

P.O. Box 77208, Atlanta, GA 30357 678.981.5295 | syoung@acluga.org

December 18, 2017

Sheriff Joey Terrell Habersham County Sheriff's Office 1000 Detention Dr. Clarkesville, GA 30523 jterrell@habershamga.com

Via Certified Mail and E-mail

Re: Unconstitutional Censorship of Facebook Comments Critical of Your Office

Dear Sheriff Terrell:

Our democracy thrives when people can freely criticize elected officials—including yourself—so that the people you answer to may best determine whether you should remain in office. This letter concerns your office's attempt to silence your critics in violation of the First Amendment to the United States Constitution—specifically, your attempt to silence those who believe that your arrests of marijuana distributors are a total waste of government resources.

The American Civil Liberties Union of Georgia (ACLU) writes on behalf of Peachtree NORML, a Georgia-based nonprofit organization whose mission is to move public opinion sufficiently to achieve the repeal of marijuana prohibition so that the responsible use of cannabis by adults is no longer subject to penalty. Your office maintains a public Facebook page ("Habersham Co. Sheriff Joey Terrell") that is open for public comment. On July 6, 2017, your office published a Facebook post extolling a recent arrest of an alleged marijuana grower and dealer, and the seizure of allegedly \$408,600 worth of marijuana plants. Over a dozen people posted comments praising your office with comments such as "Great job!! Another drug dealer off the streets!!!" and "Job well done! Thank you!!!", and those comments remain on the site to this day. *See* Exhibit A.

However, several people affiliated with Peachtree NORML including Tom McCain, the Executive Director, Chris Oglesby, Kymberli James-Cannon, Carole Ann, James Bell, Skip Eckartz, Zack Carnes, Andrew Ussery, Sharon Ravert, Samuel Coachman, and Donovan Schilling, posted comments highly critical of this arrest, including one comment that "dare[d] you" the Sheriff to "take down [her] post," which you ultimately did. These comments were all subsequently deleted by your office, and they included the following:

• "Just think of all the tax money that could have been made if that was sold from a dispensary. Oh, wait. We're in Georgia, where it's still against the law, and you guys just enforce the law. Funny thing is, Adultery is still against the law in Georgia, too.

How many Adultery cases have you prosecuted since you began your tenure, Sheriff? I'd guess none. After all, if our Law Enforcement Executives pushed THAT, they'd have to arrest too many cops. Besides, there's no civil asset forfeiture in it, is there?"

- "'If people let the government decide what foods they eat and what medicines they take, their bodies will soon be in as sorry a state as are the souls who live under tyranny.' Thomas Jefferson . . . ."
- "Why aren't you busting method heads and rapists and REAL criminals. I'll tell you why.. Because pot busts are easier. Easier folks to intimidate easier cash to steal and easier to find. You guys are pathetic!!!!!"
- "Legalized robbery! The man is only giving people what they want! No one ever died from weed or shrooms"
- A link to a website criticizing the DEA's classification of marijuana as a dangerous drug with no medical value.
- "Why are you arresting for cannabis plans when your area is riddled with meth, heroine, rapists, and robbers? Shame on you for this egregious waste of taxpayer money! Many legitimate patients rely upon that cannabis to treat a myriad of ailments patients with legit mmj red cards that do not have access due to our stupid Governor for blocking legal cultivation, and forcing legit patients to obtain their medicine through the black market. You did not make the county safer for anyone. Cannabis never hurt anyone it is non-toxic. I Smoked MJ every single day in college and graduated bachelor and master degrees with highest honors, then went on to teach public school for 39 years, so put that in your pipe a smoke it! What about you begin enforcing the laws for crimes that actually have a legitimate victim? Habersham Co Sheriffs Office might want to re-assess it's priorities and spend more time on actual crime. Now, I dare you to take down my post and block me!"
- "Prohibition is a failure. Those who support prohibition are contributing to the black market and cartels. Instead of being a part of the problem... be a part of the solution. It is time to RE-LEGALIZE cannabis."
- "That was probably someone's medicine. Why not go out and do some real police work?"
- "We can blame this on the slow poke movements to legalize in the Gold Dome. The incremental law change is putting patients in an untenable position of having to either grow or buy from other growers that are risking their lives and livelihoods . . . "
- "I am going to try and help you guys understand why this type of enforcement of the law should end. A system of regulation and control is far more ethical and effective than one of prohibition. LEAP is Law Enforcement Against Prohibition. www.CopsSayLegalizeDrugs.Com for additional information."

• "You look VERY STUPID to the rest of the country that has already freed the plant!! #FreeThePlant #Legalize"

See Exhibit B.<sup>1</sup> None of these comments now appear under that post. See Exhibit A.

You have not only censored the speech of these concerned citizens, you have outright banned some of them, including Tom McCain, from posting on your page at all for an indefinite period of time. *See* Exhibit C. It is our understanding that you have also blocked Sharon Ravert, Kimberli James-Cannon, Chris Oglesby, and Andrew Ussery, and potentially many others as well.

By selectively deleting these comments in response to a post that generated a great deal of attention and blocking several of these engaged constituents from posting any further comments, you cut off their ability to debate an important issue that is roiling the nation.

You have also violated the First Amendment to the United States Constitution, which prohibits your office, a governmental entity, to silence the voices of those with whom you disagree. Because your Facebook page has been opened for any member of the public to post comments, it is considered a "limited public forum" under the law. *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 viewpoints that are expressed in that forum, such as viewpoints critical of the Sheriff's Office and its marijuana arrests. *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).

Your page also includes the following policy concerning Facebook posts:

Regarding this Facebook page - please keep in mind people of all ages are fans on our page. Please do not use profanity. Part of the mission of the Habersham County Sheriff's Office is to promote community involvement and share as much information about our day to day operation as possible. By sharing information on this site, we hope to forge stronger relationships with the citizens we serve. The purpose of this site is to share information on specific HCSO topics of interest. This is a promotional and crime prevention site and not a forum to prompt user debate. We reserve the right to edit or remove comments which are inaccurate, promote false information, or misrepresents the agency, hateful, obscene, or comments that aren't related to the topic. Politically motivated comments will also be removed and we reserve the right to block individuals who misuse our Facebook page.

<sup>&</sup>lt;sup>1</sup> The blocked comments all followed the comment, "Soooooo, who called 911?", which now appears as the last comment to that post, confirming that these following comments were blocked.

*See* Exhibit D. None of the deleted comments, however, were "obscene" or included "profanity." Though your policy states that this is "not a forum to prompt user debate," your actions speak louder than your words—by intentionally opening up your Facebook page to public comments, you have created a limited public forum. And once that forum is created, the government cannot say that it will squelch "debate" by only allowing people who praise the government to speak. *See Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 96 (1972) (the "government may not grant the use of [the] forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views."). Similarly, your ban on comments that "misrepresents the agency" is blatantly unconstitutional to the extent that it means comments "critical of the Sheriff's Office." Lastly, your ban on "[p]olitically motivated comments" could conceivably apply to all comments and appears to be applied in a discriminatory manner only against comments critical of the Sheriff's Office. To the extent any part of your policy authorizes or allows viewpoint discrimination, it is unconstitutional.

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 demand that you immediately cease your unlawful practice of censoring the comments on your Facebook page, restore the posting privileges of each of the people named in this letter, 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 agree to these demands.

If we do not receive a response within 30 days, we may be forced to take legal action, which in addition to seeking injunctive relief will also seek compensatory damages for Peachtree NORML and attorneys' fees.

Sincerely,

July

Sean J. Young Legal Director ACLU of Georgia

## **EXHIBIT** A

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HOME	POSTS	VIDEOS	PHOTOS	ABO



Habersham Co. Sheriff Joey Terrell added 4 new photos.

July 6 · 🕄

On July 4, 2017, the Habersham County Sheriff's Office responded to 2721 Alec Mountain Road because of a 911 hang up. Habersham Deputies saw Nicholas Greene, 35, at the back door. Greene slammed the door shut. Deputies investigated further and found numerous marijuana plants. The Appalachian Regional Drug Enforcement Office executed a search warrant. Habersham authorities found 25 marijuana plants just inside the back door along with 23 half gallon mason jars full of marijuana and 1 half gallon mason jars full of mushrooms. The street value of the illegal narcotics is \$408,600. Greene had supplies used in a marijuana grow operation in a box beside the plants. Greene had recently moved into this house. Greene was charged with manufacturing marijuana, possession of marijuana with intent to distribute and possession of a scheduled I narcotic (Mushroom). Greene was transported to the Habersham County Detention Center.

For additional information about Appalachian RDEO or to provide tips on criminal activity look for ARDEO@appalachiandtf on twitter or follow on facebook@appalachianrdeo and/or Instagram or





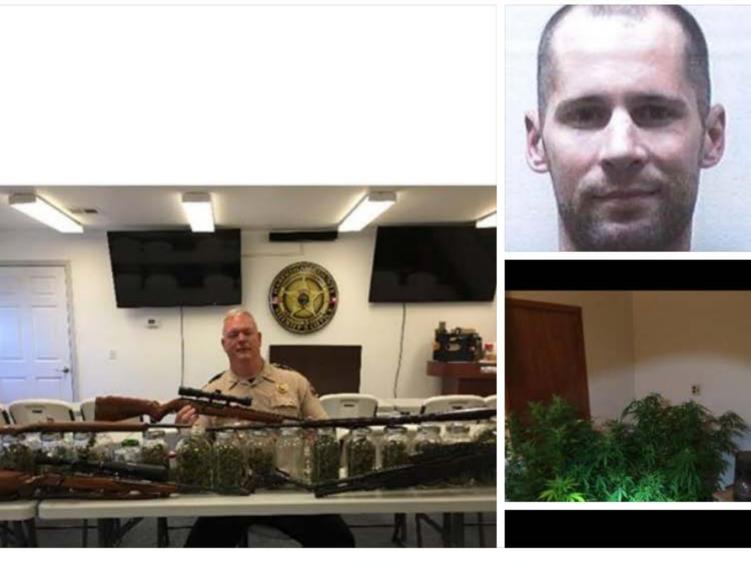




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facebook@appalachianrdeo and/or Instagram or contact your local Sheriff's Office or Police Department.

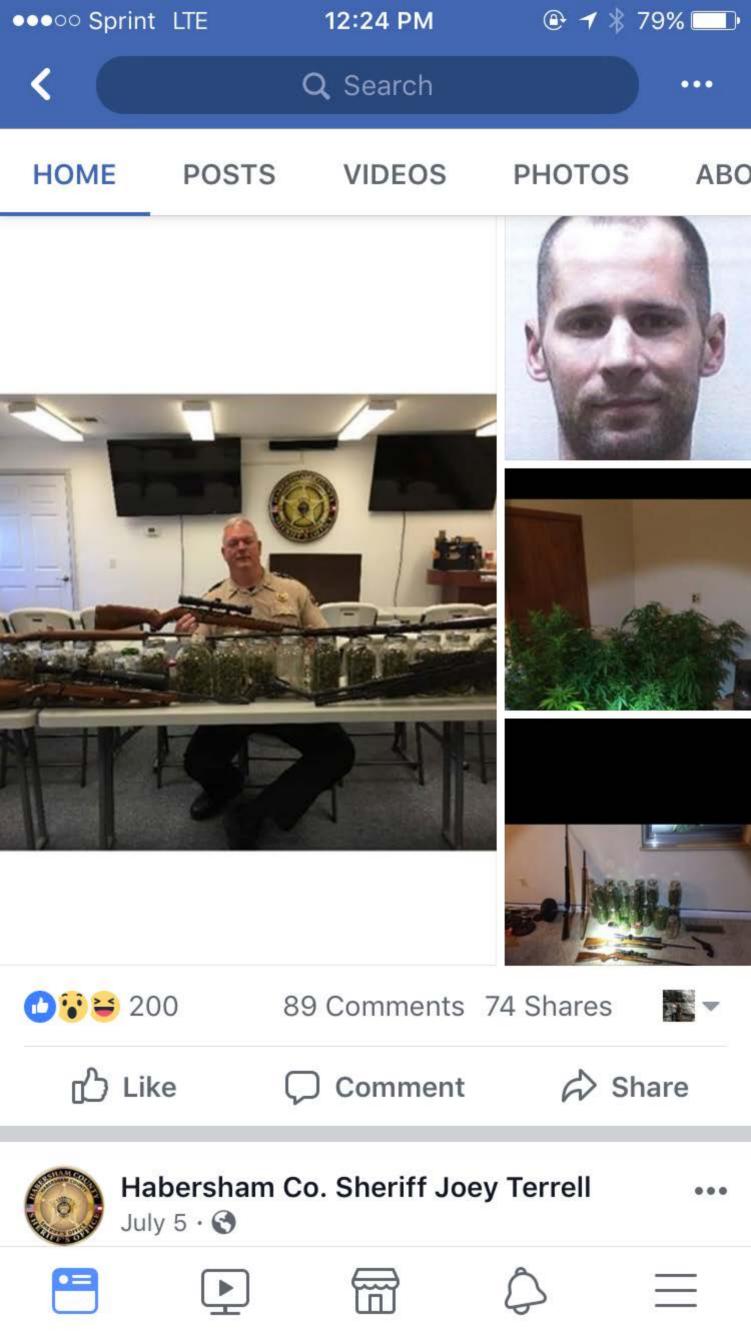
The Appalachian Regional Drug Enforcement Office is a multi-agency unit that consists of the following Sheriff's Offices: White County, Lumpkin County, Towns County, Banks County, Habersham County, Stephens County, Rabun County, Franklin County, the Cleveland Police Department, and the Lavonia Police Departement, along with the Georgia National Guard Counter Drug Task Force, the Department of Public Safety, and the Georgia Bureau of Investigation.











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Patti Kirkpatrick Roy Great job!! Another drug dealer off the streets!!!

19w Like Reply



D.j. Spencer Marijuana isn't a drug though. It's a plant

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#### Karagan Justice

That God put on the earth for us to use as medicine!! One day, it won't be an "illegal plant" can't wait to see all you people when that day comes. You'll love it when your loved one is dying one day and that's the only thing that will help them

	19w Like	Reply		13
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Because the Habersham County Sheriff Office makes and abolishes laws right?

19w Like Reply



#### Pat Pensyl

Seth Thomas Brown did I say that the habersham county sheriff's office should legalize it? No. Just said it should be legalized.

101

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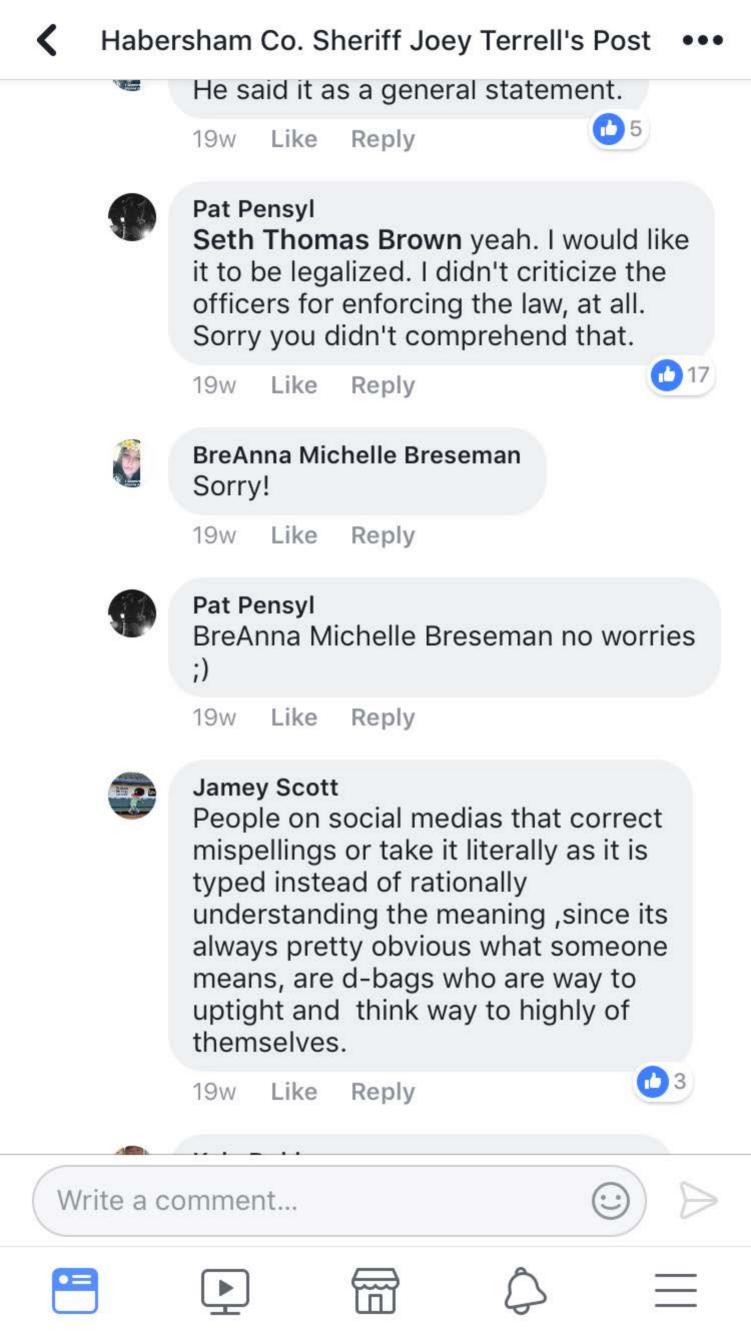
19w Like Reply



#### Seth Thomas Brown

**Pat Pensyl** you didn't say it should be, your made a demand. "Legalize It" as if it's in their power to do so. They did their Job and they did it well.









Kalee Gordon Solomon Brandon Solomon Crystal Pritchard Patton Blake Solomon on Alec mountain!!!

19w Like Reply



Margaret Santa Great job..



19w Like Reply



Nikki Jean Jones Carol Lee Tench look where this is!

19w Like Reply



Carol Lee Tench Hummmmmmm

19w Like Reply



Write a reply...





19w Like Reply



Theresa Williams Good job

19w Like Reply



Chris McConnell \*Greene

Write a comment...





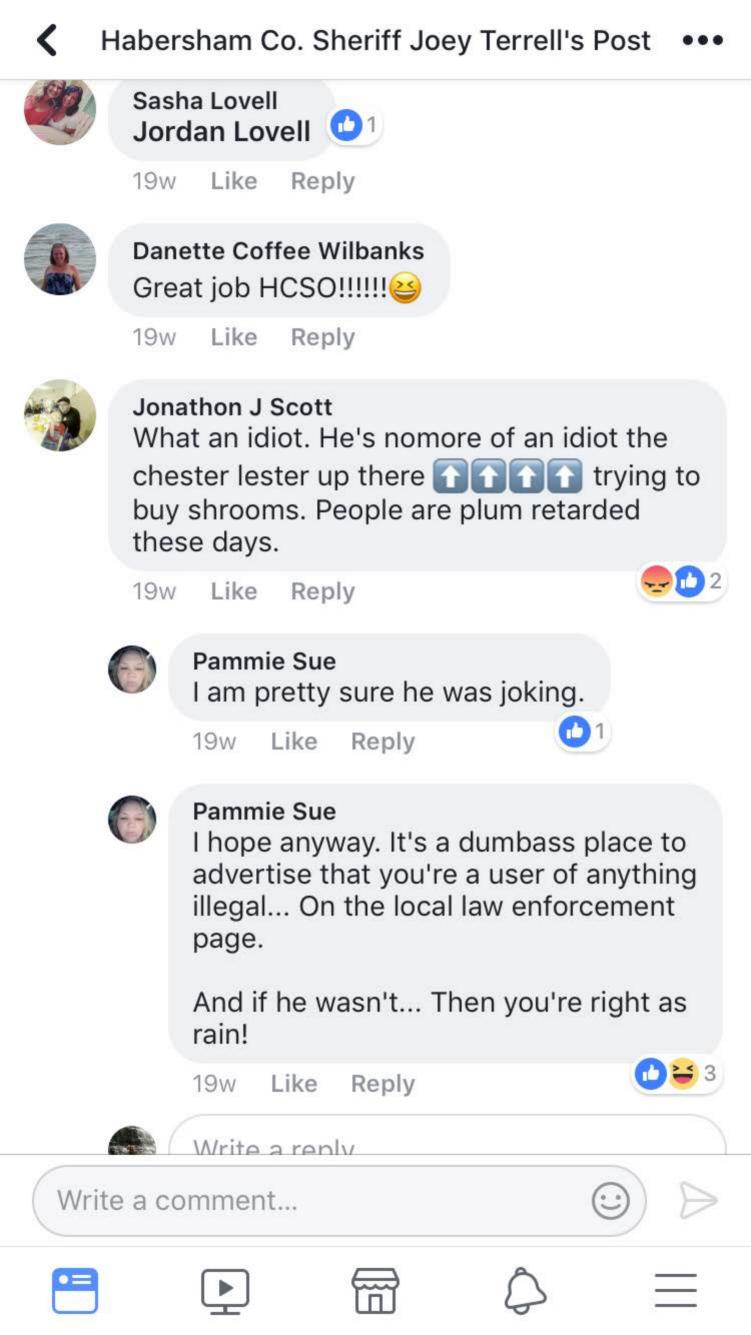






## Habersham Co. Sheriff Joey Terrell's Post motels. Lol. Reply 19w Like Write a reply... Amanda Mull Went to school with him. Wow...shocked. : Like Reply 19w Dakota Dodd Way to go guys!! 🐸 🛛 Like Reply 19w Joe James Ohhh evil marijuana! 🐸 ڬ 🖽 Reply 19w Like **Jill Davis Lewis** Plants....evil plants. SMH. 12 17w Like Reply Write a reply... **Polly Shedd** Great job! Reply Like 19w Write a comment...





< Hab	ersham Co. Sheriff Joey Terrell's Post •••
	And if he wasn't Then you're right as rain!
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A kr	len Hamilton Il of us can rest a little easier tonight nowing our families are safer because all nat marijuana is off the street.
19	w Like Reply
	Karagan Justice I truly hope this is a joke 😂 😂
	19w Like Reply
	Allen Hamilton Clint Elrod I was 100% joking. It's pathetic that our police departments waste their precious time on BS like this.
	19w Like Reply
	Allen Hamilton













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#### Matt Roberts Jason Elrod

19w Like Reply



Jessie Davis Great job.



19w Like Reply



Ashley Chastain Webb Oh he's gone. Ex husband went to jail for 5 years for a plant 3 inches tall that didn't belong to him just because the two people living there said they'd been gone and came back to him and it in there house. Hall County loved that one.

19w Like Reply



## Clint Elrod So. Who made the mysterious 911 hangup call?

19w Like Reply

Mike Dixon

Whore does the fireerme fector into all a

Write a comment...











2



#### Mike Dixon

Where does the firearms factor into all of this? Is he already a felon?

19w Like Reply



## Mike Crosby

Sadly they'll try to say tools in commission of a crime a firearm with the drug transaction

104

1

17w Like Reply



Write a reply...



#### Tc Brown

Mike Dixon possession of a firearm while also in possession of illegal drugs is another charge entirely. Most people don't realize its also against the law to have a firearm in your possession if you are under the influence (impaired) of alcohol or prescription drugs as well.

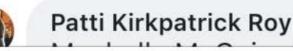
19w Like Reply



#### Patti Kirkpatrick Roy

At the moment it is still an illegal substance so law enforcement has to enforce the laws that are on the books so GREAT JOB!!!

19w Like Reply



Write a comment...









prescription drugs as well.

19w Like Reply



#### Patti Kirkpatrick Roy

At the moment it is still an illegal substance so law enforcement has to enforce the laws that are on the books so GREAT JOB!!!

19w Like Reply



#### Patti Kirkpatrick Roy

Mechelle McGuire-Padgett When these crimes occur in our county, that is exactly what our law enforcement would be doing.

17w Like Reply



#### Patti Kirkpatrick Roy

So let's get rid of the laws since someone can argue that every law on the books are unjust. If the law is unjust then work to get it changed but until then follow the laws.

17w Like Reply



## **EXHIBIT B**

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Chris Oglesby "If people let the government decide what foods they eat and what medicines they take, their bodies will soon be in as sorry a state as are the souls who live under tyranny." -- Thomas Jefferson WANTED W

- Contractor

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natural rights as it related to freedom of choice regarding our own bodies and what was meant by "common law" and "natural law". (The original concept of please. This is how the founding fathers defined freedom. This was originally Query XVII (1781-1785). The original quote centered around the concept of souls. As long as we do not harm others, we can think and do whatever we The quote above is a paraphrase taken from Jefferson's Notes on Virginia. common law has been perverted by a corrupt judiciary under the bar association.)

e to be an injured party. Political laws neaning of artheir will, against However, governments violate our natural rights by creating "political laws" Have you ever wondered where the word "police" came from?--and the "political laws" have nothing to do with natural rights or the original common law. They are all about restraining peoplemooing harm. heir natural rights, and there de

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"Licenses", for example, were all created out of political laws. The US Supreme ve the natural right to travel, but unfortunately, -----

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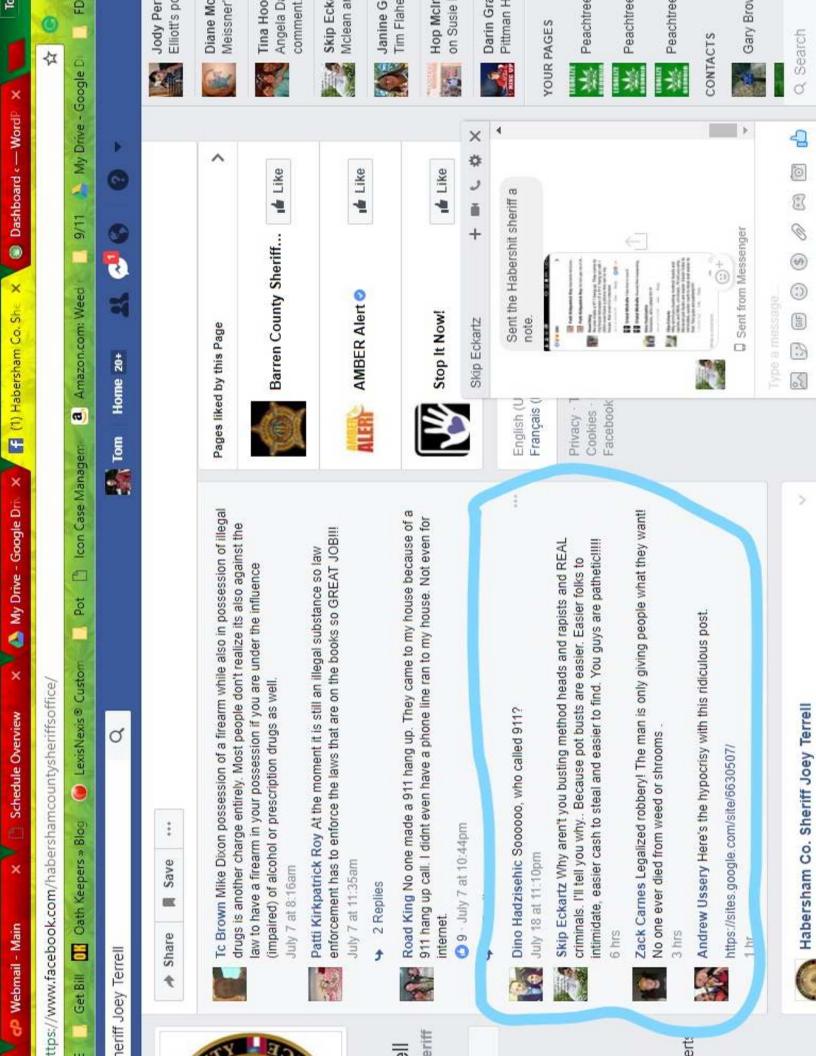
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Gary Brov

CONTACTS

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Patti Kirkpatrick Roy Mechelle McGuire-...



Patti Kirkpatrick Roy So let's get rid of th...



## Road King

No one made a 911 hang up. They came to my house because of a 911 hang up call. I didnt even have a phone line ran to my house. Not even for internet.

Jul 7 at 10:44 PM · Like · Reply · 🗂 💭 14



Cristal Michelle Take that to court!



Cristal Michelle Sounds like trespassing...



Dino Hadzisehic Soooooo, who called 911?

Yesterday at 11:10 PM · Like · Reply



Kymberli James-Cannon That was probably someone's medicine. Why not go out and do some real police work?

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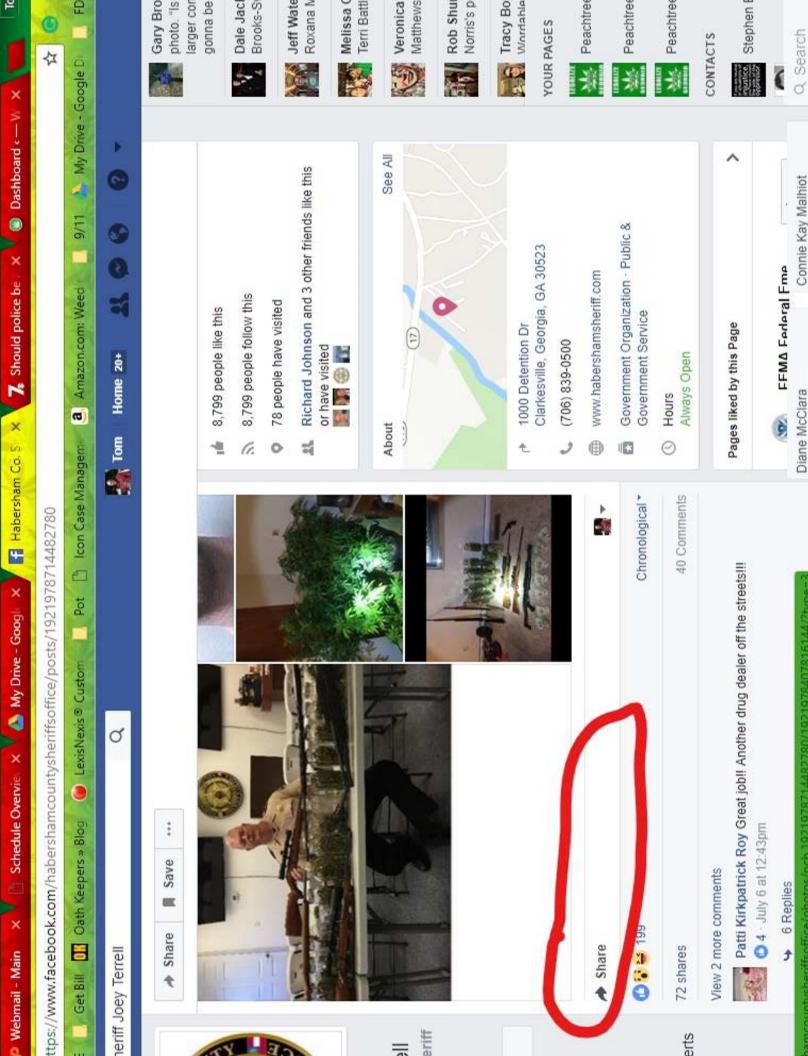
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## **EXHIBIT C**



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## **EXHIBIT D**

• Sprint LTE

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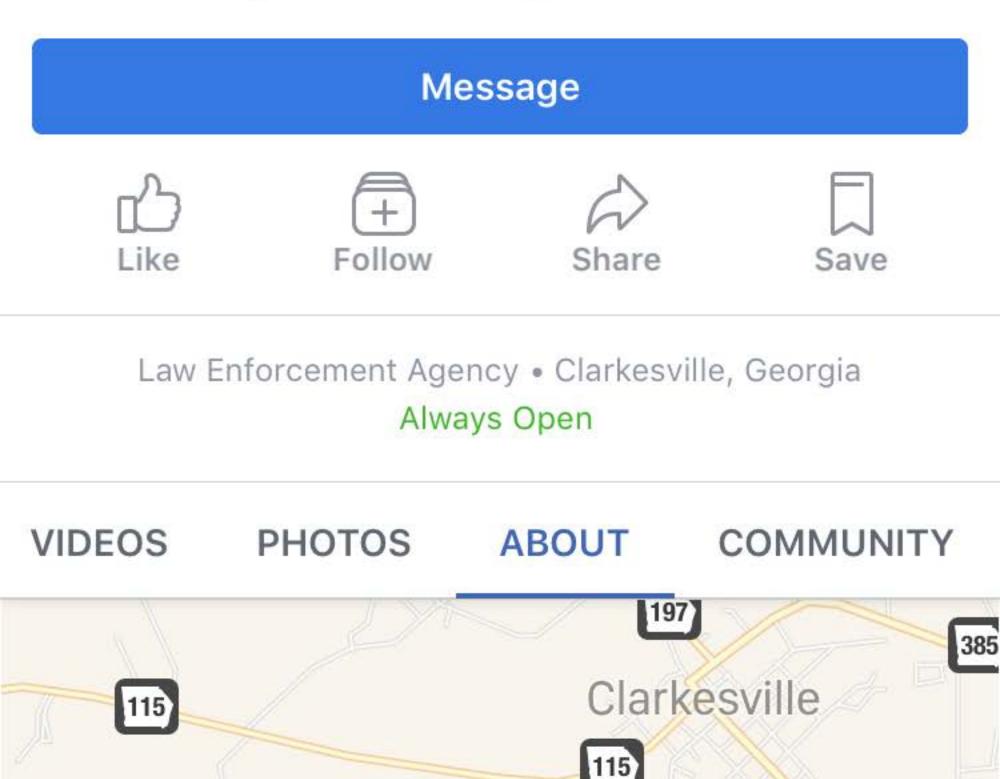
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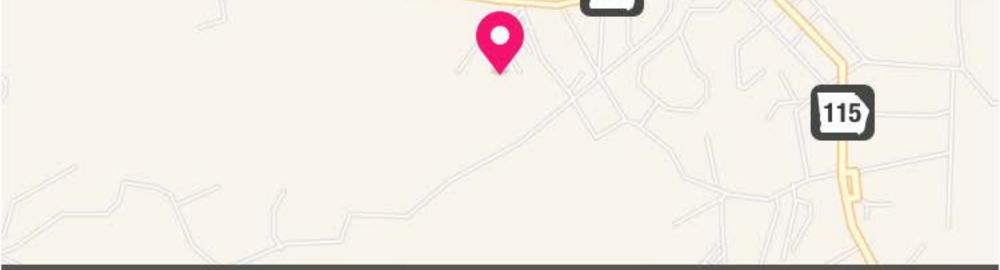
Q Habersham Co. Sheriff Joey Te...



# Habersham Co. Sheriff Joey Terrell

@habershamcountysheriffsoffice







## Habersham Co. Sheriff Joey Terrell 75.2 mi away











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VIDEO	OS PHOTOS	ABOUT	COMMUNITY
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i	The Habersham C a full-service law serving the citizer County, Georgia. Sheriff, Joey Terre constitutional offic charged with the providing all prima services within Ha agency also provi- enforcement serv	enforcement of Habers The Habers ell, is an ele cer and is s responsibilit ary law enfo abersham C des related	nt agency sham sham County cted tatutorily ity of orcement County. The law

including civil and criminal process, assistance to municipal agencies, crime prevention and education programs, victim assistance services, and providing school resource officers for the Habersham County School System.

The Sheriff is also responsible for the administration and everyday operation of











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#### VIDEOS PHOTOS ABOUT COMMUNITY administration and everyday operation of the Habersham County Jail.

Regarding this Facebook page - please keep in mind people of all ages are fans on our page. Please do not use profanity. Part of the mission of the Habersham County Sheriff's Office is to promote community involvement and share as much information about our day to day operation as possible. By sharing information on this site, we hope to forge stronger relationships with the citizens we serve. The purpose of this site is to share information on specific HCSO topics of interest. This is a promotional and crime prevention site and not a forum to prompt user debate. We reserve the right to edit or remove comments which are inaccurate, promote false information, or misrepresents the agency, hateful, obscene, or comments that aren't related to the topic. Politically motivated comments will also be removed and we reserve the right to block individuals who misuse our Facebook page. Please note that this page is not una nor dour and in the









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#### ABOUT COMMUNITY PHOTOS VIDEOS

operation as possible. by sharing information on this site, we hope to forge stronger relationships with the citizens we serve. The purpose of this site is to share information on specific HCSO topics of interest. This is a promotional and crime prevention site and not a forum to prompt user debate. We reserve the right to edit or remove comments which are inaccurate, promote false information, or misrepresents the agency, hateful, obscene, or comments that aren't related to the topic. Politically motivated comments will also be removed and we reserve the right to block individuals who misuse our Facebook page. Please note that this page is not monitored 24-hours per day and in the

## case of an emergency, please call 911.



## http://www.habershamsheriff.com



About

Welcome to the official Habersham County Sheriff's Office Fan page. Visit our website at www.habershamsheriff.com to learn more about us.

