

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KARIN LEUTHY and KELLI WHITLOCK)
BURTON,)
)
Plaintiffs,)
)
v.) Civil Action No. 1:17-cv-00296-LEW
)
PAUL R. LEPAGE, Governor of Maine, in his)
individual and official capacity,)
)
Defendant.)

SETTLEMENT AGREEMENT

Plaintiffs, Karin Leuthy and Kelli Whitlock Burton, (“Plaintiffs”) have brought a civil action against Governor LePage, in his individual and official capacities (“Governor LePage”). In this freedom-of-speech and right-to-petition case, Plaintiffs seek declaratory and injunctive relief under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections Four and Five, of the Maine Constitution, alleging that Governor LePage engaged in unlawful censorship of Plaintiffs through his official “Paul LePage, Maine’s Governor” Facebook page.

Specifically, the Plaintiffs allege that the Paul LePage, Maine’s Governor Facebook page is the Governor’s official page that creates a limited public forum in which they have the right to speak openly and petition the Governor without the threat of viewpoint- or content-based discrimination. In violation of those core constitutional principles, Plaintiffs allege that Governor LePage or his agents deleted Plaintiffs’ comments—which were critical of Governor LePage—and blocked them from further participation on the page, simply because he disagreed with the viewpoint or content of the comments.

Governor LePage has disputed Plaintiffs' claims and maintains that the page originated as a campaign page, that neither Governor LePage nor any state employees operate or administer the page in question, that he had no involvement in any decision to delete Plaintiffs' comments or to block them from the Paul LePage, Maine's Governor Facebook page, and that the operation of this page is private speech to which public forum analysis does not apply. The administrators of the Paul LePage, Maine's Governor Facebook page further dispute that the page was ever intended to operate as a government page, but acknowledge that through labels and other actions taken by Facebook on its own initiative, some users of the page may have been confused about its status.

The administrators of the Paul LePage, Maine's Governor Facebook Page and the Plaintiffs ("Parties") wish to resolve this matter. Accordingly, the Parties enter into the following agreement ("Agreement") as follows:

TERMS

1. Within one day of effective date of this Agreement, the administrators of the Paul LePage, Maine's Governor Facebook page shall unblock the Plaintiffs, enabling the Plaintiffs to post comments and/or reactions, and to otherwise interact with the Paul LePage, Maine's Governor Facebook page.
2. As of the effective date of this Agreement, the administrators of the Paul LePage, Maine's Governor Facebook page shall cease to delete any comments or reactions or to block any user for any reason relating to the content or viewpoint of the comment, reaction, or other user interaction, other than as provided in paragraph 3.
3. Nothing in this Agreement shall limit the administrators of the Paul LePage, Maine's Governor Facebook page from following a policy of deleting comments that contain

threatening, scandalous, discriminatory, vulgar, violent, libelous, defamatory, or pornographic material, or from blocking users who post such threatening, scandalous, discriminatory, vulgar, violent, libelous, defamatory, or pornographic comments on the page.

4. Within seven days of the effective date of this agreement, the Plaintiffs, through counsel, may provide the administrators with the identity of any other individuals who believe they are currently blocked from the page. To the extent possible, the information provided shall include the Facebook profile name and the date, if known, that the individual was blocked. The administrators shall take reasonable steps within seven days of receipt of those identities to determine whether the individuals are in fact blocked. If the page administrators determine the individual was blocked for the content or view point of their posts (and not for posting comments that were threatening, scandalous, discriminatory, vulgar, violent, libelous, defamatory, or pornographic), the page administrators will unblock those users and notify the Plaintiffs' counsel of their determination. Unblocking of any individuals shall not constitute an admission by the administrators of the page that any decision previously made was unlawful or improper.

5. The obligations set forth in paragraphs 1, 2 and 4 above shall cease on January 2, 2019, when Governor LePage's term in office expires.

6. The Plaintiffs may use their own Facebook pages, other social media, or other means of communication, to attempt to identify other individuals who may have been blocked from the Paul LePage, Maine's Governor Facebook page because of the viewpoint or content of their interactions on the page.

7. Within one day of the effective date of this Agreement, the administrators of the Paul LePage, Maine's Governor Facebook page shall place notice of this Agreement on the page with a link to its contents that shall include the following: "The administrators of this page have

settled a legal dispute asserted in *Leuthy v. LePage*, Docket No. 1:17-00296-LEW (D. Me.). Facebook users who believe that they have been wrongly blocked from this page may contact Facebookcase@aclumaine.org with their Facebook user names by [date], to request reinstatement under the terms of the settlement.” The date to be inserted in this message shall be the date six days after the effective date of this Agreement.

8. As used in this agreement, the phrase “administrators of the Paul LePage, Maine’s Governor Facebook page” refers to individuals who are listed as “Admin” on the Paul LePage, Maine’s Governor Facebook page. The individual signing this agreement on behalf of the administrators of the Paul LePage, Maine’s Governor Facebook page represents that he or she is authorized to sign this Agreement on behalf of the administrators of the Paul LePage, Maine’s Governor Facebook page, and to bind them to the terms of this Agreement.

9. At any time through noon on January 2, 2019, if Plaintiffs or their counsel believes that the administrators of the Paul LePage, Maine’s Governor Facebook page are not complying with this Agreement, they shall notify the undersigned below and, if the situation does not require immediate and emergent resolution, the Parties shall confer within 72 hours to try to resolve any differences without judicial intervention.

10. Neither this Agreement nor anything contained herein shall constitute an admission by the administrators of the Paul LePage, Maine’s Governor page of liability for any of the claims in the above-captioned lawsuit.

11. Within ten days of the effective date of this Agreement, after the administrators of the Governor LePage, Maine’s Governor Facebook page have completed the actions set forth in paragraphs 1, 4, and 7, Plaintiffs shall file a motion asking the Court to dismiss the case against

Governor LePage without prejudice, in the form attached hereto as Exhibit A, which has been agreed to with Governor LePage's counsel.

12. The provisions of this Agreement embody and reflect the entire understanding of the Parties and there are no representations, warranties, or undertakings other than those expressed and set forth in this Agreement. The provisions of this Agreement shall not be modified or amended in any way except by writing signed by all parties.

13. The effective dates of this agreement shall be the latest date upon which it is executed by of the Parties set forth below. The agreement may be executed in counterpart.