

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Randy Scott

(b) County of Residence of First Listed Plaintiff Lee

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Lal (SPENCER) ROACH

County of Residence of First Listed Defendant Lee

(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 PTF ☒ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF Foreign Nation ☐ 6 PTF ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act	
☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))	
☐ 130 Miller Act	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 400 State Reapportionment	
☐ 140 Negotiable Instrument	☐ 330 Federal Employers' Liability	☐ 370 Other Fraud		☐ 830 Patent	☐ 410 Antitrust	
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine	☐ 371 Truth in Lending		☐ 835 Patent - Abbreviated New Drug Application	☐ 430 Banks and Banking	
☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 380 Other Personal Property Damage		☐ 840 Trademark	☐ 450 Commerce	
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 350 Motor Vehicle	☐ 385 Property Damage Product Liability		☐ 861 HIA (1395ff)	☐ 460 Deportation	
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle Product Liability			☐ 862 Black Lung (923)	☐ 470 Racketeer Influenced and Corrupt Organizations	
☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury			☐ 863 DIWC/DIWW (405(g))	☐ 480 Consumer Credit	
☐ 190 Other Contract	☐ 362 Personal Injury - Medical Malpractice			☐ 864 SSID Title XVI	☐ 485 Telephone Consumer Protection Act	
☐ 195 Contract Product Liability				☐ 865 RSI (405(g))	☐ 490 Cable/Sat TV	
☐ 196 Franchise					☐ 495 Securities/Commodities Exchange	
					☐ 890 Other Statutory Actions	
					☐ 891 Agricultural Acts	
					☐ 893 Environmental Matters	
					☐ 895 Freedom of Information Act	
					☐ 896 Arbitration	
					☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision	
					☐ 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Recopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983Brief description of cause:
uncer color of law infringes on first amendment rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RECEIVED

2020 JAN 13 PM 3:37

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS FLORIDA

Randy Scott, Plaintiff,

Case No. _____

v.

Lal (Spencer) Roach,

Defendant.

2:20-cv-25-FEM-38MRM

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Almost every elected public official in the United States now maintains social media accounts, which are an important source of news and information about the government and important spaces for speech by, to, and about public officials. These digital spaces are the “modern public square.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1732 (2017). As our democracy increasingly moves online, it is crucial that our First Amendment principals are equally applied to digital forums so that the internet does not become a haven for public officials to avoid free speech.

2. This case involves the effort of a Florida State Representative Lal (Spencer) Roach to suppress dissenting speech on her official social media accounts. In retaliation for Plaintiff’s dissenting speech on a coming tax referendum, Defendant Heck blocked Plaintiff from Defendant’s Facebook account.

3. Plaintiff respectfully asks this Court to declare that Defendant’s viewpoint-based exclusion of Plaintiff from Defendant’s official social medial accounts violates the First Amendment, and order Defendant to restore Plaintiff’s access.

Jurisdiction, Venue, and Parties

4. The Court has jurisdiction, pursuant to 28 U.S.C. §§ 1331, 1367, and 1343, over the claims in this case because they arise under the Constitution and laws of the United States, namely the First and Fourteenth Amendments and 42 U.S.C. § 1983; the state claims are so related to claims in this case that they form part of the same case or controversy; and the claims in this case seek redress for civil rights violations committed under color of state law.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (b)(2) because Defendant resides in this district and a substantial part of the events giving rise to this claim occurred in this district.

6. Plaintiff Randy Scott resides in Lehigh Acres, Florida, within the bounds of Lehigh Acres Fire District.

7. Defendant Lal (Spencer) Roach is the Florida House of Representative representing Lehigh Acres of which I reside and vote. Defendant Roach believes to reside in Lee County and has offices here.

General Allegations

A. Background on and Facebook

8. Facebook is a social media platform that allow users to publish and share content with each other.

9. On the platform, users can post content. On Facebook users publish “posts.” Users have a profile page which contains the user’s profile and a timeline in reverse

chronology of all of the user's posts.

10. Platforms allow users to subscribe to other users' content. On Facebook, users can "friend" (a verb) individuals or "follow" organizational accounts called "Pages."

11. The platform provide users a personal "feed" which displays the tweets or posts for the accounts they follow.

12. Platforms allow users to interact with other user's content—in fact, this interaction is the defining feature of Facebook. Users can comment on other user's posts, or comment on other comments. These comments appear on users' timelines in conversation chains, such that one user's timeline includes not only their own posts but also the posts and comments of other users. Each users' timeline is thus a digital forum for dialogue, with multiple overlapping conversation threads by and between different users.

13. The platforms allow users to decide whether their content is public or private. Both platforms also allow users to "block" other users.

14. On Facebook, a blocked user cannot comment on, or otherwise interact with the blocking party's timeline or individual posts.

15. On the platform, blocked users are excluded from the blocking party's digital forum in several ways.

16. First, blocked users do not receive real-time notifications of the blocking party's posts. In the context of the rapid interactions that occur on Facebook, the absence of instant notification impedes a user's ability to participate in and shape a conversation.

17. Second, a blocked user cannot publish a comment in the blocking party's timeline—the digital forum. A blocked user is excluded from participating in the public dialogue that occurs in that forum. Conversely, the participants who remain on these public

forums are unable to receive the blocked user's viewpoint.

B. Defendant Roach' Use of Facebook

18. Defendant Roach maintains a Facebook account, <https://www.facebook.com/Spencerforflorida/>, which he uses in his official capacity as a Florida State Representative to make official statements, share information about legislative activities and other government functions, and to communicate with the public.

19. Facebook allows individuals to create individual accounts, and Facebook allows organizations and public officials to create "Pages." Like personal accounts, the Page of a public official contains profile information and a timeline with posts. Users can interact with a public official's Page just like a personal account timeline, by publishing content, posting replies, "liking" content, or sharing content.

20. Defendant Roach has a separate personal Facebook account as an individual Facebook user in which he also uses to make official statements, share information about legislative activities and other government functions, and to communicate with the public.

21. Defendant Roach uses the resources of his public office, including staff and equipment, to manage his official Facebook accounts.

22. Using settings in his Facebook accounts, Defendant Roach intentionally made his official Facebook accounts open to the public for viewing and interaction. Anyone can draft a reply, which will appear on Defendant Roach' official Facebook timeline. Anyone can post or interact with posts on Defendant Roach' official Facebook Page.

23. Like a continuous virtual town hall event, the interactions on Defendant Roach' official Facebook accounts are multidirectional: individuals contact Defendant Roach; Defendant Roach responds to individuals; and individuals share information and opinions

between themselves.

24. As an illustration, on January 8 at 7:26 PM State Representative Spencer Roach posted the following comment: "Today our team walked the swamp at Fakahatchee, the largest strand swamp in FL at 120+ sq miles, the world's only Bald Cypress Forest, w/ the most native orchid species in the U.S. Thank you to the outstanding team of guides & volunteers who hosted us today: Don, Dee, Mike, & Steve - you are the best! (We did not see a ghost orchid, & the swamp took Eric's shoe, see pic #5.)

25. The individuals named in that post who "walked the swamp" with Defendant Roach are all a part of the state legislative. Eric Schau the district representative for Florida House Representative Dane Eagle posted, "Thanks for the opportunity. I had a fantastic time", Tami Holliday a former regional director of U.S. Senator Ben Nelson and current legislative aide for US Congressman Francis Rooney posted Panthers !!! told ya they were out there! Ending with a heart emoji. Defendant Roach responded "Tami Holliday - this was my first time out there - loved it & can't wait to go back. Also took a little drive through Everglades City. Give me a shout the next time you have an extra seat in the jeep for one of your adventures!" Joshua Goergen a legislative aid for Florida Senator Lizbeth Benecquisto posted "Thank you for the invite State Representative Spencer Roach. I had an amazing time!" On Facebook, after about 48 hours, the post was liked 79 times and generated 15 comments. Again, some of these comments sparked their own replies and conversation chains. One of the individuals liking the post if Lehigh Acres Fire Chief who has an open appropriation request before the State of Florida for 5 million dollars. Plaintiff made several comments of which all were deleted by Defendant Roach.

26. Defendant Roach then blocked plaintiff from any participation in the Facebook

page managed and controlled by Defendant Roach.

27. If you were blocked from Defendants Roach' official Facebook and Facebook accounts, you would not have been able to participate in these conversations.

C. Defendant's Limitation of Plaintiff's Speech

28. On or about January 9, 2020 Defendant Roach contacted Amira Fox 20th Judicial States Attorney and Carmine Marceno appointed Lee County sheriff (both of whom he was a contributor and active supporter in their candidacy) to send law enforcement officers from the Sheriffs office to his home to inquire about Facebook posts that hurt his feelings.

29. Later that day Defendant Roach revealed his purported investigation into the personal affairs of the plaintiff and caused the results to be printed in the Florida Politics magazine.

30. Shortly thereafter, Defendant Roach' blocked Plaintiff Scott on Facebook.

31. Plaintiff Scott attempted to reply to the facebook account control by Defendant Roach and was not allowed or blocked. Plaintiff also noticed all his prior posts were deleted..

32. Plaintiff was and continues to be excluded from the dialogue that continues to occur on Defendant Roach' official Facebook pages.

33. Defendant Roach' viewpoint-based exclusion of Plaintiff from her official Facebook accounts distorts the speech in those forums and causes a chilling effect for others from similarly expressing dissenting viewpoints.

FIRST CAUSE OF ACTION

Section 1983: Deprivation of Rights under the First and Fourteenth

Amendments of the United States Constitution (Declaratory and Injunctive Relief)

34. By the acts set forth in paragraphs 1 through 36 above, Defendant violated 42 U.S.C. § 1983 by acting under color of state law to deprive Plaintiff's rights under the First and Fourteenth Amendments of the United States Constitution.

35. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts violates the First and Fourteenth Amendments because it imposes a viewpoint-based restriction on Plaintiff's participation in public forums.

36. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts also violates the First and Fourteenth Amendments because it imposes a viewpoint-based restriction on Plaintiff's access to official statements that Defendant otherwise makes available to the general public.

37. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts also violates the First and Fourteenth Amendments because it imposes a viewpoint-based restriction on Plaintiff's ability to petition the government for redress of grievances.

38. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts has caused and continues to cause Plaintiff irreparable harm.

SECOND CAUSE OF ACTION

Violation of Article I, Section 4 of the Florida Constitution (Declaratory and Injunctive Relief)

39. By the acts set forth in paragraphs 1 through 39 above, Defendant has violated

Article I, Section 4 of the Florida Constitution.

40. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts violates Article I, Section 4 because it imposes a viewpoint-based restriction on Plaintiff's participation in public forums.

41. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts also violates Article I, Section 4 because it imposes a viewpoint-based restriction on Plaintiff's access to official statements that Defendant otherwise makes available to the general public.

42. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts has caused and continues to cause Plaintiff irreparable harm.

THIRD CAUSE OF ACTION

Violation of Article I, Section 5 of the Florida Constitution (Declaratory and Injunctive Relief)

43. By the acts set forth in paragraphs 1 through 41 above, Defendant Roach has violated Article I, Section 5 of the Florida Constitution.

44. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts violates Article I, Section 5 because it imposes a viewpoint-based restriction on Plaintiff's ability to petition the government for redress of grievances.

45. Defendant Roach' blocking Plaintiff from Defendant's official Facebook accounts has caused and continues to cause Plaintiff irreparable harm.

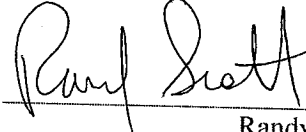
Prayer for Relief

WHEREFORE, Plaintiff requests that this Court:

1. Declare Defendant's viewpoint-based blocking of Plaintiff from the Defendant's official Facebook accounts to be unconstitutional;
2. Enter an injunction requiring Defendant to unblock Plaintiff from Defendant's official Facebook accounts, and prohibiting Defendant from blocking Plaintiff or others from the accounts on the basis of viewpoint;
3. Award Plaintiff his costs, including reasonable attorneys' fees; and
4. Grant any additional relief as may be just and proper.

Dated: January 14, 2020.

Respectfully submitted,



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