

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

KYMBERLY QUICK and )  
DEBORAH MAYS-MILLER, )  
Plaintiffs, )  
v. ) No. 1:16-cv-1709  
CITY OF BEECH GROVE, )  
Defendant. )

## **Complaint for Injunctive and Declaratory Relief**

## Introduction

1. The Beech Grove Police Department maintains a Facebook page where it posts announcements, crime statistics, and news reports concerning crime in the City of Beech Grove. The City of Beech Grove also maintains a Facebook page where it posts announcements, general information, and updates on town news. Both Facebook pages are viewable by the public, and anyone with a Facebook account can post comments in response to the City and Police Department's postings. Kymberly Quick and Deborah Mays-Miller are residents of Beech Grove who are active in the community's crime watch program. Because of their interest in crime awareness and prevention, they follow the Beech Grove Police Department's Facebook page, and post comments both praising the Police Department and, on occasion, commenting on what they view as inaccurate reporting of crime statistics, among other things. Ms. Quick and Ms. Miller also post comments on the City's Facebook page. On multiple occasions, the City and the Police Department have removed Ms. Quick and Ms. Mays-Miller's comments and those of other members of the public that are critical or pose questions to the Department, or are

deemed negative or unpleasant by the City. They have also blocked Ms. Quick and Ms. Mays-Miller from posting future comments because of the viewpoint of their past postings. The City and the Police Department's policy and practice of censoring public comments on their Facebook pages on the basis of their viewpoint is a violation of the First Amendment of the United States Constitution and it must be enjoined.

### **Jurisdiction, Venue, and Cause of Action**

2. This Court has jurisdiction of this cause pursuant to 28 U.S.C. § 1331.
3. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201, 2202.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
5. Plaintiffs bring their cause of action pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

### **Parties**

6. Kymberly Quick is an adult resident of the City of Beech Grove, Indiana.
7. Deborah Mays-Miller is an adult resident of the City of Beech Grove, Indiana.
8. The City of Beech Grove is a municipality located in Marion County, Indiana, which, among other things, is responsible for the operation of the Beech Grove Police Department.

### **Factual Allegations**

9. Approximately three years ago, the Beech Grove Police Department ("BGPD") created a Facebook page, where, among other things, it posts announcements concerning reported

crimes and police response, local news reports, and crime statistics. Pictures and links to news articles and other Facebook pages often accompany the text of BGPD's post.

10. In January of 2016, the City of Beech Grove also created a separate Facebook page for the City, where it could post announcements, information, and news concerning the City more generally.
11. Both the BGPD and City's Facebook pages can be viewed by the public and anyone with a Facebook account can post a comment in response to BGPD and the City's posts, unless the user is blocked by BGPD or the City from posting comments.
12. A Facebook user can respond to a BGPD or a City post by writing a comment or posting one of six graphic icons provided by Facebook representing a reaction by the user (*e.g.*, a thumbs-up icon indicating that the user "likes" the post). Both types of responses are viewable by the general public.
13. Facebook users can also post comments in response to other user comments.
14. BGPD and the City post new items most days, and sometimes multiple times a day. Each post can attract considerable attention, ranging from thirty to well over a hundred written comments and icon responses.
15. BGPD maintains a "terms of use" policy that is accessible from the BGPD's Facebook page.
16. According to the policy, "[a]ll City of Beech Grove social media content is subject to monitoring" and "[u]ser-generated posts will be rejected or removed, and the user could be blocked, when the content of a post:"
  - Contains obscenities or offensive terms.
  - Is threatening, harassing, inflammatory, or discriminatory.
  - Contains personal identifying information or sensitive personal information.

- Includes personal attacks.
- Incites or promotes violence or illegal activities.
- Contains information that could reasonably compromise public safety.
- Advertises or promotes a commercial product or service, or any entity or individual.
- Promotes or endorses political campaigns or candidates.
- Is off-subject or out of context.
- Apparent spam will be removed.
- We do not allow repetitive posts.
- We do not allow comments which may interfere or inhibit / compromise current investigations, police tactics, and the safety of police staff and officers.
- We do not allow posts or comments that contain any external links.
  - No "trolling"
- By posting or commenting you agree to our terms of use. You participate at your own risk, taking personal responsibility for your comments, and your username and any information provided.

17. Kymberly Quick is a resident of Beech Grove and is an active member of the Beech Grove Crime Watch, an unincorporated group of Beech Grove residents.

18. The Beech Grove Crime Watch focuses on raising community awareness and crime prevention. Some of its activities include maintaining a telephone tree to alert neighbors to potential criminal activity and conducting burglary prevention demonstrations, among other things.

19. Ms. Quick also follows and actively posts comments on the BGPD Facebook page.

20. Often Ms. Quick's comments consist of simply "liking" a BGPD post or commending officers for doing a good job.

21. Occasionally, Ms. Quick posts comments that raise questions or comments related to a BGPD post.

22. On October 2, 2015, for example, the Mayor of Beech Grove, Dennis Buckley, posted a comment in response to a BGPD arrest stating, "Another job well done by BGPD. Just received the August report, crime reporting down 9.6% from August 2014."

23. In response to Mayor Buckley's comment, Ms. Quick wrote:

Mayor Buckley, wonderful to see you on Facebook. I have a few questions. I am looking over the Aug 2015 Police Department numbers for our next Beech Grove Crime Watch Meeting. Part I Crime in regards to violent cases up by 29.4% (this includes assaults, homicides, rape, & robbery). The total Part 1 Crime (which included arson, burglary, larceny, stolen vehicles, and violent crimes) are up 9.4%. This is from Aug 2014 – Aug 2015. However, Part II Crime (drug cases, vandalism, misc) shows down, -30.2%. Just looking over the Beech Grove Community sites and District Crime Watch pages, I cannot comprehend how this number could be down. Is it just that citizens are refusing to file reports, is it police not filing reports because of a criteria not being met, or what? And what exactly does the category "drug case" under this category Part II Crimes signify...what does this mean and include? I know from listening to others that drugs and vandalism have been quite rampant in our City. Please provide some insight into this. I also noticed on the 2014 Police Department Annual Report that it states that Violent Crime in Beech Grove increased by 18% compared to 2013. Also on the 2014 annual report it was stated that total Part I Crime increase by 15% over 2013. I look forward to your responses in regards to my questions.

24. Shortly after Ms. Quick posted her comment, BGPD removed it. Ms. Quick received no explanation for why her comment was removed.

25. On May 2, 2016, the day before the Indiana primary election, Ms. Quick responded to a BGPD post concerning reports that signs supporting Donald Trump for President were being stolen from people's yards. One of these incidents had been recorded on video and posted on the internet. The BGPD post stated:

Information: The Political Sign Controversy is actually not an issue. We have spoken to the young lady who took the video. The video was taken as she walked home with friends. The sign was placed back into the yard after the video was taken. On an unrelated note, the BGPD detectives recovered \$116,000 worth of equipment stolen over the weekend from MacAllister Machinery. During the investigation of that case, an earlier stolen vehicle taken from the business of JL Squared was also recovered. Three arrests were made in the case.

26. Ms. Quick, who had similar signs stolen from her lawn, posted a comment asking why the stealing of political signs was not a controversy, given that it was a crime, and why in

last year's election the police actively investigated cases when signs supporting the Mayor were taken from his supporters' lawns.

27. Shortly after making her post, BGPD removed Ms. Quick's comment.
28. BGPD also permanently blocked Ms. Quick from posting future comments on the BGPD Facebook page. She knows she has been blocked because the dialogue box that appears under BGPD postings that allows a Facebook user to enter text no longer appears. Ms. Quick is also unable to "like" a posting or post an icon response. BGPD did not notify Ms. Quick of the reasons for removing her comment or for why she was blocked.
29. Ms. Quick is aware of critical comments from other users that BGPD has similarly removed from its Facebook page.
30. Deborah Mays-Miller is also a resident of Beech Grove and an active member of the Beech Grove Crime Watch.
31. Ms. Mays-Miller occasionally visits the BGPD Facebook page, particularly when there is a posting related to her neighborhood.
32. She has posted positive comments when she believes the BGPD has done a good job.
33. On more than one occasion, however, Ms. Mays-Miller has posted comments questioning BGPD's posts concerning crime statistics. Ms. Mays-Miller's comments were critical of those statistics because she believes that crime is underreported by BGPD and her comments stated as much.
34. Ms. Mays-Miller has also posted comments in the past critical of BGPD's administrative responses to resident requests.
35. On at least two occasions BGPD removed her critical comments.

36. Ms. Mays-Miller recently checked the BGPD Facebook page and realized that she has been blocked from posting comments. She did not receive any written notification from BGPD that she had been blocked or the reason why she had been blocked. She knows she has been blocked because a dialogue box that appears under BGPD postings that allows a Facebook user to enter text no longer appears. Ms. Mays-Miller is also unable to “like” a posting or post an icon response.
37. Ms. Quick and Ms. Mays-Miller also both post comments to the City’s Facebook page.
38. On June 13, 2016, for example, Ms. Quick posted a comment in response to a City post concerning a recent mass shooting in Orlando, Florida. Ms. Quick and Ms. Mays-Miller posted a series of comments to the effect of stating that terrorists were not welcome in Beech Grove.
39. Shortly after posting her comments, the City removed all comments with regard to its posting on the Orlando shootings, including those posted by Ms. Quick and Ms. Mays-Miller. Both of their accounts were also blocked from posting future comments on the City’s Facebook page.
40. Three days later, the Town posted the following:

This Facebook site was created to pass on information to you and to try to keep you informed as to what is occurring in our City. We will not entertain negative comments towards anyone, nor will we host arguments between individuals. We do not care who you are, we are trying to inform you. If you decide to make unpleasant comments we will delete you.

41. Ms. Quick and Ms. Mays-Miller both wish to continue posting comments in response to BGPD’s postings but cannot because BGPD has blocked them from its Facebook page.
42. Ms. Quick and Ms. Mays-Miller also wish to continue to post comments on both the City and BGPD’s Facebook pages without being censored because of their viewpoint.

43. At all times BGPD and the City have acted under color of state law.
44. The plaintiffs are being caused irreparable harm for which there is no adequate remedy at law.

### **Legal Claim**

45. The defendant's removal of the plaintiffs' comments on the BGPD and City of Beech Grove Facebook pages and blocking of plaintiffs' ability to make future comments violates the First Amendment of the United States Constitution, and the defendant's policy and practice of removing public comments because of their viewpoint and blocking users from future comments on the basis of the viewpoint of past postings is a violation of the First Amendment of the United States Constitution.

### **Request for Relief**

**WHEREFORE**, plaintiffs request that this Court

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare that the actions of the defendant violate the First Amendment for the reasons noted above.
3. Enter a preliminary injunction, later to be made permanent, enjoining defendants from blocking the plaintiffs from posting comments on the BGPD and City Facebook pages, from removing public comments on the basis of their viewpoint, and from blocking future users from posting comments because of the viewpoint of those comments.
4. Award plaintiffs their attorney's fees and costs pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

/s/ Jan P. Mensz

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