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The Honorable John Cornyn
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Dear Senator Cornyn,

We write to ask that you immediately cease your practice of blocking individuals from your Twitter account, @JohnCornyn, based on their viewpoints. That practice violates the First Amendment, as several federal courts have recently held. We further ask that you unblock all individuals that you have blocked based on viewpoint in the past.

We understand that you and/or your staff blocked our client, Heath Mayo, in early April of this year, after he replied to one of your tweets and criticized your response to the COVID-19 pandemic.[1] Mr. Mayo is a Texas voter and outspoken advocate of conservative causes on Twitter and elsewhere. He also interned for you in 2011. As a constituent, Mr. Mayo has followed your account since 2010. He relies on your account to follow your work as a Senator as well as to track public engagement with your legislative policies and proposals.

On March 14, 2020, you tweeted from the @JohnCornyn account, "Be smart; don't panic. We will get us through this #coronavirus," with a photo of a Corona Extra beer at an empty restaurant.[2] The next day, Mr. Mayo retweeted that post and commented, "I just don't understand the thought process that gets a senior-ranking Senator to say: 'You know what? I think

[1] Heath Mayo (@HeathMayo), Twitter (Apr. 11, 2020, 1:29 PM), https://twitter.com/HeathMayo/status/1249026749104521217.

[2] Senator John Cornyn (@JohnCornyn), Twitter (Mar. 14, 2020, 1:25 PM), https://twitter.com/JohnCornyn/status/1238878952644624390.

I'll post this picture of a Corona beer in an empty restaurant where I'm dining, in direct disregard of CDC & gov't guidance—a gov't for which I'm a spokesman.'"[3] Afterwards, Mr. Mayo was blocked from your account.[4] As a result, Mr. Mayo can no longer use his Twitter account to see or reply to your tweets, view your list of followers or followed accounts, or search for your tweets.

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 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."[5] Likewise, the Fourth Circuit held that the chairperson of a local county board violated the First Amendment by blocking an individual from her Facebook page.[6]

As these courts have explained, the First Amendment applies to public officials who use their Twitter accounts as an extension of their office—which is how you use your @JohnCornyn account. Your account's biographical section describes you as "Senator John Cornyn," and currently provides links to your "cornyn.senate.gov" website and other official government websites. It is the only Twitter account you use in your capacity as a senator. You use the account to explain policy proposals, to advocate for legislation, and to inform the public about issues relating to government.[7] For example, many

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[3] Heath Mayo (@HeathMayo), Twitter (Mar. 15, 2020, 1:09 PM), https://twitter.com/HeathMayo/status/1249026749104521217/photo/2 (including a screenshot of Senator Cornyn's since-deleted tweet).

[4] Heath Mayo (@HeathMayo), Twitter (Apr. 11, 2020, 1:29 PM), https://twitter.com/HeathMayo/status/1249026749104521217.

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

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

[7] *E.g.*, Senator John Cornyn (@JohnCornyn), Twitter (Feb. 24, 2020, 5:42 PM), https://twitter.com/JohnCornyn/status/1232073319295442946 ("This week I'm going to vote on two bills that will protect our most vulnerable, including the Pain-Capable Unborn Child Protection Act. It's time to step up for unborn babies and stop doctors from performing abortions on infants who can feel pain."); Senator John Cornyn (@JohnCornyn), Twitter (Feb. 21, 2020, 2:27 PM), https://twitter.com/JohnCornyn/status/1230937097386758144 ("Vaping has had a significant and dangerous impact on children. My Preventing Online Sales of E-Cigarettes to Children act will apply the same safeguards to e-cigarettes that are already in place for cigarettes and smokeless tobacco products. It's critical we put an end to this."); Senator John Cornyn (@JohnCornyn), Twitter (May 23, 2019, 2:42 PM), https://twitter.com/JohnCornyn/status/1131631381451300864 ("Spam callers

of your recent tweets have pertained to the government's response to the COVID-19 pandemic.[8] In the past several weeks, you have used the account to discuss "how Texas restaurants can take advantage of the CARES Act to keep their doors open and ensure their employees still get a paycheck,"[9] to link to your op-ed in a Texas newspaper explaining the ramifications of the CARES Act for Texans,[10] and to provide Texans with information relating to the pandemic and the government's response to it.[11]

The available evidence also shows that the @JohnCornyn Twitter 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 the public at large, and who use their accounts to interact with the public at large, have created public forums, and they may not exclude individuals from those forums based on viewpoint. That is precisely what you and/or your staff did when you blocked Mr. Mayo from your account following his criticism of you.

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aren't just annoying, they can also be dangerous. That's why I'm proud to protect Texans by voting YES on this common-sense, bipartisan bill. It's time to put an end to unwanted robocalls.").

[8] *E.g.*, Senator John Cornyn (@JohnCornyn), Twitter (Apr. 9, 2020, 8:28 AM), https://twitter.com/JohnCornyn/status/1248226161596956673 ("The ink barely dry on the $2.2 trillion dollar Cares Act, money largely not yet out the door (except for PPP), and Schumer and Pelosi to seek more spending for spendings sake. We need to make sure what we have already done works as intended. Then, fill the gaps."); Senator John Cornyn (@JohnCornyn), Twitter (Mar. 29, 2020, 11:49 AM), https://twitter.com/JohnCornyn/status/1244290640600539137 (responding to the Houston Police Chief's request for more protective equipment for first responders: "Chief, we got $850 million in Byrne JAG funding that just came on line for this purpose for State and Local law enforcement. We will work with you and the LEOs on implementation."); Senator John Cornyn (@JohnCornyn), Twitter (Mar. 6, 2020, 12:34 PM), https://twitter.com/JohnCornyn/status/1235982105181671424 ("Just got off the phone with @texashospitals, healthcare professionals across the state, @HHS_ASH, and @TexasDSHS to discuss a unified response to #COVID19."); Senator John Cornyn (@JohnCornyn), Twitter, https://twitter.com/JohnCornyn/header_photo (last visited May 6, 2020) (displaying header photo that says, "Get the Latest Info on the COVID-19 Outbreak" and linking to "dshs.texas.gov/coronavirus," "coronavirus.gov," and "cornyn.senate.gov/coronavirus").

[9] Senator John Cornyn (@JohnCornyn), Twitter (Apr. 7, 2020, 4:45 PM), https://twitter.com/JohnCornyn/status/1247626687413657604.

[10] Senator John Cornyn (@JohnCornyn), Twitter (Apr. 1, 2020, 5:28 PM), https://twitter.com/JohnCornyn/status/1245463015757053958.

[11] Senator John Cornyn (@JohnCornyn), Twitter (Apr. 1, 2020, 1:49 PM), https://twitter.com/JohnCornyn/status/1245407944323276807.

Mr. Mayo is not the only one to have been unconstitutionally blocked from the @JohnCornyn account. An examination of tweets stretching back to 2010 shows that many other individuals have reported being blocked from your account.[12] In addition, on April 30, 2020, a Texas constituent sued you in federal district court, alleging that you violated his First Amendment rights when you blocked him based on viewpoint.[13] The next day you unblocked the plaintiff, and a spokesperson for your office reportedly said the user had been blocked "inadvertently."[14] However, an unknown number of other users, including Mr. Mayo, remain blocked from the @JohnCornyn account after having criticized you on Twitter, and the public evidence suggests that these blocks were viewpoint-based.[15]

Accordingly, we ask that you and/or your staff immediately unblock Mr. Mayo from the @JohnCornyn Twitter account, and that you also unblock any

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[12] *E.g.*, Amanda Carpenter (@amandacarpenter), Twitter (Apr. 11, 2020, 1:41 PM), https://twitter.com/amandacarpenter/status/1249029831435706371 ("Welcome to the Blocked by John Cornyn Club, Heath!"); Sara Spector (@Miriam2626), Twitter (Jan. 29, 2020, 10:53 PM), https://twitter.com/Miriam2626/status/1222729412090744832 ("I'm a constituent who tweeted about my concerns for abused Children's healthcare and mental health care when I was prosecutor in his state. He blocked me. Cornyn is a coward who runs from those who serve."); YesBiscuit (@YesBiscuit), Twitter (Dec. 16, 2017, 1:10 PM), https://twitter.com/YesBiscuit/status/942094612537200640 ("Senator Cornyn blocked me. Also: Senator Cornyn blocked me??!"); John Weaver (@jwgop), Twitter (Aug. 5, 2017, 11:22 AM), https://twitter.com/jwgop/status/893854708829491201 ("he didn't block you like he did me?"); Bambi (@bambi380), Twitter (Jul. 28, 2017, 7:30 PM), https://twitter.com/bambi380/status/891078476467499008 ("John Cornyn blocked me when I questioned his stance on birth control coverage vs viagra!"); Frank Sharry (@FrankSharry), Twitter (Feb. 9, 2017, 11:40 AM), https://twitter.com/FrankSharry/status/829731703946031104 ("If u hadn't blocked me, Sen Cornyn (I'm flattered you care, sir), I'd tell you: do your job as Sen Imm Cmte Chair and hold hearings on EOs."); Jason P. Steed (@5thCircAppeals), Twitter (Mar. 20, 2017, 12:01 PM), https://twitter.com/5thCircAppeals/status/843854932063260673 ("Cornyn blocked me on Twitter for telling him to hold a vote on Garland."); Houston Hammer (@Houston_Hammer), Twitter (Jul. 27, 2015, 10:45 AM), https://twitter.com/Houston_Hammer/status/625678462787792896 ("Mr. Cornyn blocked me, I never cursed, just disagreed, a little thin skinned Sen."); Michelle (@OhellMichell), Twitter (Dec. 14, 2010, 9:59 AM), https://twitter.com/OhellMichell/status/14695951734145024 ("Cornyn blocked me because I criticized a policy tweet & I'm his constituent. He's a little too testy for twitter.").

[13] Nicole Cobler, *Sen. Cornyn Unblocks Twitter Critic After Lawsuit*, Statesman (May 1, 2020, 6:24 PM), https://www.statesman.com/news/20200501/sen-cornyn-unblocks-twitter-critic-after-lawsuit.

[14] *Id.*

[15] *See id.*

other users you or your staff have blocked from the account because of the viewpoints they have expressed. We appreciate your prompt attention to this matter.

Respectfully,

*/s/ Katie Fallow*

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