



December 7, 2021

Congressman Thomas Massie
United States House of Representatives
2453 Rayburn HOB
Washington, D.C. 20515
(202) 225-3465

Dear Representative Massie,

We write on behalf of our client Mike Masnick to ask that you unblock Mr. Masnick's Twitter account (@mmasnick) and those of any other individuals you have blocked from your Twitter account (@RepThomasMassie) based on viewpoint, and that you refrain from blocking individuals based on viewpoint in the future. Your Twitter account is a public forum under the First Amendment, and blocking followers from this forum based on viewpoint is unconstitutional.

Your Twitter account, @RepThomasMassie, is a public forum under the First Amendment because you use the account as an extension of your office—to share information and commentary about House proceedings and your own actions in Congress, to advocate legislation, and to interact with other Twitter users about policy-related matters.¹ The account is a digital forum in which you share your thoughts and decisions as a member of Congress, and in which members of the public directly engage with you and with one another about matters of public policy. Since you took office, the number of users following the @RepThomas Massie account has reached more than 284,000. Many of your tweets staking out positions on various policies have made headline

¹ See, e.g., Representative Thomas Massie (@RepThomasMassie), TWITTER (Sept. 27, 2021), <https://twitter.com/RepThomasMassie/status/1442618999825702916>; Representative Thomas Massie (@RepThomasMassie), TWITTER (Oct. 10, 2021), <https://twitter.com/RepThomasMassie/status/1447261376972460048>; Representative Thomas Massie (@RepThomasMassie), TWITTER (Sept. 4, 2021), <https://twitter.com/RepThomasMassie/status/1434370948380205057> (replying to a tweet from @TinaMDeraco).

news.² The @RepThomasMassie account is important to you as a legislator, to your constituents, and to others who seek to understand and influence your legislative decisions and priorities.

Our client, Mr. Masnick, is the founder and editor-in-chief of Techdirt, a blog that reports on technology, policy, and the law. He frequently writes about Congress and tech policy, and he uses Twitter in the course of his work.

Mr. Masnick's Twitter handle, @mmasnick, was blocked from your Twitter account on or around December 4, 2021, after he posted these two tweets:



² See, e.g., Ayana Archie, *Kentucky Rep. Thomas Massie Tweets Pro-gun Photo Days After Michigan School Shooting*, LOUISVILLE COURIER JOURNAL (Dec. 4, 2021, 5:17 AM), <https://www.courier-journal.com/story/news/local/2021/12/04/thomas-massie-tweets-gun-photo-days-after-michigan-school-shooting/8869968002/>; Graeme Massie, *Republican Accuses Pro-Israel group of 'Foreign Interference in Our Elections' After Iron Dome Criticism*, THE INDEPENDENT (Sept. 28, 2021, 6:47 AM), <https://www.independent.co.uk/news/world/americas/us-politics/massie-republican-aipac-iron-dome-b1928121.html>.



Mr. Masnick discovered that he had been blocked from the @Rep-ThomasMassie account on December 5. We note that other Twitter users have said that they were blocked from your Twitter account on the basis of the views they expressed in replies to your tweets.

Multiple courts have held that public officials' social media accounts constitute public forums when they are used in the way that you use the @RepThomasMassie account, and they have made clear that public officials violate the First Amendment when they block users from these fora on the basis of viewpoint. For example, the U.S. Court of Appeals for the Second Circuit reached this conclusion in *Knight Institute v. Trump*,³ and the U.S. Court of Appeals for the Fourth Circuit reached

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

this conclusion in *Davison v. Randall*.⁴ The principles articulated in these cases apply here. In both of these cases, and in many others, courts have held that the First Amendment binds public officials who use their social media accounts in furtherance of official duties, and that public officials act unconstitutionally when they block individuals from these accounts on the basis of viewpoint.

Again, we ask that you unblock the Twitter account @mmasnick and any other Twitter accounts that have been blocked by you or your staff from the @RepThomasMassie account based on viewpoint. We would appreciate a written response to this letter by Dec. 15, 2021. You can reach us at the address above or at katie.fallow@knightcolumbia.org.

Sincerely,



Katie Fallow
Alyssa Morones

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