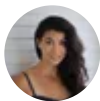


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NEWS

Wisconsin lawmaker Shae Sortwell spoke out against social media censorship. He then blocked Facebook comments after child abuse report.



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State Rep. Shae Sortwell began restricting who can comment on his professional Facebook page soon after the Green Bay Press-Gazette reported that Green Bay police sought a felony child abuse charge against him in 2013.

The decision could run afoul of the First Amendment and contradicts recent legislation Sortwell sponsored that decries censorship on social media.

"You can't hide stories just because you don't like them," Sortwell told the Assembly Committee on Constitution and Ethics on Oct. 21.

Since the Press-Gazette reported its findings on Nov. 2, Sortwell has blocked and limited comments on his official Wisconsin Assembly Facebook page, where he's considered an official government employee. His Facebook page also links to his official Assembly District website. Sortwell, R-Gibson, represents Assembly District 2, which includes portions of Brown and Manitowoc counties.

The Press-Gazette investigation found that before Sortwell was elected to the Legislature, he was referred to the Brown County District Attorney's Office for a felony charge after authorities said they found five 4-inch bruises on his child. Sortwell told officers he believed the Bible instructed him to use physical punishment as discipline, though he did not admit to abuse, according to a Green Bay police report.

The district attorney's office declined to file charges.

Senate Bill 582, written this year and co-sponsored by Sortwell, states state agency employees and state-elected officials are prohibited from "influencing or attempting to influence a social media internet site to censor, deplatform, or shadow ban users on the social media Internet site."

The language of the bill also would include federal officials: "The prohibition also applies to a U.S. senator or representative of Congress elected to his or her office in this state and to federal government agency employees present in this state."

The status of the bill is pending.

A draft of another bill that Sortwell co-wrote has not yet been approved. LRB-290 creates a civil cause of action against the owner of a social media account that restricts political or religious speech.

On the Assembly floor on Oct. 21, Sortwell also defended journalistic enterprises from "social media giants" that would bury information that the public has the right to know about.

"The American free press has been one of the country's hallmarks since its founding and, honestly, before its founding," Sortwell told the Assembly. "It has served a critical role in unearthing controversies, exposing unpopular truths about power, especially in the government."

He critiqued tech companies that he said are "purposefully tanking stories that would be harmful to government officials." He argued that social media is a public forum.

"When we share our posts with people, they can't have their cake and eat it too," Sortwell said on the Assembly floor. "It's a public forum. They should be respecting people's free speech rights."

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The Senate bill Sortwell co-authored this year would require a Wisconsin elected official to pay anywhere from \$1,000 to \$10,000 "for each occasion that the official influences or

attempts to influence a social media internet site in violation of (the law)."

It isn't clear how Sortwell limited comments from his over 10,000 Facebook followers. Sortwell's office, however, denied any constitutional violations. In an emailed statement to the Press-Gazette, his office spokesperson wrote, "The Representative's social media is in full compliance with the Constitution and the court's decision."

Sortwell and his office have not responded to further inquiries to explain his position. The limits on his official Facebook page, however, likely amount to First Amendment violations, according to Bill Lueders, president of the Wisconsin Freedom of Information Council and editor of The Progressive.

Lueders said the circumstances paralleled another case from 2019 involving the liberal group One Wisconsin Now and three Republicans: state Assembly Speaker Robin Vos of Rochester, former state Rep. Jesse Kremer and former state Rep. John Nygren.

In 2019, U.S. District Judge William Conley found the defendants — Vos, Kremer and Nygren — could not block the liberal nonprofit on Twitter.

In his 30-page opinion and order, Conley said because Twitter is a designated public forum, "there are limited circumstances in which it can restrict speech." Speech, Conley argued, cannot be excluded for its content unless "strict scrutiny" informs extraordinary circumstance. Conley concluded that "content-based restrictions are impermissible and in violation of (One Wisconsin Now's) First Amendment rights." He ordered Assembly representatives to unblock the nonprofit as part of the appropriate relief.

Christa Westerberg, a partner at Pines Bach, LLP, who specializes in open government law, and Aaron Dumas, an associate at Pines Bach's civil litigation practice group, co-wrote an article last year for the State Bar of Wisconsin on the topic. They noted that social media websites are public forums by any other name.

"A key feature of social media's role in public discourse, and in First Amendment litigation, is its interactivity," Westerberg and Dumas wrote. "Social media sites are not simply one-way communication tools that allow the government to broadcast its messages; rather, they allow members of the public to engage with the government and with each other."

Eric Drzewiecki, a member of the Green Bay Board of Review who writes opinion pieces as a conservative, sees Sortwell's move to shut down Facebook comments as an abandonment of his values, evidence that the legislator has shifted gears into "survival mode."

"Sortwell's commitment to the First Amendment seems to have evaporated at the first hint that First Amendment powers could be used against him," Drzewiecki said.

After Sortwell restricted comments, a citizens group associated with the Greater Green Bay Society of the Llama formed a Facebook page called "Tell Shae Sortwell." The page displays screenshots of the lawmaker's recent posts to allow for full public forum.

"Until Wisconsin Assembly Representative Shae Sortwell restores his constituents' legal rights to comment on his *official* state Facebook page, we will port his new posts here to allow everyone to openly comment," says a message on the new Facebook group's page.

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