rules and the copyright provision reach a potentially vast amount of protected speech, including that related to CPD policies and operations, and are thus not reasonably related to the Facebook page's stated purpose of facilitating public interaction with CPD.

[26] *See Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

"offensive"? When does criticism of departmental action become "bullying" or "disrespectful"? And what qualifies as "inappropriate material"?

There are no clear answers because these terms are "irreparably clothed in subjectivity"—their meaning varies from "speaker to speaker, and listener to listener."[27] And the policy provides no "guidance or other interpretive tools to assist in properly applying" the rules,[28] leaving enforcement to the whims of whomever happens to be moderating the page on a given day.

Conclusion

When it comes to protected speech that some find objectionable, "the remedy to be applied is more speech, not enforced silence."[29] CPD can use its own platform to respond to criticism or encourage civil dialogue, but may not censor protected speech simply because officials dislike its viewpoint, content, or tone. FIRE therefore calls on CPD to revise its Facebook comment policy to comply with the First Amendment, remove or update the June 25 post, and commit to refraining from deleting comments, hiding comments, or blocking users over constitutionally protected speech. We would be pleased to assist CPD—at no cost—in ensuring its policies are constitutionally compliant.

We respectfully request a substantive response to this letter no later than August 20, 2026.

Sincerely,



Aaron Terr
Director of Public Advocacy, FIRE

[27] *Marshall v. Amuso*, 571 F. Supp. 3d 412, 425–26 (E.D. Pa. 2021).

[28] *Id.*

[29] *Whitney v. California*, 274 U.S. 357, 377 (1927).