



Georgia

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January 23, 2018

Congressman Barry Loudermilk  
9898 Highway 92, Suite 100  
Woodstock, GA 30188

Via Certified Mail

Re: Censorship on Your Government Facebook Page

Dear Congressman Loudermilk:

Our democracy thrives when people can freely criticize elected officials—including yourself—so that the people you answer to can best determine whether you should remain in office. The American Civil Liberties Union of Georgia (ACLU-GA) writes on behalf of one of your constituents, Robert Thompson, who has been blocked indefinitely from posting any comments on your official government Facebook page (“Congressman Barry Loudermilk, @RepLoudermilk”), which is open to public comment. *See Exhibit A.*<sup>1</sup>

We are concerned that you have blocked Mr. Thompson for unconstitutional reasons, especially since, according to Mr. Thompson, you have not provided any explanation for blocking him. Mr. Thompson has written your office repeatedly to request that you allow him to post comments on your government Facebook page as other constituents are able to do, and he states that your office has yet to explain its reasons for blocking him indefinitely.

Because your government Facebook page has been opened for any member of the public to post comments, it is considered a “limited public forum.” *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983). And when a limited public forum has been created, it is unconstitutional for the government to discriminate against certain speakers because of the viewpoints they express. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). Though legal challenges to censorship on government social media sites are a relatively new phenomenon, at least one court has already found that targeted censorship on government Facebook pages open for public comment is unconstitutional. *See Davison v. Loudon County*, 2016 WL 4801617 (E.D. Va. Sept. 14, 2016) and 2017 WL 58294 (E.D. Va. Jan. 4, 2017). Indefinitely blocking a constituent from posting comments on your government Facebook page in this manner is like forever banning a constituent from attending all town hall meetings, without explanation, until you no longer occupy public office.

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<sup>1</sup> Exhibit A is a screenshot taken from Mr. Thompson’s phone on January 18, 2018, the date of the post pictured. There is no “Comment” option listed for Mr. Thompson, even though it appears for other members of the public.

We also have concern about your written policy concerning Facebook posts, posted under the “About” section of your government page. *See* Exhibit B. Your office claims the right to delete any comment that contains “hateful language, name-calling, . . . personal attacks, or other obviously inappropriate comments.” But debate is often heated and passionate, and the First Amendment provides the breathing room necessary for that robust exchange of ideas. *See generally* *Watts v. United States*, 394 U.S. 705, 708 (1969) (language consisting of “‘vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials’” as well as language that is “vituperative, abusive, and inexact” are all protected by the First Amendment). Any criticism of your office could be construed as a “personal attack” or “obviously inappropriate,” but criticism of government officials is the cornerstone of a healthy democracy. *See* *Roth v. United States*, 354 U.S. 476, 484 (1957) (the First Amendment “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people”); *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017) (antidisparagement prohibition is unconstitutional because “[s]peech may not be banned on the ground that it expresses ideas that offend.”).

As social media becomes more integral to the political process and public discourse, government officials must not engage in any form of viewpoint censorship in violation of the First Amendment. As the Supreme Court of the United States has recently said, “[i]t is cyberspace—the ‘vast democratic forums of the Internet’ in general, and social media in particular,” that is “the most important place[] . . . for the exchange of views” in the modern era. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

We respectfully ask that you restore the posting privileges of Mr. Thompson or provide a legal justification for why he has been blocked, undertake a review of all people whose posting privileges have been censored, and restore all of those who have been unlawfully blocked for commenting. Please notify us within 30 days in writing regarding whether you will agree to do so. We look forward to hearing from your office.

Sincerely,



Sean J. Young  
Legal Director  
ACLU of Georgia

# **EXHIBIT A**

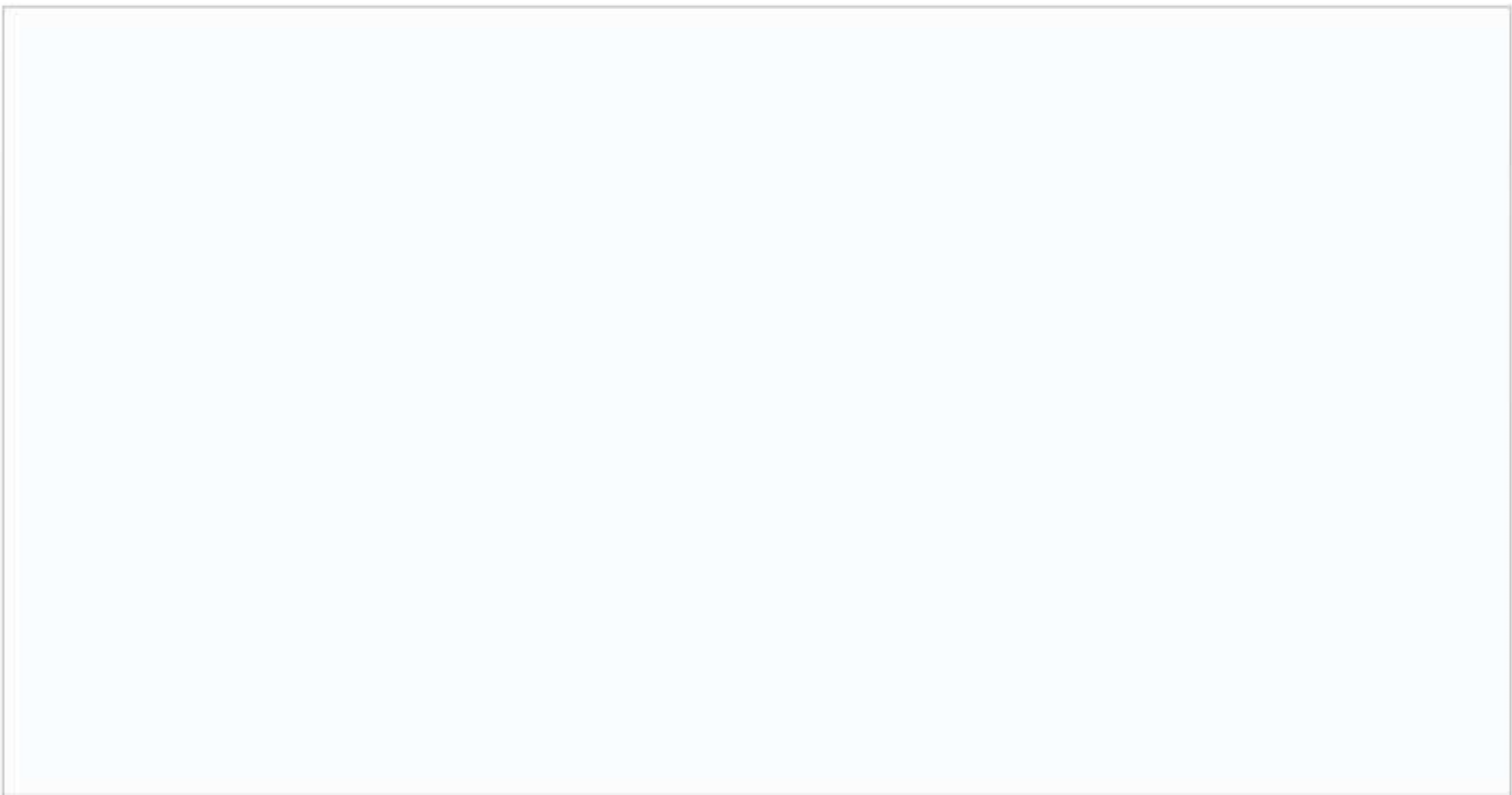


**Congressman Barry Loudermilk**



3 hrs ·

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53

103 Comments 5 Shares

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# **EXHIBIT B**



Congressman Barry...



HOME

**ABOUT**

POSTS

VIDEO

ensure all opinions are respected and encouraged, all users must adhere to the following rules:

- Absolutely no profanity, hateful language, name-calling, threats, personal attacks, or other obviously inappropriate comments will be permitted.
  - o Our page automatically filters any words deemed by Facebook as profanity.
  - o Comments deemed inappropriate or in violation of this rule may be hidden or deleted. Third party or outside links will be deleted.
- All comments must be relevant to the specific issue or subject in the post. If you have a comment or opinion about an issue not posted to the page, please see the list of options below to contact the Congressman.

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