

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|-------------------------------|---|------------------|
| CHRISTINE POPP, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 1:19-cv-3664 |
| |) | |
| MONROE COUNTY SHERIFF, in his |) | |
| official capacity, |) | |
| |) | |
| Defendant. |) | |

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introductory Statement

1. The Monroe County Sheriff (“the Sheriff”), like many government officials, maintains a Facebook account from which he regularly posts information concerning, among other things, the activities of his office. This Facebook page is viewable by the public, and anyone with a Facebook account can post comments in response to the Sheriff’s posting. Christine Popp is a practicing immigration attorney who is often critical of the Sheriff and the positions that his office has taken on various issues. In order to express her opinions regarding the activities and positions of the Sheriff, as well as to provide the public with information about federal immigration law and its enforcement, Ms. Popp has posted comments in response to postings made by the Sheriff that were critical of the Sheriff; these comments, however, were not profane, obscene, or defamatory. The Sheriff, however, has “hidden” Ms. Popp’s critical comments—meaning that they can be viewed only by her but not by any other member of the public—while simultaneously allowing comments favorable to or supportive of him to remain publicly available. This censorship represents

viewpoint-based discrimination that runs afoul of the First Amendment to the United States Constitution. Appropriate declaratory and injunctive relief is warranted.

Jurisdiction, Venue, and Cause of Action

2. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. Christine Popp is an adult resident of Monroe County, Indiana.
7. The Monroe County Sheriff is the duly elected head of the Monroe County Sheriff's Department, and is sued in his official capacity.

Factual Allegations

8. The Monroe County Sheriff ("the Sheriff"), like many government officials, maintains and operates a Facebook account. The Sheriff's Facebook page is available at <https://www.facebook.com/SheriffMonroeCo>.
9. On his Facebook page, the Sheriff—among other things—posts announcements concerning the activities of the Monroe County Sheriff's Department and its officers, solicits information from the public pertaining to criminal enforcement, and responds to concerns that have been voiced by citizens. Videos and photographs often accompany the Sheriff's Facebook "posts."
10. The Sheriff's Facebook page can be viewed by the public and anyone with a Facebook

account can post a comment in response to the Sheriff's posts or in response to other user comments that have been made on those posts.

11. When a "comment" is posted to a user's Facebook page, two options exist for the user to limit the ability of others to view that comment. Either the Facebook user may "delete" the comment altogether (and thereby remove it from the page entirely), or the Facebook user may "hide" the comment. Once a comment is "hidden," it becomes visible only to the individual who posted the comment and not to any other member of the public.
12. Christine Popp is a resident of Monroe County and is a practicing immigration attorney. She is frequently critical of positions or actions taken by the Sheriff, particularly as they relate to assistance that the Sheriff provides in enforcing federal immigration law.
13. Ms. Popp maintains two Facebook accounts: a personal Facebook account (which she rarely uses), and a Facebook account for her law practice.
14. On or about July 15, 2019, the Sheriff made a "post" to his Facebook account that pertained to statements made by Ms. Popp and others at a political rally in Monroe County regarding the Sheriff's enforcement of federal immigration law.
15. Using the Facebook account associated with her law practice, Ms. Popp made several "comments" on this post. These comments expressed Ms. Popp's opinions concerning the Sheriff's practices, the statements made in his Facebook "post," and local officials' enforcement of federal immigration law in general; Ms. Popp's comments were also intended to inform the public about immigration law and the role that local officials may play in the enforcement of immigration law. While Ms. Popp's statements were certainly critical of the Sheriff and his Facebook post, they were not in any way profane, obscene, or defamatory.

16. At one point, the Sheriff himself—using a personal Facebook account rather than the account associated with the Monroe County Sheriff’s Department—even responded to Ms. Popp’s comments, and he and Ms. Popp engaged in an electronic dialogue concerning his enforcement of federal immigration laws.
17. Screen shots of Ms. Popp’s comments, as well as the Sheriff’s response to those comments, are attached as **Exhibit 1**.
18. Some time after engaging in this dialogue, Ms. Popp visited the Sheriff’s Facebook page while she was logged in to her personal Facebook account rather than the Facebook account associated with her law practice from which she posted the comments to the Sheriff’s Facebook page. While logged in to her personal account, Ms. Popp was unable to view the comments that she made to the Sheriff’s Facebook page nor could she view any comments that were made in response to her comments.
19. Ms. Popp immediately logged out of her personal Facebook account and in to the Facebook account associated with her law practice from which she posted the comments to the Sheriff’s Facebook page. Once logged in to the Facebook account associated with her law practice, Ms. Popp was immediately able to view the comments that she posted to the Sheriff’s Facebook page. This means that the Sheriff utilized the Facebook option to “hide” Ms. Popp’s comments, thereby allowing them to be viewed by the user who posted the comments (the account associated with Ms. Popp’s law practice) but not by any other user or member of the public.
20. On information and belief, the Sheriff thus has a practice or policy of “hiding” comments posted by Facebook users that he believes to be unfavorable or critical of his positions,

while simultaneously allowing comments that are favorable to or supportive of him to be viewed by the public at large. This represents viewpoint-based discrimination.

21. Ms. Popp desires that her previous comments to the Sheriff's Facebook page be viewable by the public at large, for she wishes to share her opinions with the public, she believes strongly that the public would benefit from more information concerning the local enforcement of federal immigration law, and she disagrees with the Sheriff's immigration policies. She also desires to post critical comments to the Sheriff's Facebook page in the future without risking censorship based on the viewpoints that she expresses.
22. At all times the Sheriff has acted under color of state law.
23. As a result of the actions or inactions of the Sheriff, the plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

Legal Claim

24. The Sheriff's censorship of the plaintiff's comments to the Sheriff's Facebook page violates the First Amendment to the United States Constitution.

Request for Relief

WHEREFORE, the plaintiff respectfully requests that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that the defendant has violated and is violating the rights of the plaintiff for the reason described above.
3. Enter a preliminary injunction, later to be made permanent, (a) enjoining the defendant to restore previously hidden comments to his Facebook page and (b) enjoining the defendant from hiding or deleting public comments on the basis of their viewpoint.
4. Award the plaintiff her costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

5. Award all other proper relief.

Gavin M. Rose
ACLU of Indiana
1031 E. Washington St
Indianapolis, IN 46202
317/635-4059
fax: 317/635-4105
grose@aclu-in.org

Attorney for the plaintiff