

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**RICHARD L. RYNEARSON,**

**Plaintiff**

v.

**CHIEF MASTER SERGEANT JOANNE  
S. BASS, in her official capacity,**

**Defendant.**

**COMPLAINT  
(For injunctive and declaratory relief; violation of First Amendment rights)**

1. This case is about the right to criticize the policies of a government agency in an online public forum without being censored. The office of the Chief Master Sergeant of the Air Force (“CMSAF”) established an official Facebook page years ago (“CMSAF Page”), designated with the tag “@CMSAFOfficial” and categorized as “Government Official,” which invites public comment and discussion on matters of public concern.

2. The CMSAF Page is an important forum for the expression of views and opinions about the CMSAF office and its responsibilities and Air Force policies. The current CMSAF, Defendant Chief Master Sergeant, JoAnne S. Bass, posts on the Page about official Air Force business and events. Facebook users are entitled, unless prevented by Chief Bass, to comment on these posts. Any member of the public (including those without a Facebook account who, though unable to comment, can nonetheless view the CMSAF Page) are thus able to review and consider the viewpoints—often competing—expressed on the CMSAF Page. Under governing law, the CMSAF Page thus qualifies as a public forum under the First Amendment.

3. Plaintiff Richard L. Rynearson is a blogger who has often written about United States Air Force culture and policy, sometimes critically. In November 2020, he made a comment critical of Air Force policy on a post by Chief Bass. After the comment engendered a substantial amount of discussion, Chief Bass, alone or in conjunction with members of a Public Affairs team under her supervision, deleted Plaintiff's comment from the CMSAF Page and banned Plaintiff from being able to comment again on that page.

4. Defendant thereby impermissibly censored Plaintiff based on the content of his speech and his viewpoint. Plaintiff respectfully requests that the Court enter judgment declaring that Defendant's continuing exclusion of Plaintiff from the CMSAF Page violates the First Amendment of the U.S. Constitution, enjoining Defendant from engaging in unlawful censorship of comments, and mandating that Defendant restore Plaintiff's comment and ability to comment on the CMSAF Page.

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201–2202.

6. Venue is proper in the Eastern District of Virginia under 28 U.S.C. § 1391(e)(1) because Defendant performs her official duties at the Pentagon, which is located in Arlington County within this District.

### **PARTIES**

7. Plaintiff has blogged for more than a decade about the United States Air Force, service culture, service policy, and the importance of Air Force officials following constitutional law.

8. Defendant Chief Master Sergeant JoAnne S. Bass is the Chief Master Sergeant of the Air Force. She represents the highest enlisted level of leadership in the Air Force, provides

direction for the enlisted force, and represents their interests to the American public and to those in all levels of government. Chief Bass advises the Chief of Staff and the Secretary of the Air Force on all issues regarding the welfare, readiness, morale, and proper utilization of more than 600,000 enlisted members of the Air Force. As such, Chief Bass is responsible for government functions within the USAF. Her governmental functions include adopting policies concerning official public social media forums and managing those forums, including the official CMSAF Page.

## **FACTUAL BACKGROUND**

### **Relevant Features of the Facebook Social Media Platform**

9. Facebook is a social media platform with approximately 2.27 billion monthly users worldwide, including approximately 214 million users in the United States. The site allows users to upload content—including text, news articles, photos, and video. It also permits other users to respond to, comment on and interact with others in relation to such content.

10. A profile is the home page of a Facebook account typically used by private individuals. It is “a place on Facebook where you can share information about yourself, such as your interests, photos, videos, current city and hometown.” *See* Facebook, What’s the difference between a profile, Page, and group on Facebook? [https://www.facebook.com/help/337881706729661?helpref=faq\\_content](https://www.facebook.com/help/337881706729661?helpref=faq_content).

11. In contrast to a “profile,” a Facebook “page” is a way for “public figures, businesses, brands, organizations and nonprofits” to “connect with their fans or customers.” *Id.*

12. The content that a Facebook user shares with friends, followers or the public is called a “post.” Posts can be made by the owner of a profile or a page. Posts may be made by other users who visit a page only if the owner of the page permits the post.

13. Facebook users can respond to or comment on posts, unless not permitted to do so. This is called “replying” or “commenting.” Replies appear immediately under the post to which

they respond, thereby reflecting the interaction of ideas or viewpoints that the Facebook page or profile is intended to foster.

14. To mention a page in a post or reply, a Facebook user types the page's tag, which is the @ symbol followed by the page's name. *See* Facebook: How do I mention people, Pages or groups in a post or comment on Facebook? <https://www.facebook.com/help/218027134882349>.

15. An owner of a Facebook page has the ability to independently control its content, separate and apart from any controls Facebook may exercise. They may hide or delete posts made by other users, individual comments on those posts, and individual replies to those comments. They may also "ban" a user from posting on the page. A banned user remains able to view posts by the owner or other users on the page, but is barred from commenting, posting, or otherwise contributing to the page, and is thereby excluded from participation in the online dialogue or debate. When a page owner bans someone from a page, the owner may choose whether or not to delete all of the individual's past comments.

#### **The CMSAF Page**

16. The CMSAF Page was created in 2013 and used for years by prior Chief Master Sergeants of the Air Force. Upon information and belief, the name of the page has been changed to reflect the name of the incumbent CMSAF each time a new person has assumed the CMSAF position.

17. Chief Bass assumed the position of Chief Master Sergeant of the Air Force in August 2020 and took over control and operation of the CMSAF Page at that time. The CMSAF Page is distinct from Chief Bass's personal Facebook profile.

18. The CMSAF Page uses the tag "@CMSAFOfficial" and is categorized as "government official." The Page states that "This is the official FB page of CMSAF JoAnne S.

Bass. Managing the page is a team effort but the words posted here are 100% hers.” The Page further states that it “exists to encourage open discussion and dialogue but should also be family friendly.” (Exhibit 1). The CMSAF Page has over 150,000 followers.

19. Chief Bass regularly and primarily uses the Facebook page to promote official Air Force events, to discuss Air Force priorities and initiatives, to share positive stories about the Air Force and Airmen she has met on tours to different bases, and in support of Air Force policy objectives such as recruiting and community outreach.

20. The CMSAF Page is accessible by the general public and no Facebook account is needed to see the content or the public discussion. Any user who has a Facebook account may comment, unless the Page has chosen to ban them from commenting, and many posts draw more than one hundred comments, and sometimes far more than that.

21. The CMSAF Page displays “rules” for the page which, at the relevant time, concluded with “We reserve the right, in our sole discretion, to terminate your access to this forum for any reason, with or without notice.” (Exhibit 2)

#### **Plaintiff’s Criticism of the Air Force on the CMSAF Page**

22. Prior to 22 November 2020, Plaintiff had made only a few comments on the CMSAF Page. There was no response from the CMSAF Page to the comments.

23. On 22 November 2020, Chief Bass posted a picture and commentary stating that she was thankful for the people who “make up the strongest Air Force in the world” and encouraging people to think about what they were thankful for. This led to multiple comments from the public on that topic (Exhibit 3).

24. Some of the public comment was lighthearted; other comments were more critical of the Air Force or CMSAF Bass’s leadership. For example, one commenter named “Barb Ridge”

responded to the post with “I am thankful that this E-9 can’t be messing with much in the way of Air Force policy because she is too busy playing on social media.” (Exhibit 4).

25. Plaintiff posted a response to Chief Bass saying he was thankful other military services were concentrating on the wartime mission so that the Air Force could concentrate on being the world’s best “Day Care, concentrating on our feelings and making sure we all feel good about ourselves.” He objected to the Air Force “concentrating on our core mission to ensure nobody is offended or feels like a victim,” and his post included a link to an image of Care Bears (Exhibit 3).

26. Chief Bass responded to Plaintiff’s comment, stating “you couldn’t be more wrong, my friend.” (Exhibit 3)

27. Several other members of the public engaged with either Chief Bass or Plaintiff on the thread created by Plaintiff’s comment. Plaintiff’s comment generated the most engagement, interaction, and public discussion of any comment on Chief Bass’ original post. Much of the discussion involved debate between Plaintiff and others regarding whether the Air Force had begun focusing too much on equity or feelings, as compared to mission accomplishment. (Exhibit 3)

28. As part of the responses, one person by the name of Aaron Degnan responded, “I would kinda like to show Rick Rynearson some of the violence and messy stuff so that he would learn to shut his mouth when he talks to CMSAF.” (Exhibit 3).

### **Defendants’ Banning of Plaintiff and Deletion of Comments**

29. Within approximately four to five hours of Plaintiff’s initial comment about being thankful for the other services’ focus on warfighting, Chief Bass or a member of her Public Affairs team acting under her supervision or direction removed Plaintiff’s ability to comment in the thread.

30. Moments thereafter, Plaintiff clicked the “message” button at the top of the Facebook page and wrote, “Chief, I just want to make sure there isn’t a glitch on your Facebook page. It is telling me that I no longer have permission to comment. If this is the case, I will be filing suit against you and the Air Force for violating the First Amendment, so I hope that is not the case.” (Exhibit 5). This was the first message Plaintiff attempted to send to the CMSAF Page.

31. Chief Bass or a member of her team then deleted Plaintiff’s comment, which automatically deleted all of the replies to it, including his own replies.

32. Shortly thereafter, Chief Bass, or a member of her team, deleted all comments by Plaintiff from the page (to include the previous few comments prior to 22 November); removed Plaintiff’s ability to comment on the Facebook page altogether; and removed his ability to message the CMSAF Page (as reflected by the “message” button at the top of the Facebook page no longer appearing) (Exhibit 5).

33. On 23 November 2020, Plaintiff attempted to message the CMSAF Page again through the thread in his Messenger history, stating, “Chief Bass, I just wanted to give you another opportunity to unblock me from the official CMSAF page to avoid me filing a lawsuit on you for using your official office to violate my First Amendment rights.” The message did not go through and displayed “This person isn’t available right now” (Exhibit 5).

34. As of the filing of this lawsuit, Plaintiff remains banned from the CMSAF Page, and thereby unable to comment, contribute or participate in any of the discussions and debates occurring on that forum.

#### **Defendant’s Reasons for Banning Plaintiff and Deleting His Comments**

35. At the time Plaintiff was blocked, the CMSAF Page expressly stated that “we reserve the right, in our sole discretion, to terminate [a commenter’s] access to this forum for any

reason.” Chief Bass, alone or with a member of her team under her supervision, deleted Plaintiff’s comments and banned Plaintiff because of the comments’ content and viewpoint.

36. No reason or justification was provided to Plaintiff for his comments being deleted or him being blocked from posting on the CMSAF Page.

37. Plaintiff’s comments did not violate any of the rules then stated on the CMSAF Page (Exhibit 2). In addition, some aspects of the rules discriminate based on content and viewpoint. *See, e.g., Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (“Giving offense is a viewpoint.”).

38. A commenter who did violate the rules, Aaron Degnan, who replied that he would like to show Plaintiff “some of the violence and messy stuff so that he would learn to shut his mouth when he talks to CMSAF,” was not banned from the CMSAF Page and did not have all of his comments on the page deleted. His reply to Plaintiff was deleted only because Plaintiff’s comment was deleted. Chief Bass could have deleted Degnan’s individual reply without deleting Plaintiff’s comment.

### **Subsequent Events**

39. On 27 November 2020, Plaintiff sent a message through the “Air Force Public Inquiries” section of the “Contact Us” page on the [www.af.mil](http://www.af.mil) website stating “I just wanted to reiterate to Chief Bass, as I have stated to her in a message on Facebook sent on 22 November 2020, that her recent decision to censor my content from the @CMSAFOfficial Facebook page, and to block my ability to comment on that page, is a violation of the First Amendment whether done by her or by a member of her staff. I request that she unblock me and return my deleted comments to the page. Doing so in a timely fashion will avoid the filing of a federal lawsuit to seek a remedy for the violation of my First Amendment rights and will mitigate any bad press



directed at the United States Air Force. I request this message be passed to Chief Bass and request a response from Chief Bass about this issue as soon as possible. Thank you.” (Exhibit 6).

40. Plaintiff checked the “Contact me: A response is requested” checkbox on the form and the website indicated the message “was successfully submitted.” (Exhibit 6). As of the date of this complaint, no response has been received.

41. At some point thereafter, the CMSAF Page updated its “rules.” The new rules provide that “[t]his is a moderated forum,” and the “Air Force alone will determine which comment will be posted.” In addition, the new rules prohibit “comments that contain abusive or vulgar language, hate speech, personal attacks, [and] comments that violate equal employment opportunity policy or are offensive to others.” (Exhibit 7).

### **FIRST CLAIM FOR RELIEF**

(Violation of the First Amendment; declaratory and injunctive relief)  
(Censorship in a public forum)

42. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein.

43. The CMSAF Page constitutes a public forum or a limited public forum under the United States Constitution.

44. At the time Chief Bass banned Plaintiff from the CMSAF Page, and deleted his comments, she was acting in her official capacity and performing governmental functions.

45. Chief Bass violated the First Amendment when she deleted Plaintiff’s comments and banned him from the CMSAF Page on account of the content and viewpoint of his constitutionally protected speech. Banning Plaintiff from commenting on the CMSAF Page infringes on Plaintiff’s First Amendment right to participate in discussions in the public forum established by the USAF and controlled by Chief Bass.

### **SECOND CLAIM FOR RELIEF**

(Violation of the First Amendment; declaratory and injunctive relief)  
(Facial challenge)

46. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein.

47. Defendant's express policy of barring comments that "contain abusive or vulgar language, hate speech, personal attacks, [and] comments that violate equal employment opportunity policy or are offensive to others" violates the First Amendment on its face and by its overbreadth.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court:

(a) Declare that by banning Plaintiff from the CMSAF Page, and by deleting his comments, Defendant violated Plaintiff's rights under the First Amendment of the United States Constitution; (b) Enter an injunction requiring Defendant to restore Plaintiff's deleted comments, unblock Plaintiff from the CMSAF Page, and prohibiting Defendant from blocking Plaintiff from the CMSAF Page or deleting his comments on the basis of viewpoint; (c) Enjoin Defendant from applying the policy that ostensibly permits Defendant to ban any content that is "offensive to others"; (d) Award Plaintiff his costs, including reasonable attorneys' fees, pursuant to 28 U.S.C. § 2412; and (e) Grant any additional relief as may be just and proper.

Dated: August 27, 2021

Respectfully submitted,

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/s/

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