

September 23, 2024

Via e-mail

Harvey G Stenger
Binghamton University President
president@binghamton.edu

Ryan Yarosh
Senior Director of Media and Public Relations
Division of Communications and Marketing
ryarosh@binghamton.edu

RE: Binghamton University's restriction of critical Facebook comments and blocking of Evan Oakley

Dear Mr. Stenger:

I am counsel for Evan Oakley and People for the Ethical Treatment of Animals, Inc. ("PETA"), and I write on their behalf. On September 6, 2024, Binghamton University announced that it would be bringing a live binturong, also known as a bearcat, named Bing to multiple community events. As the [post](#) announcing Bing on Binghamton's website acknowledges, bearcats are wild animals native to Asia who spend most of their time in treetops. After PETA alerted its followers to Binghamton's decision, community members—including Mr. Oakley—and others commented on the [Binghamton University Facebook Page](#) to voice their opinions concerning the needless distress that bringing Bing to community events with large gatherings of humans would cause.

Binghamton appears, as part of its response to this outpouring of concern about Bing's welfare, to have deleted a number of such comments from its Facebook page and blocked Mr. Oakley completely from posting, commenting, or even viewing the Binghamton Facebook page.

Binghamton's deletion of comments expressing concern for Bing, along with the blocking of Mr. Oakley, violates the First Amendment to the U.S. Constitution. It is clearly established that government authorities, including publicly funded universities, have opened up a public forum when they operate a Facebook page with open access and commenting. *See, e.g. Davison v. Randall*, 912 F.3d 666, 682-87 (4th Cir. 2019), *as amended* (Jan. 9, 2019). Regardless of whether Binghamton's Facebook page is a traditional public forum or a limited public forum, it is prohibited from engaging in viewpoint discrimination. *Id.* at 687.

Binghamton committed unconstitutional viewpoint discrimination when it deleted comments on, and restricted Mr. Oakley's access to, its official social media page because it did not like the content of the comments—criticizing its complicity in exploiting and distressing Bing—or the "motivating ideology" of the commenter. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995); *see also Davidson* at 687; *PETA v. Tabak*, 109 F.4th 627,

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

Washington
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

PETA FOUNDATION IS AN OPERATING
NAME OF THE FOUNDATION TO
SUPPORT ANIMAL PROTECTION.

ENTITIES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Switzerland
- PETA Netherlands
- PETA Foundation (U.K.)

638 (D.C. Cir. 2024). In *PETA v. Tabak*, a case handed down this summer by the D.C. Circuit, the court held that the NIH’s moderation of social media comments critical of animal testing was a violation of the First Amendment. *Id.* As *Tabak* explains, government entities must “tread carefully when enforcing any speech restriction to ensure it is not viewpoint discriminatory and does not inappropriately censor criticism or exposure of governmental actions.” *Id.* This includes attempts to hide behind rules against “off-topic” content that cannot be reasonably enforced without guidance supplying explicit definition. *Id.* at 637.

Both Mr. Oakley and PETA, as well as its employees and supporters, have the right and an ongoing interest in being able to post and view comments concerning Bing’s well-being. For these reasons, Mr. Oakley and PETA demand Binghamton University immediately cease deleting or restricting comments on its Facebook page critical to its use of Bing and restore Mr. Oakley’s ability to comment on the page and Binghamton’s posts.

Please provide your assurance that Binghamton University will do so no later than October 7, 2024. Absent Binghamton’s cessation of its illegal conduct, Mr. Oakley and PETA are prepared to take legal action to enforce their constitutional rights, and the rights of PETA’s members and supporters.

Thank you for your attention to this matter.

Sincerely,

Kelsey McLean

Kelsey McLean
Litigation Counsel
PETA Foundation
kmclean@petaf.org