KNIGHT
FIRST AMENDMENT
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June 10, 2020

Mayor Christina L. Shea
1 Civic Center Plaza
Irvine, CA 92606
christinashea@cityofirvine.org

Dear Mayor Shea,

We write to ask that you immediately cease your practice of blocking individuals and deleting comments from your Facebook account[1] ("the Christina Shea account") based on their viewpoints. While we recognize that you use this account for multiple purposes, we nonetheless believe that you use the account as an extension of your office, and that the account is therefore a public forum. Blocking individuals and deleting comments based on viewpoint from this kind of public forum violates the First Amendment, as several federal courts have recently held. We further ask that you unblock any individuals that you have blocked based on viewpoint, and that you stop deleting comments on the basis of viewpoint.

We understand that, last week, you and/or your staff blocked our client, Nikka Aminmadani, after she replied to one of your posts about the ongoing protests of police brutality. Ms. Aminmadani is an Irvine native and rising junior at Vanderbilt University. As a constituent, Ms. Aminmadani relies on your account to follow your work as a Mayor as well as to track public engagement with your policies and proposals for the City of Irvine.

We understand that, between June 3 and June 4, you and/or your staff published posts on the Christina Shea account criticizing protesters in Irvine as well as Black Lives Matter.[2] Those posts have since been deleted. On June

[1] Christina Shea, Facebook, https://www.facebook.com/christina.shea.186.

[2] Noah Biesiada, *Calls Mount for Irvine Mayor to Recant Criticisms of Protestors*, Voice of OC (June 6, 2020), https://voiceofoc.org/2020/06/calls-mount-for-irvine-mayor-called-to-recant-criticisms-of-protestors; Ben Brazil, *Irvine Mayor Christina Shea Under Fire for Comments in Criticizing Black Lives Matter Protests*, Daily Pilot

3, Ms. Aminmadani replied to two of those posts, respectfully criticizing your viewpoint on the protests and your use of the phrase "All Lives Matter." For example, Ms. Aminmadani stated in one comment:

> I want to preface this with saying that this comes out of a place of respect and an attempt to help you learn because you have a lot to learn. You should first promote for police to treat black Americans with respect and dignity so that they are able to walk out of their homes without the fear of experiencing systemic racism in the same way that you have this freedom.

In another comment, Ms. Aminmadani stated:

> Please use your platform to uplift marginalized groups instead of promoting the false narrative that all people are already equal. It's sad, but not all races are treated equally. I encourage you to read White Fragility by Robin DiAngelo to help learn more! I think it could help you a lot. I say this with respect.

Shortly after posting these comments, Ms. Aminmadani was blocked from your account.[3] As a result, Ms. Aminmadani can no longer use her Facebook account to view your posts or replies to comments, view your list of followers, or search for your posts.

Multiple federal courts have held that a public official who uses a social media account for official purposes, and allows the general public to comment or post replies to that account, has created a public forum and may not block individuals from that forum based on viewpoint. Most relevant here, the U.S. Court of Appeals for the Second Circuit has held that President Trump violated the First Amendment by blocking users from his Twitter account, @realDonaldTrump, because "he disagree[d] with their speech."[4] Likewise, the U.S. Court of Appeals for the Fourth Circuit held that the chairperson of a local county board violated the First Amendment by blocking an individual from her Facebook page.[5]

(June 8, 2020), https://www.latimes.com/socal/daily-pilot/entertainment/story/2020-06-08/irvine-mayor-christina-shea-under-fire-for-comments-criticizing-black-lives-matter-protests.

[3] Nikka Aminmadani (@nikkaaminmadani), Twitter (June 4, 2020, 1:37 AM), https://twitter.com/nikkaaminmadani/status/1268416520629018624?s=20.

[4] *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 230 (2d Cir. 2019).

[5] *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019).

As these courts have explained, the First Amendment applies to public officials who use their social media accounts as an extension of their office—which is how you use the Christina Shea account. Although you have two other Facebook accounts that are ostensibly reserved for official use,[6] you frequently use the Christina Shea account in your official capacity, including, for example: to explain city policy proposals, to recount and announce city council meetings, to share public correspondence, to advocate for legislation, and to inform the public about issues relating to the Irvine city government.[7] Many of your recent posts have pertained to Irvine's response to the ongoing COVID-19 pandemic.[8] As federal appeals courts have held, when public officials use ostensibly personal accounts for official purposes, those

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[6] One of these is a Facebook Page, and the other is an account. Christina Shea, Irvine City Mayor, Facebook, https://www.facebook.com/Christina-Shea-Irvine-City-Mayor-734393366963939/; Christina Shea, Irvine City Mayor, Facebook, https://www.facebook.com/christina.shea.900. You post very infrequently on the Page (for instance, you have only posted twice in 2020).

[7] *E.g.*, Christina Shea, Facebook (May 28, 2020, 3:14 P.M.), https://perma.cc/FN6U-MLJD (linking to Irvine City Hall's COVID-19 hotline and other city resources); Christina Shea, Facebook (May 28, 2020, 10:02 A.M.), https://perma.cc/7KBW-PCKT ("I am calling a Special Council Meeting for this Friday to set a plan in place to move [] money immediately to our business community struggling to stay open or money to help them reopen!"); Christina Shea, Facebook (May 27, 2020, 10:23 A.M.), https://perma.cc/PA74-4VYR; ("Last night at City Council we extended our resolution to protect renters from evictions and lease increases thru June 30th . . ."); Christina Shea, Facebook (May 21, 2020, 9:56 A.M.), https://perma.cc/J82Z-LV5J ("I received this letter at City Hall from Dee Fox yesterday supporting this very concerning proposal below . . ."); Christina Shea, Facebook (May 13, 2020, 1:47 A.M.), https://perma.cc/8JCV-G2YY ("Tonight I asked my Council colleagues to place the decision for the Veterans cemetery site on the ballot and let the people decide . . ."); Christina Shea, Facebook (May 8, 2020), https://perma.cc/2MY9-AKPK ("Tuesday we will take up the discussion to adopt the initiative to make the ARDA site the location for the future Veterans cemetery . . . I am proposing to put both sites to the voters in November as a side by side choice.").

[8] *E.g.*, Christina Shea, Facebook (May 14, 2020, 9:34 A.M.), https://perma.cc/LBV8-7HQJ (stating "Hi Everyone, testing will begin around May 26" and linking to the City of Irvine's reopening and testing plan); Christina Shea, Facebook (Apr. 18, 2020), https://perma.cc/4SZL-EZ3R ("Good morning Irvine . . . If you need a mask please call 949 724-8250 our Omnbudsman hotline or go to our city webpage for links to purchase inexpensive cloth masks . . ."); Christina Shea, Facebook (Apr. 4, 2020), https://perma.cc/BBR9-KR7P ("In order to ensure essential workers can find care our City staff and I have been working on partnering with child care agencies throughout the County to survey providers to find those who are still open and providing care."); Christina Shea, Facebook (Mar. 27, 2020), https://perma.cc/BE5Q-7338 (sharing a City of Irvine COVID-19 resource guide and an official statement on COVID-19).

accounts reflect government action under the First Amendment. For example, in *Knight First Amendment Institute v. Trump*, the Second Circuit concluded that President Trump used his previously personal @realDonaldTrump account as an extension of his office, notwithstanding that he had another official account, @POTUS.[9] Similarly, in *Davison v. Randall*, after examining how the chairperson's supposedly personal Facebook page was used, the Fourth Circuit concluded that it reflected state action.

The available evidence also shows that the Christina Shea account is a "public forum" under the First Amendment. As the Second and Fourth Circuits have concluded, government officials who open their social media accounts to speech by the public at large, and who use their accounts to interact with the public at large, have created public forums. You have opened your Christina Shea account so that any member of the public can view and comment on your posts. In addition, you regularly solicit feedback from your constituents on the account. For example, on May 21, you invited Irvine residents to weigh in on a discussion regarding a proposed cemetery for veterans.[10] Similarly, on April 23, you informed constituents that "I'd like your feedback" and "Your thoughts and feedback would be valuable," with respect to Irvine's closure of golf courses and tennis courts during the pandemic.[11] When government officials create a public forum, as you have done, they may not exclude individuals from those forums based on viewpoint. That is precisely what you and/or your staff did when you blocked Ms. Aminmadani from your account following her criticism of you.

Ms. Aminmadani is not the only one to have been unconstitutionally blocked from the Christina Shea account. As news reports have documented, several other individuals have also been blocked from your account based on viewpoint, and you have deleted comments on the basis of viewpoint.[12]

Accordingly, we ask that you and/or your staff immediately unblock Ms. Aminmadani from the Christina Shea account. We further ask that you unblock any other users that have been blocked based on viewpoint, and that you stop deleting comments on the basis of viewpoint. We appreciate your prompt attention to this matter.

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[9] *Knight*, 928 F.3d at 235.

[10] Christina Shea, Facebook (May 21, 2020), https://perma.cc/L5QL-PNG6 ("Do you want to spend 98 million of your city funds for this particular parcel or relocate the development to a more cost effective site in the Great Park? County supervisors and State electeds are suggesting the Anaheim location? . . . Read below.... share your thoughts . . . Thank you for your thoughts").

[11] Christina Shea, Facebook (Apr. 23, 2020), https://perma.cc/T784-N29H

[12] *See* Biesiada, *supra* note 2; Brazil, *supra* note 2.

Respectfully,

/s/ Katie Fallow

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