



June 5, 2023

The Honorable Colorado State House of Representatives
74th General Assembly
First Regular Session
Colorado State Capitol
200 East Colfax Avenue
Denver, CO 80203

Dear Honorable Members of the Colorado State House of Representatives,

Today, I signed House Bill 23-1306, “Concerning the Use of Social Media Administered by an Elected Official that is Not Supported by Government Resources.”

House Bill 23-1306 (“HB 23-1306”) defines the difference between a private and an official social media account, and allows a Colorado state or local elected official to restrict or bar an individual permanently or temporarily from using the elected official’s private social media account for any reason, including bullying, harassment, or intimidation, in the elected official’s sole discretion. The bill establishes that “private social media” is social media that is not supported by state or local government resources and is not required by any state or local law, ordinance, or regulation to be created or maintained by the elected official. Under the bill, private social media administered by an elected official or their designee (such as their political campaign under campaign finance laws) is a private account and does not create a public forum. Therefore, the elected official or designee has discretion to restrict or remove a user on the official’s private social media for any reason.

Having conducted hundreds of town halls in my official capacity as a member of Congress, several on the campaign side, as well as having attended many events in my personal capacity over the years, I understand why it is important to figure out how to apply free speech protections in the physical world to the virtual world. Clearly, an elected official doesn’t surrender their private right of free speech upon taking elected office, and may express personal opinions about a variety of matters or simply share pictures of a pet, favorite recipe, or funny meme. In their personal capacity, just as if they were not in elected office, they should be able to ban toxic commentators if they choose to. Any official forum, however, has a higher standard to be open to the public, although may still be monitored for fighting words, threats, and other unprotected speech which is allowed to be removed. The question before us is what is private or campaign related, and what is a public forum, and this bill posits a reasonable division.

This area of law, related to legitimate public discourse on social media and the protections provided by the First Amendment, is unsettled and currently pending before the United States Supreme Court. In April 2023, the Court agreed to review two cases specific to this issue, one from the Ninth Circuit, *Garnier v. O’Connor-Ratcliff*, 41 F.4th 1158 (9th Cir. 2022), and the other from the Sixth Circuit, *Lindke v. Freed*, 37

F.4th 1199 (6th Cir. 2022). I appreciate the goals of the sponsors of this bill in providing clarity to public officials in this area of law, and the bipartisan work that went into this bill. However, I also want to make sure that elected officials don't view the presence of this statute as a safe harbor for the activity allowed under this law due to ongoing litigation. I encourage the General Assembly to monitor the Court's opinion in these cases, and if needed, to pass future legislation for my signature that amends this bill to conform with the Court's decision.

Sincerely,

A handwritten signature in blue ink that reads "Jared Polis". The signature is written in a cursive, flowing style.

Jared Polis
Governor
State of Colorado