

**EMAIL THREAD BETWEEN ALABAMA SEC. OF STATE JOHN MERRILL,
HIS DEPUTY CHIEF OF STAFF/COMMS DIRECTOR JOHN BENNETT,
AND BRADBLOG.COM JOURNALIST BRAD FRIEDMAN**

[NOTE: Regarding references in this conversation to the Twitter conversation which resulted in Merrill blocking Brad Friedman, the bizarre, reconstructed Twitter thread of that conversation can be found here: http://bradblog.com/Docs/BradFriedman_JohnMerrill_TwitterThreadReconstructed_123017.pdf]

From: Brad Friedman
Sent: Thursday, May 24, 2018 12:11 PM
To: 'John.Merrill@sos.alabama.gov'
Cc: 'David.Brewer@sos.alabama.gov'; 'John.Bennett@sos.alabama.gov'
Subject: REQUEST FOR COMMENT

Secretary Merrill -

I assume you have likely heard about the federal court in New York this week [finding](#) that Donald Trump was in violation of the U.S. Constitution for blocking followers on Twitter.

As you have blocked a number of election attorneys (as well as myself, a journalist), I'd appreciate any comment you may have on the court ruling, and if you intend to unblock me and the others from your Twitter account?

Will be covering this matter on today's radio program at 4:00pm ET, and would like to be able to include your response in our coverage, if possible.

Thank you,
 Brad

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Brad Friedman - Publisher/Editor, [The BRAD BLOG](#), since 2004
WEB: <http://www.BradBlog.com> **TWITTER:** [@TheBradBlog](#) **FACEBOOK:** [TheBradBlog](#)
RADIO: [The BradCast](#), nationally syndicated daily | [Green News Report](#), nationally syndicated twice-weekly

From: Bennett, John [mailto:John.Bennett@sos.alabama.gov]
Sent: Thursday, May 24, 2018 12:59 PM
To: Brad Friedman
Cc: Merrill, John; Brewer, David
Subject: Re: REQUEST FOR COMMENT

Brian,

From Secretary Merrill:

"I will continue to use my social media forums the way that I have utilized them in the past. They will not be utilized by other users to express their political views or promote their agendas. If someone is unable to reach me through social media they are always welcome to contact me at the office at <XXX-XXX-XXX> or on my cell phone at <XXX-XXX-XXX>. That is the most efficient and preferred way to contact me."

Please let me know if you have any questions questions or concerns.

Thank you,
 John Bennett
 Sent from my iPhone

[After receiving the above statement from Sec. Merrill, I shared it in full on Twitter, with the phone numbers redacted as a courtesy, and then on air on [The BradCast \(5/24/2018\)](#) with my guest that day, Joshua A. Douglas, a University of Kentucky College of Law election professor who was also blocked by Merrill on Twitter last year after informing him that blocking people from an account he used for official business was likely in violation of the Constitution.]

From: Brad Friedman
Sent: Thursday, May 24, 2018 4:37 PM
To: 'Bennett, John'
Cc: 'Merrill, John'; 'Brewer, David'
Subject: RE: REQUEST FOR COMMENT

Thank you, John. The Secretary's statement seems to be in direct contradiction with this week's federal court ruling, and calling Twitter "**my** social media forum" that others may not use to express "**their** political views or promote their agendas", is disturbing on several levels, including the fact that neither myself, nor noted Constitutional attorneys Josh Douglas or Rick Hasen were expressing either a political view or agenda, to my knowledge before being blocked by Sec. Merrill.

Nonetheless, I shared the response in full (sans phone numbers) on today's show, and would welcome any further clarification as to how that response aligns with either the federal court ruling or the U.S. Constitution's First Amendment, if you or the Secretary care to offer it.

Best,
Brad

From: Merrill, John [mailto:John.Merrill@sos.alabama.gov]
Sent: Thursday, May 24, 2018 8:52 PM
To: Brad Friedman
Cc: Bennett, John; Brewer, David
Subject: Re: REQUEST FOR COMMENT

I know you have a problem and your problem is bigger than one that I have the ability to solve.

I didn't ask you to remove my phone numbers. I gave them to you so you and your readers would have a way to reach me. That's why I shared them with you and others on Twitter. You have a right to speak to me and I have a right to determine how I receive your message.

You don't have a right to speak to me or communicate with me anyway you want to.

Let me make this clear – I will not be unblocking anyone that I have blocked.

I'm not preventing anyone from communicating with me but they're not communicating with me on Twitter if they've been blocked by me.

If you have any questions you can call me at 334-242-7200 at the office or on my cell phone at <XXX-XXX-XXX>.

Sent from my iPhone

From: Bennett, John [mailto:John.Bennett@sos.alabama.gov]
Sent: Friday, May 25, 2018 9:18 AM
To: Merrill, John; Brad Friedman
Cc: Brewer, David; Beal, Brent; Helms, Clay
Subject: RE: REQUEST FOR COMMENT

Brad,

Please let me know when you would be interested in hosting Secretary Merrill on your show to fully engage your first amendment right!

I attempted to contact your Public Relations representative via phone yesterday but she would not connect me to anyone on your team nor was she aware of the BradBlog or anyone names Brad Friedman so that we could arrange a discussion live on the air.

Please contact me at your earliest convenience so that we can continue dialogue on this issue.

Thank you,
John Bennett
Deputy Chief of Staff/Communications Director
<XXX-XXX-XXX>

From: Brad Friedman
Sent: Friday, May 25, 2018 11:00 AM
To: 'Bennett, John'
Subject: RE: REQUEST FOR COMMENT

I don't have a Public Relations representative, so I'm not sure who you spoke with. But you are welcome to call me directly at <XXX-XXX-XXX>.

That said, we are off for the holiday weekend until next Tuesday. If you'd like to call and discuss then, I'd be happy to, of course.

Brad

From: Brad Friedman
Sent: Friday, May 25, 2018 11:27 AM
To: 'Merrill, John'
Cc: 'Bennett, John'; 'Brewer, David'
Subject: RE: REQUEST FOR COMMENT

What "problem" is it that I have, sir? Please feel free to let me know.

As a common courtesy, I had removed your phone numbers before publicly publishing your remarks or sharing them on radio. You've blocked me on Twitter, so I don't know what you've "shared...on Twitter". Nonetheless, I was trying to respect your privacy.

I do know, however, based on your remarks below, that you haven't taken to the time to read the federal court ruling finding that your behavior on Twitter is in violation of the U.S. Constitution. The "right" you are concerned about below, and how to make sure to retain it without violating the rights of others is discussed in that ruling. I recommend you read it, but that's up to you, of course.

Your seemingly self-defeating war against journalists like myself and highly-regarded election law attorneys -- all of whom have been quite polite with you, while correcting erroneous information you've offered to the public -- remains bizarre. You are welcome, of course, to let me know why it isn't, and why Judge Buchwald was wrong in her findings.

Please note, I will be on Holiday until next Tuesday, so if I'm unable to answer your responses right away, I hope you'll understand.

Best,
Brad

[Shortly after sending that note, I did, in fact, hit the road. Sometime later, that same day, while I was on the road for the long holiday weekend, Merrill called and left a brief voice mail, asking me to call him back. Before I could do so, he sent another email (which I wouldn't receive for several days, as I was on the road and not checking email), as seen below...]

From: Merrill, John [mailto:John.Merrill@sos.alabama.gov]
Sent: Friday, May 25, 2018 2:01 PM
To: Brad Friedman
Cc: Bennett, John; Brewer, David
Subject: Re: REQUEST FOR COMMENT

I actually don't understand because you expect me and others to be available to you at all times anytime. So I've already called you and left a message. When you call me I will be happy to speak to you. But don't worry you're not going to get on unblocked and neither are the others I have blocked.

Sent from my iPhone

[After finally quickly checking my weekend email on the Monday, Memorial Day holiday, I replied to Sec. Merrill's email...]

From: Brad Friedman
Sent: Monday, May 28, 2018 12:08 PM
To: 'Merrill, John'
Cc: 'Bennett, John'; 'Brewer, David'
Subject: RE: REQUEST FOR COMMENT

As noted in my two previous messages in response to you and your staff, I was largely off the grid over the past several days for a rare holiday break, so my apologies for this delayed reply.

You have not clarified your emailed insult (about my having a "problem"), to explain what that problem is. So, some clarity there would still be very much appreciated. Does it extend to the Constitutional and election law experts who have also been blocked by you on Twitter after politely correcting your inaccurate public comments?

That is a serious query, since it was a serious charge that you offered in your email below, for some reason. So, your clarification would be appreciated.

As to the actual substance of your remark here: No, I don't "expect [you] to be available to [me] at all times anytime." I have no idea where you get that idea. I'd like to be able to read your Twitter feed, and respond to you and others, as I cover elections as a journalist, that's particularly true one week out from Alabama's primaries, where statements by its Secretary of State are of not to the public. If you choose not to respond to any one persons tweets, that is, of course your right, as the recent federal court case makes clear. It also finds that what you are doing by blocking the public is unconstitutional, even as it also argues you have no

requirement to either read, nor even see my tweets (or anybody else's), nor any requirement to respond to them, if you do not wish.

Thus, the assertions you continue to make -- here, that I "expect [you] to be available to [me] at all times anytimes", along with the other weird attacks against myself and others become more puzzling with each strange choice you make, as you dig your heels in on cutting off public access to the public Twitter forum you have otherwise chosen to use for your official work as Sec. of State of Alabama.

Brad

From: Merrill, John [mailto:John.Merrill@sos.alabama.gov]

Sent: Monday, May 28, 2018 3:37 PM

To: Brad Friedman

Cc: Bennett, John; Brewer, David

Subject: Re: REQUEST FOR COMMENT

If you want to talk to me, I would advise you to give me a call on my cell phone anytime or the office phone during work hours.

Sent from my iPhone

[Three minutes after sending that email, according to my voice mail records, Merrill called me again and left another message with his phone number for me to call back, if I wished.]

Of course, by this point, given his blocking me on Twitter to avoid public conversations, I was not inclined to have a phone conversation, preferring a written email record of the strange conversation instead.

But, on Tuesday, after I was back at work, I responded to his email...]

From: Brad Friedman

Sent: Tuesday, May 29, 2018 10:20 AM

To: 'Merrill, John'

Cc: 'Bennett, John'; 'Brewer, David'

Subject: RE: REQUEST FOR COMMENT

Again, thank you for your subsequent calls over the holiday weekend. And, again, I'm sorry I was not available while spending down time with my family.

It seems you've made your position very clear that you do not intend to unblock those you have blocked on the public Twitter forum where you use your account for public work. I had been hoping you would explain why that is and how that is not in violation of the Constitutional findings of the federal court, which also offered ways in which you could keep yourself from having to see anything you didn't want to see, while protecting the RIGHTS of your constituents and those whose work (such as journalists and election attorneys) rely on being able to cover the positions of public officials.

You haven't offered a justification for this behavior, to date -- other than you don't feel like allowing people you don't agree with to see your Twitter feed -- so I'm not sure what else I'd have to ask you on this topic. I was hoping you would explain your position here, so I could share it with listeners and readers, but you don't seem to want to do so.

Finally, as Alabama holds its primaries next Tuesday, and most of your computer tabulation systems in the state allow for the retention of all digital Ballot Images (as determined in state court during the US Senate Special Election late last year), have you

instructed Counties to turn on that feature to save all Ballot Images in Tuesday's federal primaries, so as to retain election materials for potential public scrutiny for the 22 months required by federal law?

Thank you in advance for a, hopefully, direct response to at least this last question.

Best,
Brad

[An hour or so later, now back at work, the phone rang again from an Alabama number, which I assumed was Sec. Merrill again. Instead, it was his Deputy Chief of Staff and Communications Director John Bennett.

We had a very polite conversation, in which Bennett actually seemed somewhat embarrassed by his boss's behavior.

We discussed the two key issues: Blocking folks on Twitter, as per the federal court ruling last week in the U.S. District Court in the Southern District of New York that Donald Trump (and, presumably, other public officials) was a violation of Constitutional free speech rights.

And, the original matter that resulted in Merrill blocking me on Twitter last year (along with a number of very well regarded election law attorneys and professors who were similarly blocked by Merrill after politely correcting him on points of law that he'd made following the U.S. Senate Special Election between Roy Moore and Doug Jones in December, 2017.)

Specifically, I pointed out to Mr. Bennett, that, yes, as discussed in [that Twitter thread](#) last year that resulted in me being blocked by Merrill, the majority of Alabama's ES&S computerized ballot scanners do, in fact, capture digital Ballot Images of ballots when they are scanned, and may be set by election officials to preserve all such Ballot Images, for release to the public, if there are questions about elections results. Merrill had denied, incorrectly, in December, that the AL systems, manufactured by their vendor ES&S, either captured or preserved such digital images.

Bennett was very polite -- and noted that while our conversation was quite productive, Twitter conversations can be much less so, and very frustrating.

He thanked me for the conversation, and told me he'd get back to me after checking with the vendors (ES&S) to see if I was right about the Ballot Images matter, and would also review the Federal Court ruling in NY, regarding public officials blocking Twitter followers, especially since, as I'd explained, the judge found it was permissible to "Mute" followers rather than "Block" them, thus allowing followers their Constitutional right to read the public tweets and participate in discussion about them, even if the "Muter" would not see their posts in response.

Some time after that call, Bennett followed up with an email...]

From: Bennett, John [mailto:John.Bennett@sos.alabama.gov]
Sent: Tuesday, May 29, 2018 12:54 PM
To: Brad Friedman
Cc: Merrill, John
Subject: FW: Opinion on Ballot Images

Brad,

Per our conversation I discussed the issue of digital ballot images with our legal counsel who informed me that a ruling from the court was released on May 18,2018.

I still plan to return your call regarding the twitter practices once I review that court ruling.

Thank you,
 John Bennett
 Deputy Chief of Staff/Communications Director
 <XXX-XXX-XXX>

[The email included a copy of the [AL Supreme Court's written ruling \[PDF\]](#) in response to Merrill's ex parte motion to stay the lower court ruling last December which had ordered Merrill to send emails to County election officials, asking them to turn on the software switch on their ES&S digital ballot scanners, to preserve all captured ballot images.

After getting off air and taking the time to read the ruling later that night, I responded to Mr. Bennett...]

From: Brad Friedman
Sent: Tuesday, May 29, 2018 7:56 PM
To: 'Bennett, John'
Cc: 'Merrill, John'
Subject: RE: Opinion on Ballot Images

Thanks, John. That ruling appears to be the written ruling of the December *ex parte* motion filed by the Secretary (without defendants present), simply explaining why the Supremes stayed the lower court, largely due to jurisdictional issues.

For the record, I agree with the Court on a number -- if not most -- of their points, and had made many of the same arguments to the plaintiffs on air when interviewing them both before and after the rulings.

The conversation that resulted in my being blocked by Sec. Merrill (which you can [read here](#)) was my attempt to confirm his (inaccurate) argument that Alabama's tabulation "machines do not capture or preserve the digital ballot images."

That argument is simply inaccurate, as I politely noted at the time. Most of AL's machines do, in fact, capture digital ballot images and are set, by default, to preserve write-in ballots only. The ruling from the AL Supreme Court that you sent, *confirms* that matter in several places. For example:

On December 19, after the preliminary injunction was issued and after this Court stayed the proceedings, the defendants filed in the trial court an affidavit by Mark Kelley, "Vice President for Ballot Management Services" for Election Systems and Software ("ES&S"), the vendor of the electronic voting machines. He testified that some machines in the state do not create digital images at all. Some 2,000 machines, however, do have this ability

Nonetheless, as you can read in the brief Twitter conversation from before I was blocked, the Secretary repeatedly and incorrectly argued otherwise.

He similarly blocked others for correcting his errors (eg. UC Irvine's well-respected election law expert Rick Hasen, who simply asked what legal authority the Secretary was citing when he incorrectly stated on CNN that Roy Moore could receive a "recount" under state law, so long as he was willing to pay for it. That is also in error, apparently, and should appropriately have been corrected by Sec. Merrill or your office, after his misstatement of the law on CNN on Election Night.)

As to the federal court's ruling finding public officials violate the Constitution when blocking those who are perceived to be political opponents (which is what Sec. Merrill argued I was -- and, presumably, folks like Hasen are -- in a recent email he sent me), I believe you will find I've been accurate in my arguments regarding that court's ruling as well, and that Mr. Merrill should both unblock those blocked and, frankly, apologize to the many he has inappropriately accused and/or blocked. Whenever I mention the block on Twitter, I hear from more and more folks -- attorneys, election experts, etc. -- who all say he has blocked them as well.

He is the only Sec. of State, to my knowledge, who has displayed this type of behavior, over the 15+ years I've been covering election issues.

Best,
Brad

[Now it gets really weird. In response to the above, Sec. Merrill wrote...]

From: Merrill, John [mailto:John.Merrill@sos.alabama.gov]
Sent: Tuesday, May 29, 2018 8:17 PM
To: Brad Friedman
Cc: Bennett, John
Subject: Re: Opinion on Ballot Images

You will never be unblocked. If you ever wish to speak to me you need to call me on the phone. You have my telephone numbers. You have absolutely no idea what you're talking about.

Sent from my iPhone

From: Brad Friedman
Sent: Tuesday, May 29, 2018 8:28 PM
To: 'Merrill, John'
Cc: 'Bennett, John'
Subject: RE: Opinion on Ballot Images

Okay. Thank you, Mr. Secretary. Why you wish to keep digging, I don't know.

If you should ever have evidence to share that actually SUPPORTS your continuing, inaccurate arguments, I'm sure you'll share it with me. You have not done so on Twitter nor via phone nor via email, for some reason. If I have "absolutely no idea what [I'm] talking about", I'd think you'd be able to support that argument in any way, shape or form. You have repeatedly failed to do so.

Your Dep. CoS and Comms Director John Bennett, however, *has* been much more polite *and* has kindly shared actual evidence (eg. from the AL Supreme Court ruling he sent) which supports *exactly* what I said on Twitter originally, resulting in your inappropriate (apparently unconstitutional) and self-defeating blocking of me.

Brad

[Before it appears that he read that note, he followed up his previous one...with another...]

From: Merrill, John [mailto:John.Merrill@sos.alabama.gov]
Sent: Tuesday, May 29, 2018 8:22 PM
To: Brad Friedman
Cc: Bennett, John
Subject: Re: Opinion on Ballot Images

You are like the Monday morning quarterback sits back and tells the head coach and the quarterback and the defensive coordinator in the middle linebacker all the mistakes that they made in the game on Sunday. However you have never been in the arena. I refer you to Teddy Roosevelt epic poem. You have never played the game, you're only a spectator. You have never administered an election, you have know no understanding of Alabama's election laws. Your opinion is irrelevant to us and your commentary is neither interesting or useful to us. We have no interest in hearing from you for a multitude of reasons. You will never be unblocked.

Sent from my iPhone

From: Brad Friedman
Sent: Tuesday, May 29, 2018 8:32 PM
To: 'Merrill, John'
Cc: 'Bennett, John'
Subject: RE: Opinion on Ballot Images

Good god, man. What is *wrong* with you?

As (repeatedly) noted, I'll wait for your evidence -- ANY evidence -- to support ANY of the arguments in question.

Until then, the ridiculous insults are much appreciated.

Brad

From: Merrill, John [mailto:John.Merrill@sos.alabama.gov]
Sent: Tuesday, May 29, 2018 8:37 PM
To: Brad Friedman
Cc: Bennett, John
Subject: Re: Opinion on Ballot Images

Look, Brad, you're probably a nice enough guy. But you have never had any experiences in elections. You have absolutely no idea what you're talking about. You simply read things in magazines and books and think you're an expert. Sorry, you probably also use the Internet which as we all know is infallible. I'm sure you've never even touched a piece of election equipment except when you were casting a ballot.

Before you begin to comment on things it would be nice to have had some real life experiences instead of living with your mother and having someone answer the phone that is supposedly your public relations person that doesn't even know who you're talking to or what you're engaged in.

This will be the last communication that you have with me. I just want to make sure you understand where I stand and that is where you will never be. I am a nationally recognized expert in the field of elections. I did not seek this position out, that designation has been given to me for the successes we have experience in our state.

I'm sorry that you cannot understand that. Maybe you should try to get a job with an elections program system and then you could contribute to the discussion as an expert in the field.

Sent from my iPhone

From: Brad Friedman
Sent: Tuesday, May 29, 2018 8:49 PM
To: 'Merrill, John'
Cc: 'Bennett, John'
Subject: RE: Opinion on Ballot Images

Thank you. You don't sound unhinged at all, Mr. Secretary.

I'm sorry you continue to be wrong about the voting systems you use in Alabama (according to your own vendor and the state Supreme Court) and wrong about your obligations as a public official (according to the U.S. District Court in the Southern District of New York) and wrong about state recount laws (according to several highly-regarded election law experts.)

As to your nearly-sociopathic and wildly bizarre attacks (that "mother" below was really something!) against a journalist with some 15 years covering elections and voting systems, well, that's between you and your god and whoever else may take an interest in your unhinged behavior as a public official.

Best,
Brad

[As of 5/30/2018, that was the last I've heard from either Sec. Merrill or his Deputy Chief of Staff/Comms Director John Bennett.]