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Policy Paper: Blocking of Social Media Users by Officials*

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1. Background

The blocking of social media users by officials, and sometimes by other opinion leaders with major influence in these media is repeatedly discussed in various contexts. This discussion raises a variety of issues, including account owners' right to block contents in their accounts; the distinction between "private" and "public" accounts; the violation of the blocked user's freedom of expression; and the account owners' commitment to the exercising of this freedom in their own particular accounts.

This subject has been discussed in Israel and other countries in several contexts, as detailed below, but there is still no clear policy on the matter. In this policy paper, we highlight the importance of the normative questions arising from the issue, present the current legal landscape in Israel, the US, Canada and Spain, and enumerate several principles we believe officials should adopt. Such policy concerning social media use may be adopted by a central body (such as the Ethics Committee of Knesset (Israeli parliament), the Federation of Local Authorities in Israel, or a political party) or by an official. To the extent that such a policy is shaped by a central body, we believe that officials should enjoy some latitude in managing their social media accounts, given the wide range of reasonableness within the appropriate practice, providing it is fair and transparent.

This discussion is still in its infancy, and naturally, as we are dealing with a dynamic, ever-evolving area, policy recommendations will warrant reexamination and periodical update. Moreover, some details of this discussion merits further deliberation by experts from different disciplines and public discourse. Meanwhile, we hope this document will be useful for relevant actors in understanding the background for the issue of blocking of social media users by officials, and finding ways of addressing it.

* I thank Adv. Limor Schmerling Magazanik, Director of the Israeli Tech Policy Institute, for her important comments, as well as Mr. Luke Schwartz, an institute intern, and Mr. Miles Light of the Future of Privacy Forum in the US for their assistance.

1.1. The significance of debating social media content blocking

Limitations on contents posted on social media are currently at the center of an intense debate. We can identify three key actors exercising control over social media contents: the users, government authorities, and the social platform itself. Each affecting the contents in the platform in different ways and to varying extents. We must separately examine, the impact each actor carries, within its scope of control, on social media discourse and its ability to influence freedom of expression on the internet more generally. In this document, we focus on high-profile users and the Content-management tools online platforms make available to them.

The higher the public account owner's profile – in terms of number of followers and scope of distribution – the greater the repercussions of blocking other users, deleting or removing comments. Above all, such limitations prevent restricted users from participating in the multi-user discussion held in this influential account. The harm of blocking users and deleting their comments, particularly when practiced on a large scale, well exceeds that caused to the individual user. It reshapes public discourse as reflected in the owner's account, and beyond that. For example, where a politician lays out a policy, but decides to delete and remove any criticism thereof, this could create a misrepresentation to the effect that the proposed policy is subject to little or no criticism, without users having any way of finding out how many comments have been deleted and removed and why.

When the account holders in question are officials, we may ask, to what extent are they responsible for the way social media discourse is conducted on their formal accounts? Do social media platforms provide them and the public with tools to manage account in transparent ways that enables other users to evaluate their account management? We shall elaborate on these important questions below.

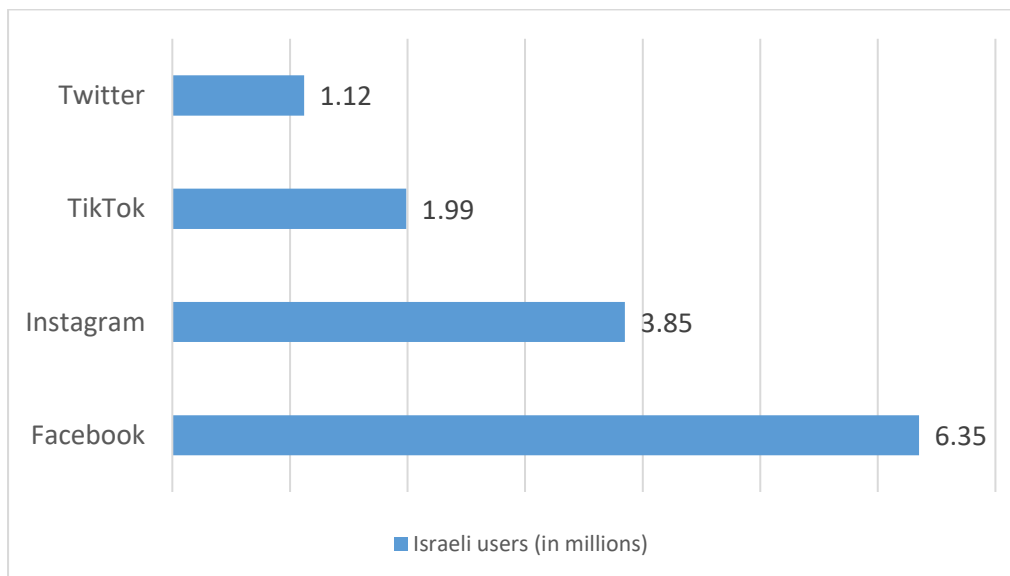
1.2 Glossary

Account owner/holder	The person registered in the social media platform as such. In this document, we address account owners/holders who are elected officials.
Blocking	Preventing a user from interacting with the account owner.
Deletion or removal	Refers to a specific comment.
Official	This document addresses the need to define account owners with additional obligations. For the sake of convenience, we use the term “official”, which also includes elected officials and senior appointed officials. ¹
Limitation/restriction	Any limitation imposed on a social media user due to settings determined or changed by the account owner, or any other action taken thereby.
Social media	Computerized platform allowing users to interact and share information, ideas or sentiments by creating virtual networks and communities. For the purpose of this policy paper, we will refer exclusively to networks and accounts that are significantly public in nature, and therefore do not address platforms such as Telegram or WhatsApp, or closed communities (which we believe deserve a dedicated discussion).
User	Any member of the public who is a member of a social media platform, but who is not its owner.

¹ The discussion regarding the commitment of public officials to a social media discourse respectful of free speech is particularly intense in the US, where, more than in Israel, there is a large number of senior positions in the administration held by elected officials or those appointed by politicians. We believe that although the use of social media is less prevalent among the senior professional ranks in Israeli government agencies, to the extent senior public officials manage public social media accounts they must adopt a similar policy with regard to limitations imposed on users.

1.3 Data

To understand the significance of the issue of Blocking of Social Media Users by Officials in Israel's media climate, we ought to look at the extent of local social media usage. According to the Central Bureau of Statistics, social media usage is the most common type of internet usage: 86% of users have indicated using the internet for this purpose.² According to Statista, the estimated user base in Israel in 2021,³ covering the four social media relevant to this study, is as follows:⁴



Surveys on the sentiments of Israeli social media users suggest a prevailing sense that the discourse on the various platforms is becoming increasingly violent. According to a December 2020 survey of 700 users by the Israel Internet Association, 86% reported feeling that the discourse is becoming increasingly violent. The 2020 annual [survey](#) by Israeli telecom giant Bezeq (2,300 respondents) suggested that 10% of adults and 22% of youth reported having been subjected to violence or bullying in social media.

Given the huge scale of social media activity in Israel and the prevailing sense of an increasingly violent discourse, we find it important to examine the role of officials in this regard, and policies they may be advised to take to maintain an appropriate discourse without however compromising freedom of speech.

² See "[Selected Data from the Social Survey on Internet Usage](#)", Central Bureau of Statistics (July 6, 2021; Hebrew).

³ In 2021, there were approximately 9 million citizens in Israel.

⁴ For links to the relevant reports, see [Facebook](#), [Instagram](#), [TikTok](#), and [Twitter](#).

2. The Normative Basis

2.1 Constitutional Law: The Principle of Free Speech

Freedom of speech is a foundational and deeply rooted democratic principle recognized by international law.⁵ The right to free speech has been recognized in Israel since the early days of statehood, starting from the 1953 High Court of Justice (HCJ) ruling in the *Kol Ha'am* case, which recognized it as “tightly bound with the democratic process”,⁶ as well as in several subsequent rulings.⁷ Upon the enactment of Basic Law: Human Dignity and Liberty in 1992, despite not having explicitly referred to freedom of speech, many have considered it as deriving from the right to dignity.⁸

Like any other right, the right to free speech is not absolute. The limits to this right recognized in Israel and anchored in legislation and court rulings are similar to those recognized in international law,⁹ as well as many other countries. Here are some recognized exceptions particularly relevant to the present discussion:

1. The right to good reputation¹⁰ and the right to privacy.¹¹
2. Racial slurs¹² and incitement to racism.¹³
3. Damage to state security¹⁴ and incitement to terrorism.¹⁵
4. Sedition and incitement to violence.¹⁶

⁵ The right to freedom of speech or expression is anchored in several international convention, the most important of which is the UN International Covenant on Civil and Political Rights (ICCPR), Art. 19(2).

⁶ HCJ 73/53, *Kol Ha'am Ltd. v. Minister of Interior*, Ruling 7, 871, p. 977 (hereinafter, *Kol Ha'am*).

⁷ Selected cases include HCJ 153/83, *Levi v. Chief of Israel Police District South*, Ruling 38(2), 393; HCJ 243/85, *Cahana v. Board of Israel Broadcasting Authority*, Ruling 41(3) 255 (hereinafter, *Cahana*); HCJ 14/86, *Laor v. Film and Play Review Council*, Ruling 41(1), 421.

⁸ See, e.g., HCJ 243/62, *Israel Film Studios, Ltd. v. Gerry*, Ruling 16, 2407, p. 2,415.

⁹ According to the ICCPR, the right to free speech is not absolute, but rather restricted wherever it may be required to protect the rights or the reputation of others (Art. 19(3)(a)), or protect public security, public order, or public health and morals (Art. 19(3)(b)).

¹⁰ In the 1965 Prohibition of Defamation Law and in several rulings. For example, Civic Appeal Permission 10520/03 *Ben Gvir v. Dankner* (Nov. 12, 2006); Additional Civic Proceeding 1221/12 *John Doe v. Dr. Ilana Dayan Orbach*, Ruling 67(1), 667.

¹¹ Protection of Privacy Law, 1981.

¹² HCJ 4646/08 *Lavi v. Prime Minister* (Oct. 12, 2008).

¹³ Art. 144b of the 1977 Penal Law.

¹⁴ See *Kol Ha'am*, op. cit. note 5.

¹⁵ Prevention of Terrorism Ordinance, 1948.

¹⁶ Art. 134 of the Penal Law; Mordechai Kremnitzer and Liat Levanon Morag, “Restricting Freedom of Speech out of Fear of Violence”, *Law and Governance (Mishpat Umimshal)* 7 305 (2004; Hebrew).

The courts have often emphasized the importance of the right to free speech precisely when protecting the voicing of criticism and unconventional views.¹⁷ In this regard, Justice Stein emphasized in his recent ruling on *The Religious Action Center*,¹⁸ that the listener has the option of not paying attention and listening to a given statement. Judge Stein made a comparison, which certainly should be made and further refined in the present discussion, between broadcast and online media:

If John Doe broadcasts his statement on TV or on the radio, Richard Doe, and the rest of the world, may turn the device off, mute it, or change the channel – all that without requiring John Doe’s permission; and if John Doe chooses to write his appalling and infuriating statement in cyberspace, on the internet or in an email, Richard Doe – much like the rest of the world – may make it disappear by a single press on the X button or on the “delete” button in his computer.

Note, however, that when a social media user mutes another, he or she not only chooses not to attend to their words, but also denies the other access to a broader public. In the case of users whose accounts have multiple followers and the discourses conducted within them have major public impact, the damage caused to the blocked user is proportionately greater. Finally, when the account owner is also an elected official, blocking a user prevents the latter from taking part in a public discourse on issues included in the elected official’s page.

Nonetheless, an important caveat needs to be considered. Israeli court rulings on freedom of speech mostly address the care a public authority must take in treating the media, the cultural sphere, the right to demonstrate, etc. The public authority’s commitment to uphold freedom of speech and expression does not typically apply to individuals. Consequently, when we adopt a policy that requires *a person* to avoid certain actions in the name of free speech, we must make sure that that person is acting *by virtue of a public office rather than as a private individual*. Therefore, we must distinguish between officials on the one hand and others who may have significant impact on virtual discourses but do not derive their power and duties from their office.¹⁹

¹⁷ E.g. Appeal Request 2/84 *Neiman v. Chair of the Central Elections Committee for the 11th Knesset*, Ruling 39(2), 225; HCJ 2454 *Legal Forum for the Land of Israel v. Minister of Education* (Apr. 17, 2008); *Cahana*, op. cit. not 6; HCJ 316/03 *Bakri v. Film Review Council*, Ruling 58(1), 249.

¹⁸ HCJ 7150 *Religious Action Center and Israel Movement for Reform and Progressive Judaism et al. v. Minister of Justice et al.* (Sep. 21, 2020), p. 19.

¹⁹ Therefore, we must distinguish between, for example, celebrities, whose social media power is huge, and elected and non-elected officials. Personally, I believe we may expect senior journalists to also adopt an appropriate policy on this matter, but this issue is beyond our present scope.

2.2 Social media policies: Terms of use

When addressing the normative basis we also need to refer to the social media platforms' terms of use. Each platform publishes its own terms, to which the user is required to consent in order to use it. The companies operating the platform often include a mission statement on their site.²⁰ Notably, despite providing users with space for self-expression as arising from their terms of use, the companies do not declare in their mission statement (at least at the time of this writing) that they are *committed* to protect freedom of expression.²¹ Nevertheless, in their responses to discussions of issues related to content posted in their platforms, they often refer to freedom of speech as the justification for not removing certain contents.

The terms of use include community standards that are similar across the companies with regard to contents that may not be posted on the platform. For example, the use of the platform to encourage violence, harassment, child pornography, racism or terrorism is forbidden, and whoever violates this prohibition risks having their relevant content removed or their account blocked.²² On the surface, there is no reference in the platforms' terms of use or any other formal document to users' conduct in terms of blocking contents, and all users are free to administer their account so long as they meet the community standards, including their account's privacy settings (which in some platforms are also derived from the type of account).²³

2.3 The legal situation in Israel

In Israel, there is no normative regulation of the restriction of social media users by officials (or public agencies). To date, there are also no court rulings on this matter. Nevertheless, the issue has been discussed in several contexts, as follows.

2.3.1 The State Comptroller

The State Comptroller, in his role as ombudsman, has addressed the issue of user blocking by elected official several times. Most recently, in July 2020, he published a comprehensive

²⁰ For example, Facebook: "Give people the power to build community and bring the world closer together"; Instagram: "To capture and share the world's moments"; Twitter: "Give everyone the power to create and share ideas and information instantly without barriers"; TikTok: "To inspire creativity and bring joy".

²¹ Facebook undertakes to protect freedom of speech indirectly by applying the principles of international law as arising from its [Corporate Human Rights Policy](#), but does not commit to that explicitly.

²² See the community standard of [Facebook](#), [Instagram](#), [Twitter](#), and [TikTok](#).

²³ In Instagram, for example, personal details are not exposed in private accounts, whereas in Facebook, business accounts are open for public viewing.

report on “The Use of Social Media by Local Authorities and Their Elected Officials (hereinafter, Audit Report). The report also referred to the blocking of users by municipalities (pp. 70-83) and by elected officials (pp. 97-102).

The State Comptroller, has addressed the issue for the first time in his role as ombudsman, in 2016, following several complaints made by members of the public on the blocking of users or the deletion of comments (State Comptroller Annual Report, 2016, pp. 39-42). In that report, the Comptroller listed four indications to the public nature of a social media page. These were extended in subsequent reports, as summarized in the Audit Report (p. 98), as follows:

1. Type of account
2. The official’s role and seniority
3. The purpose and manner of using the account
4. Whether the account is used for public work
5. Account contents
6. Public perceptions of the account
7. Target audience and number of followers and friends
8. Funding sources
9. Actual administrators

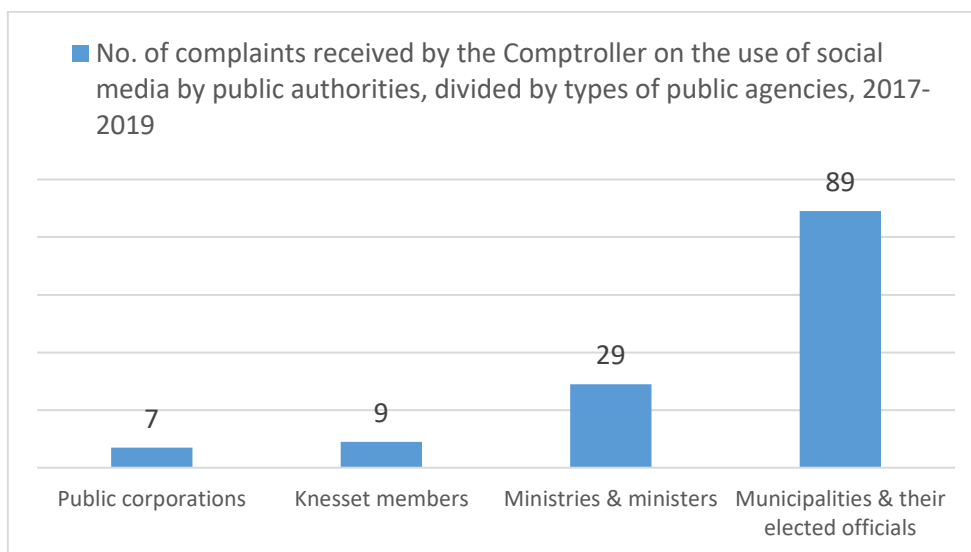
If indications point to a public account, the Comptroller examines the restrictions applied to the user in question in terms of violation of freedom of speech (apart for statements unprotected thereby). Specifically, the Comptroller examines whether the blocking or deletion have served an appropriate purpose and have not been excessive. Note that to the extent freedom of *political* expression has been ostensibly violated, this examination is stricter. Nevertheless, hitherto no clear guidelines have been published as to the way the Comptroller needs to apply discretion in examining such complaints.

Among the reasons for examination enumerated by the Comptroller in the 2016 report, in addition to whether the statement in question is racist or inciting, is whether it violates others’ freedom of speech by repeatedly swamping the account.²⁴ The more such content is deserving of deletion, the Comptroller examines whether a proportional and less offensive means has been, such as warning the commenter. Blocking a user is a serious violation, since it also violates *future* free speech.

In 2017-2019, the Comptroller addressed 134 relevant complaints. Notably, the Comptroller is not authorized to inquire into complaints against Knesset members or ministers other than

²⁴ At the time of writing, the Comptroller is the only one who has referred to this phenomenon as potentially violating free speech.

with relation to the latter's work in their ministries. These complaints are distributed as follows:



Source: State Comptroller Audit Report, pp. 24-25

In the findings of the Audit Report (2020), the Comptroller opined as follows:

1. Concealing a user's comment is more severe than deleting it, since users are not informed of the former, and they and their virtual friends erroneously believe it is still posted.
2. It is important to maintain the documentation of the posting, of the decision and the considerations leading to restricting the user.
3. Blocking certain words in advance is a problematic practice, since many such words may also be used in legitimate contexts (such as "Nazi", "fool", "corrupt").

2.3.2 Position paper by the Clinic on Digital Rights and Human Rights in Cyberspace

The former Clinic on Digital Rights and Human Rights in Cyberspace at the Hebrew University of Jerusalem represented Mr. Saidov, a social activist blocked out of the Facebook page of then Minister of Transportations Israel Katz. Following his complaint, the blocking was removed and it was made clear that critical statements would not be deleted, nor commenters blocked. The Clinic also made available a [standard unblocking request](#), and wrote a [position paper](#) published in April 2019. The main points raised in the paper are as follows:

1. Blocking users for having expressed opinions or criticisms in official pages of public authorities or elected officials is *unconstitutional*.
2. Social media are a major source for consuming important contents, including political ones, and enable direct contact between the public and its elected representatives.
3. To the extent that the contents of the comment in question are legitimate, are not offensive nor illegal, their blocking violates free speech (in this regard, the authors rely among other things on the State Comptroller Report from 2016).
4. Also violated is freedom of information, both of the user restricted from the account and the remaining active users.
5. Given the transition of public discourse to social media platforms, no appropriate alternative may compensate for the violation of users' freedom of political expression. The public resonance of posting a comment on the page of an elected official is substantially greater than a posting on the user's personal page.
6. It is suggested that the law applied to Knesset and municipality members should be identical to that applied to ministers and mayors.

The position paper conclusion was that elected officials must avoid blocking users or deleting their comments, unless the comments are illegal.²⁵

In July 2019, a [press article](#) reported that following the Clinic's complaints, the Prime Minister, Minister of Finance, and Minister of Economy announced that they would unblock users in their pages.

2.3.3 Legal proceedings

In 2017, a petition was lodged against the Mayor of Hadera due to his practice of blocking rivals and deleting their comments from his personal page and from the municipality page. The petition was revoked on May 2018 after the mayor and the municipality undertook to follow the State Comptroller's (Ombudsman's) guidelines on this matter.²⁶

At the time of writing, the case is pending the Tel Aviv-Jaffa District Court's decision on the permissibility of an elected official blocking a user in his private Twitter account.²⁷ The petitioner, originally represented by the Clinic, claims that his blocking by the Mayor of Givatayim represents a violation of his freedom of speech. The mayor claims that it is his private accounts, and that administrative duties may not be applied to the management of

²⁵ Note that the conclusion is framed in a single sentence, without distinguishing between blocking users, deleting or concealing comments, and without requiring time limits, notices, etc.

²⁶ Administrative Petition (Haifa) [52592-08-17](#), *Shirley Oded et al. v. Zvika Gendelman, Mayor of Hadera*.

²⁷ Administrative Petition (TA)61176-10-20, *Rubinstein v. Givatayim Municipality et al.*

private accounts. Recently, the Attorney General announced that he would join the proceedings. His opinion is to be submitted by September 19, 2021.

Shortly before this publication, a petition was filed to the High Court of Justice by independent journalist and social activist Tomer Avital – together with a local NGO Shakuf (“Transparent”: The Democratic Media Outlet), of which Avital is a cofounder – against the Attorney General, the Knesset Attorney General, and the Minister of the Interior. The petitioners requesting an order directing the respondents to instruct members of the government and Knesset as well as local authorities not to block or delete their social media accounts except in unusual cases.²⁸

2.3.4 Appeals to the Attorney General

In April 2018, the Law, Technology & Cyber Clinic at Haifa University, together with other experts, [appealed](#) to the Attorney General, requesting that he regulate the use of social media by elected officials. To the best of our knowledge, no comprehensive document has yet been issued that sets guidelines on user restrictions.

2.4 Comparative law

2.4.1 The US

The issue of user restriction is being intensely discussed in the US, including in frequent legal proceedings. The most significant ruling hitherto has been given on July 9, 2019, by the 2nd Circuit Court, following a petition by seven users blocked out of President Trump’s Twitter account for their political views. The petitioners were represented by the Knight First Amendment Institute.²⁹ They argued that Trump cannot block users out of his private Twitter account (which was essentially a presidential account), since this would violate the First Amendment. The court accepted the petition and [ruled](#) that freedom of speech does not include the vested right of any citizen to have the president (or more precisely, the government) listen to what they say. Nevertheless, it ruled that blocking users out of the president’s account violates their ability to freely express their opinion vis-à-vis public participation in and exposed to the discourse conducted in the president’s tweet thread. Given the public resonance of this account, and the issues arising therein, the court rejected

²⁸ [Petition to the High Court of Justice against elected officials’ practice of “blocking” social media users](#), Avishai Grinzig, *Globes* (19/8/2021) (Hebrew).

²⁹ *Knight First Amendment Institute v. Trump*, No. 1:17-cv-05205 (S.D.N.Y.). Note that since the ruling was annulled by the Supreme Court, there is no longer an official link to it on the official court website, but only in the petitioner’s website.

the respondent's claim that the blocked-out users could express their views in their personal account, and that therefore their freedom of speech was not violated.³⁰

President Trump's case reached the US Supreme Court, having decided to adjudicate the petition.³¹ Nevertheless, on April 5, 2021, the court decided to accede to the Ministry of Justice' request, annul the petition, and dismiss the lower-instance ruling, since Trump had been elected out of office. The [ruling](#) provided no reasoning beyond that, apart for the dissenting opinion by Justice Thomas.³² Justice Thomas joined in his peers' opinion in the matter of dismissing the petition for irrelevance, but elaborated in his opinion on the importance of discussing the protection of free speech in the new platform, an issue that became particularly relevant following Twitter's decision to block the president's account. According to his opinion, when discussing the principle of elected officials' control of their account, and whether they should be allowed to or prevented from blocking out private individuals, the vast power held by the few who owned technological platforms to deny free speech to elected officials – even ones as powerful as the president – also merits discussion.

Another relevant US ruling from January 2021³³ accepted the view of Missouri state representative Cheri Toalston Reisch that blocking out Campbell for criticizing Reisch conduct on her Twitter account did not represent a violation of freedom of speech. The majority justices perceived the candidate's Twitter account, opened at the launch of her electoral campaign, as her private voter newsletter, therefore entitling her to determine how to present information therein, and whether or not to delete any criticisms posted thereto. The majority justices distinguished their decision from the ruling in the Trump case, given that Toalston Reisch did not use the account with relation to her office but distinctively did so to promote herself personally in keeping with the purpose for which it had been created during the campaign. They further noted that it also included completely private tweets about her

³⁰ This decision is aligned with a previous lower-instance ruling from January 2019, given by the Virginia 4th District Court. In the case in question, [Davison v. Randall](#), No. 17-2002 (4th Cir. 2019), the court ruled that Randall, who served in an official position as Board of Supervisors Chair, violated Davison's freedom of speech by blocking him out of her Facebook Account. The petition related to a business page created one day prior to her entry into office. The court also addressed the contents of the page, its relevance to her public office, and the contact details' reference to the official phone number, email and website, and the page's definition as belonging to a "government official". It also addressed the fact that Randall invited the public to contact her on the page on issues related to her public office. Finally, the court suggested that the page included no terms of use, and that the content posted by the petitioner did include any violation that could justify his blocking. Note that Randall deleted the entire post to which Davison had commented, and not only his own comment, and blocked him out of her account for only twelve hours.

³¹ In the US, the Supreme Court is not obliged to rule on all matters brought before it, but selects them.

³² Justice Thomas chose to present his theoretical difficulty in discussing issues related to freedom of speech following the blocking of a user by the president, while the president himself is being blocked out by social media, in a way that represented a severe violation, in his view. Nevertheless, he also suggested that this was an entirely theoretical discussion, as it has not been brought before the court.

³³ [Campbell v. Reisch](#), No. 19-2994 (8th Cir. 2021).

children and niece. In their opinion, any intervention in the contents of her “election newsletter” on Twitter actually represented a violation of *her* freedom of speech. According to the dissenting opinion, the Twitter account in question became clearly transformed after her election, and was used for the purpose of fulfilling her public duties and maintaining contact with her constituency, so that “official” news could no longer be distinguished from information designed to promote the candidate.³⁴

2.4.2 Canada

The issue of blocking users is also being discussed in the Canadian public sphere. In one case, three users petitioned the court against the Mayor of Ottawa for his policy of blocking out his critics in social media. The petition was dismissed after the parties have reached understandings out of court, and the mayor unblocked all blocked users in his accounts.³⁵

In January 2021, Member of Parliament Yves-François Blanchet was criticized for his decision to block dozens of users, including other members of parliament, out of his Twitter account. This was done following his comments on the appointment of a new Minister of Transport, referring to the latter’s presumed connections with the Islamic movement, leading to harsh criticism against Blanchet.³⁶ His action was publicly criticized,³⁷ but to the best of our knowledge, this issue was not brought before a Canadian court.

A journalistic inquiry by *Canada’s National Observer* found that the Liberal Party (Canada’s largest party, headed by Prime Minister Trudeau) and the New Democratic Party (the fourth largest) have adopted social media conduct standards³⁸ calling for complete avoidance of user blocking, apart for cases of offensive language or threats. As a result, the journalistic inquiry claims they found no evidence of user complaints against members of the Canadian House of Commons, as opposed to the Conservative Party (the second largest), which had no such policy in place.³⁹

³⁴ Note that there is at least one more ruling in this matter, by a lower instance court. In *Hargis v. Bevin*, the court prioritized the free speech of an elected official over that of users of his account. See [Hargis v. Bevin](#), 298 F. Supp. 3d 1003, 2018 U.S. Dist.

³⁵ [Watson concedes Twitter account is public, not personal; agrees to unblock critics](#), *Global News* (2 Nov. 2018)

³⁶ [Bloc leader criticized for limiting free speech over Twitter blocking](#), *CTV News* (18 Jan. 2021)

³⁷ [Officials shouldn't block people on social media, says Montreal law professor](#), *Montreal Gazette* (21 Jan. 2021)

³⁸ We were unable to access these standards in their original form.

³⁹ [Politicians can block you on Twitter. But should they?, Canada's National Observer](#) (4 Jul. 2019)

A study by two researchers from the University of British Columbia on “Online Incivility and Abuse in Canadian Politics” offered some interesting perspectives.⁴⁰ The study was based on analysis of approximately a million tweets directed at politicians during the 2019 electoral campaign, and on interviews with politicians and their staff members. The interviews demonstrated that many politicians feared that by blocking users, they would be seen as violating free speech or acting without accountability. According to the interviewees, they would be more willing to block out bots, in which case it would not be considered a violation of free speech, and would be willing to tolerate harsher discourse in the case of accounts authentically representing real individuals, although the distinction between the two is not always straightforward.⁴¹

Among the researchers’ recommendations for optimizing political discourse in social media, were suggestions that account holders publish policies and guidelines with regard to offensive content. This, they believed, would elucidate what is expected of users commenting in the account, enable monitoring of compliance with said principles, and ensure that the rules were applied justly and fairly. In the researchers’ opinion, it would be proper that upon blocking users, the account holder would contact them, informing which rule or guideline violation led to their blocking.⁴² The researchers also recommended that the parties lay out minimal guidelines, while respecting the autonomy of each elected official to determine their own policy and strategy upon facing offensive contents. These limited rules should include reference to the following: undertaking to delete hate speech from the account; avoiding the blocking of users strictly for their political views; and transparently publishing such guidelines on social media, as well as referring to them in justifying the blocking out of users or the deletion of specific comments.⁴³ As a model to be followed, the researchers presented a [flowchart](#) tweeted by Member of Parliament Michelle Rempel Garner.⁴⁴

4.2.3 Spain⁴⁵

The issue of blocking users by elected official is part of the public discourse in Spain, although it has yet to be directly addressed by the courts. News reports have referred to the fact that

⁴⁰ Tenove, Chris, and Heidi Tworek (2020) [Trolled on the Campaign Trail: Online Incivility and Abuse in Canadian Politics](#). Vancouver: Centre for the Study of Democratic Institutions, University of British Columbia (hereinafter, Tenove & Tworek).

⁴¹ Tenove & Tworek, p. 16.

⁴² Tenove & Tworek, p. 33.

⁴³ Tenove & Tworek, p. 35.

⁴⁴ We believe that this flowchart is too complex to be practical and therefore do not suggest it as a model, but rather as a resource for learning and comparison.

⁴⁵ This section was written with the help of Mr. Miles Light, a legislation and policy fellow at the Future of Privacy Forum and a Spanish speaker.

leading politicians including Prime Minister Pedro Sánchez, and former Prime Minister Mariano Rajoy frequently block users out of their Twitter accounts.⁴⁶ One 2016 intensively discussed case involving a public authority concerned a politician named Alberto Garzon, who was blocked by an official account of the Spanish Military. The Ministry of Defense claimed that it strictly blocked tweets offensive to the military as an institution, but the politicians' tweets appeared to criticize specific actions by the armed forces.⁴⁷

Freedom of opinion and expression,⁴⁸ as well as the right to information,⁴⁹ are stipulated in Art. 20 of the 1978 [Spanish Constitution](#). Freedom of speech is specifically protected in cyberspace as well, in Art. 85 of the 2018 Organic Law on Data Protection and Guarantee of Digital Rights,⁵⁰ which, as an "organic law" has a higher constitutional standard (somewhat similar to Israel's "basic laws"). Art. 20 §2 of the constitution stipulates that exercising these rights cannot be limited by prior censorship. Such censorship by a public authority or official constitutes a criminal offense according to section 538 of the Spanish Criminal Code. The term "prior censorship" has been interpreted broadly by the Constitutional Court of Spain, in order to minimize all types of prior censorship liable to restrict the rights accorded by Art. 20.⁵¹ It appears that deleting comments in social media may be bound by these constitutional provisions, although as mentioned, at the time of writing, the issue has yet to be brought before the Spanish courts.

Official Spanish agencies have published several guidelines related to the policy of blocking out social media users by public officials. For example, the autonomous community of Castile and León published a guide for the usage of social media, instructing the admins of public authorities on how to manage public accounts with regard to public contacts.⁵² As a general rule, it was determined that no citizen comments were to be deleted, and no critical users blocked out, unless the social media's terms of use had been violated. Blocking out users would be permitted in cases of repeated violations by the user, or disrespectful conduct, or any intervention in the account administration – in those cases, users could be blocked even without prior notice. The guidelines also include a strategic recommendation to keep an updated list of profiles to be monitored and followed in cases of frequent mendacious or

⁴⁶ Jaime Rubio Hancock, "[¿La Moncloa tiene derecho a bloquearte en redes sociales?](#)", El País Verne (25 May 2018); Carlos Del Castillo, "[Atención, políticos: la sentencia contra los bloqueos de Trump en Twitter](#)" "es exportable a España", El Diario (May 24, 2018).

⁴⁷ *Id.* See also Noel Ceballos, "[Por qué ningún político tiene derecho a bloquearte en Twitter](#)", GQ Espana (May 24, 2018).

⁴⁸ Defined as the freedom "to freely express and disseminate thoughts, ideas, and opinions".

⁴⁹ Defined as the right "to freely communicate or receive truthful information by any means of dissemination".

⁵⁰ [Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales](#).

⁵¹ Decision [STC 52/1983](#), by the Constitutional Court of Spain (June 17, 1983).

⁵² Junta de Castilla y Leon, [Guía: Usos y Estilo en las Redes Sociales](#).

malicious comments. Similar guidelines were also published by the Catalonia autonomous community that recommended that admins avoid blocking tweeters unless they had offensive or pornographic avatars that could be offensive if included among the followers of a public authority’s account.⁵³ Despite the importance of these local government regulations, or rather guidelines, as mentioned, we have found no national guidelines, nor content-blocking guidelines dedicated specifically to elected officials in Spain.

3. Types of Existing Limitations in Social Media and Considerations for Applying Them

3.1 Potential types of limitations⁵⁴

The table below details various options of limiting contents in social media, and the way they are applied in the four major social media typically used by Israeli elected officials.

Blocking users

Terms of Use	Facebook	Instagram	Twitter	TikTok
Can users block others out?	Yes	Yes	Yes	Yes
When users are blocked, are some functions still accessible to them?	No, but they still maintain some presence in the form of previous posts and contents shared by common friends	No, but they may still be exposed to the blocker, e.g., viewing “likes” and comments by the blocker in posts shared by public accounts or ones followed by the blocker. Conversely, previous posts and likes are also erased from the blocker’s account.	No, but if the account refers to the blocker, the blocker will be exposed to the tweet.	No
Is the user notified of the blocking?	No	No	No	No
Can an external user (not the account holder) view how many users have been blocked out and identify them?	No	No	No	No
Is there a time limit on the blocking, or is it up to the blocker to decide?	Up to the blocker to decide	Up to the blocker to decide	Up to the blocker to decide	Up to the blocker to decide

⁵³ Generalitat de Catalunya, [Guia de usos y estilo en las redes sociales de la Generalitat de Catalunya](#).

⁵⁴ This section was written with the help of Mr. Luke Schwartz, an institute intern.

Preventing users from commenting

Terms of Use	Facebook	Instagram	Twitter	TikTok
Can users block others only from commenting in their accounts (without blocking them completely)?	Can limit comments only for friends and friends of friends	Yes	Can limit comments only for followees or specified individuals	Can limit comments only for friends
Can comments be blocked based on keywords?	Yes	Yes	No. Keywords may be blocked out of your feed, but not out of comments.	Yes
Is the user notified of the restriction?	No	No	No	No
Can an external user (not the account holder) view how many users have been restricted and identify them?	No	No	No	No
Is there a time limit on the restriction, or is it within the account holder's discretion?	Up to the account holder to decide	Up to the account holder to decide	Up to the account holder to decide	Up to the account holder to decide

Deleting or removing comments

Terms of Use	Facebook	Instagram	Twitter	TikTok
Can users block or hide a specific comment?	Yes. In Facebook there's a difference between deleting and removing (when removing, it would still appear to the commenters and their friends that the comment is still posted)	Yes	Yes, a comment may be hidden	Yes
Is the user notified?	No	No	No	No
Can an external user (not the account holder) see that a comment has been removed?	In the case of "removing", no. If this option is used, the account holders and their friends would view the comment as if it is still posted	No	No	No

Additional functions

On Twitter, it is possible to "mute" a user, so that that user's tweets would no longer appear on the account holder's feed.

3.2 Circumstances when restrictions are legitimate

The various restrictions enabled by social media have been born out of the attempt to encourage “appropriate” discourse, seeing that with time, phenomena of offensive expressions against users have become increasingly frequent and intense. In addition, some contents are not protected under “freedom of speech”, as detailed above. Remarkably, in some circumstances certain restrictions may be legitimate and even necessary in order to protect the rights and wellbeing of the account holder and the public, as enumerated below:

- 3.2.1 *Calls for violent and criminal conduct*, whether directed at the account holder, another user, or a certain group. Note that it is not necessary to view criticism against the content or writer (even if couched in angry tones), or a certain incoherence of the writer as equivalent to incitement to violence that justifies blocking the comment or the commenter.
- 3.2.2 *Extreme and degrading offensiveness and violence*. Comments which include content that is inherently violent or extremely rude, to the point of degrading the account holder or another user, and the use of language so extreme and violent as to compromise the very ability of conducting a matter-of-factual and respectful discourse in public space.
- 3.2.3 *Bigotry*. This is perhaps the most complex restriction to apply, given the desire to enable a discussion that raises issues unique to a certain population group (for example, affirmative action or women’s rights in traditional societies), without using offensive motifs that associate a certain human quality or tendency with a racial, national, or gender group.
- 3.2.4 *Pornography*, whether verbal or visual.
- 3.2.5 *Recurring harassment*, defined as when a user frequently and repeatedly comments on the same post (as opposed to one who is active on the entire page), or identical comments by multiple users in a way that appears to be a coordinated automatized attack.⁵⁵
- 3.2.6 *Using the account to resonate other messages*. This occurs when a user chooses a highly popular account to deliver messages not at all relevant to its contents.
- 3.2.7 *A user who appears to be bogus*. When the commenter appears to be a bot, it is easy to block, given that the right to free speech is not extended to non-humans. Note that it is seldom easy to distinguish between bogus and real accounts, and that in any case such accounts must be reported to the platform operator.

⁵⁵ The illegitimacy concerns cyberattacks, distinguished from protests by groups and organizations whose members are active in propagating similar messages on a broad scale, so long as the content itself is proper.

In addition, note that the tools offered by the social media allow a hierarchy of responses to offensive expressions. Both the type and duration of restriction imposed on a given user may be adjusted to the intensity of the offense. In the case of elected officials, we recommend that they avoid blocking users due to a single comment, unless a recurring behavioral pattern is seen that meets any of the categories enumerated above.

3.3 The public transparency of such restrictions

This section refers to the transparency of the account holder vis-à-vis the public (even if the policy is determined by another entity). Transparency is considered essential to the conduct of an administrative authority, enabling to monitor and supervise its activity in a manner that induces trust. The issue of transparency vis-à-vis individual users upon imposing usage restrictions upon them, and vis-à-vis the entire public with regard to the policy governing such restrictions should be taken into account when formulating the account holder's policy, as detailed below. In other words, even if the account holder has adopted a policy determined by another, the responsibility for transparency with regard to this policy, and for any additional aspects of the transparency required, lies with the account holder implementing that policy.

3.3.1 The advantages of transparency

- (1) Informing the followers and commenters about the policy, so that they are able to act upon it and not be surprised if steps are taken against them for violating it;
- (2) Transparency vis-à-vis the other users, so that they are able to estimate the degree to which the contents they view represent actual comments, as opposed to being byproducts of the account holder's settings; and
- (3) Being able to monitor the account holders and make sure that they implement their own policies equitably.

3.3.2 Policy statement and periodical reports

It is advisable for account holders to issue a policy statement presenting the types of discourse and offensive expression they intend to restrict, and formulate it in a simple and clear language. If possible, it is also advisable to issue quarterly reports detailing the extent of restrictions applied. This report should include reference to the following:

- (1) Types of restrictions used;
- (2) Number of users restricted with each type of restriction;

- (3) The causes for the restrictions (racism, violence, harassment, etc.);
- (4) To the extent restrictions are time limited – the time limit(s) applied; and
- (5) Any other information on the account holder's restrictions.

It would of course be much easier if the platforms provide structured tools enabling quick and friendly presentation of these data. Even without them, however, the account holders are able to present this information in a way that would demonstrate their commitment to their own policies, as well as the extent of improper user conduct in their account.

3.4 Technological solution

We believe it is important for the companies operating the platforms to develop a technological feature or application that would streamline the management of restrictions and their transparent reporting by the account holders. Using this technology need not be mandatory, but will enable those among the elected officials who want to demonstrate their commitment to free speech to do so most transparently. Such a tool can also help researchers seeking to analyze the conduct of elected and appointed officials in social media.

We recommend that this tool include the following features:

- (1) Collecting the relevant account data, enumerated in section 3.3.2 above;
- (2) Presenting the data in the form of a link from the account of the elected or appointed official;
- (3) Enabling the exporting of these data in various format.

4. Summary

We suggest that the development and promotion of a clear policy on the blocking of users by elected official, is timely. Such a policy would contribute to greater user certainty – both those restricted and others following or viewing the account in question. The policy may vary according to the elected official's preference and discretion and be subject to the general principles discussed above. It is important for such a policy to be formulated following public dialogue.

We also believe that the companies operating the social media may contribute to this process by developing technological tools to present the account holders' policy and the extent to which they implement them to the public. Such tools, offered as a voluntary component in the platform, would be of great help to the account holders, users and researchers in the areas. We hope that this document and the attached annex will serve as a basis for dialogue and contribute to policymaking in this area.

Annex: Guidelines to Formulating a Policy on Restricting Social Media Users

This annex provides guidance for those seeking to formulate a clear policy on the blocking of social media users by elected officials. We believe that such a policy should address the following issues:

1. The policy maker

1.1. Who should be responsible for formulating the policy? The state, the political party, or the account holder?

1.2. Would it be appropriate to determine the policy based on a binding normative regulation, and in that case, on what level – legislation or ethical rules?

We believe that the more the policy is set by actors who are not the account holders, they must retain a certain level of discretion in applying their own strategy as elected officials.

2. **Type of account.** Namely, does the account have characteristics that justify referring to it as a public space, whose restriction compromises freedom of expression. Among other things, we recommend considering the following:

2.1 Who are the account holders whose accounts should be considered as part of public space?

2.2 Should the policy distinguish between accounts belonging to the public authority itself (a type on which we have not elaborated in this document) and between accounts belonging to elected and appointed officials serving within it? It is also worth asking who are the public bodies to which the policy should apply, and should it also be extended to hybrid public/private entities?

2.3 Should the policy distinguish between an elected official, an elected official serving in an official capacity, a public employee in a position of trust and a senior public official?

2.4 What are the criteria for distinguishing between “private” and “public” accounts (for example, content, number of those with access, identity of the content feeders)?

3. **Type of restriction.** It is important to distinguish between the types of restrictions, which involve different levels of violating free speech.

3.1 Distinguish between blocking users, which prevents them, in most platforms, from viewing future contents posted by the blocker, and removing a specific content, which may be seen as a specific decision regarding a specific comment.

3.2 Address the way the content has been removed: Has the use of certain words been restricted, so that the blocking is general and uniform, or has the content been removed after having been scrutinized specifically?

3.3 In the case of Facebook, consider when to delete and when to remove a comment (see reference to that difference in the tables in section 3.1 above).

Note that as opposed to the Israel State Comptroller's opinion, we believe removal is a more moderate response than deletion. Removal enables users to go on interacting with their friends, so that it violates their freedom of speech less than deletion. To the extent the blocking has been occasioned by the use of rude language, it is important for friends to acknowledge that, and be able to comment on that or block the offending users themselves. On the other hand, removal does not allow for a public dialogue on inappropriate discourse.

4. **Legitimate blocking.** What are the contents or the cases for which there would be an understanding or consensus that users should be restricted? It is important to correlate between the type of content, its intensity and frequency and the type of blocking. For example, the use of inappropriate language once is not equivalent to recurring use of violent language. See details in section 3.2 above.
5. **Publicity.** Where should the account policy be made public and how? Does it make sense to apply different policies to different social media platforms?⁵⁶ It is also worthy of consideration whether publishing a policy with regard to certain words, and detailing them, would not lead to bypassing that restriction by using other words or blurring them by misspelling them?⁵⁷
6. **Notifying the user.** Is it right and proper to inform users prior to or after restricting them, and if yes, in which cases. On the one hand, this seems reasonable, but on the other hand, if the users in questions are blocked in a manner consistent with the policy, such notification may in fact help them to continue conveying inappropriate messages by bypassing the policy.
7. **Time limits.** If an account holder has blocked a user, how long should this remain in effect, and what circumstances should be considered when deciding that question?
8. **Appeals.** Should a dedicated procedure be enacted or regulated to appeal decisions to restrict users? If so, should the appellate authority be the account holder, an external administrative authority, or a court of law?

⁵⁶ For example, it is argued that the Canadian Prime Minister does not restrict any users in his Twitter and Instagram accounts, but tends to block Facebook users in cases of violent and offensive language.

⁵⁷ The way the various platforms block certain words or expression varies, with some addressing such "misspellings" in advance. Arguably, if publishing the policy would lead to avoiding certain words, this in itself is an achievement.