



Georgia

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December 18, 2017

Chief Deputy David Carmichael<sup>1</sup>  
Worth County Sheriff's Office  
201 North Main Street Room 14  
Sylvester, GA 31791

Via Certified Mail

Re: Unconstitutional Censorship of Facebook Comments Critical of Your Office

Dear Worth County Sheriff's Office:

Our democracy thrives when people can freely criticize elected officials so that the people may best determine whether they 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, comments related to your handling of marijuana arrests and the recent incident involving your office's invasive search of an entire high school student body.

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 ("Worth County Sheriff's Office") that is open for public comment. On November 15, 2017, your office published a Facebook post extolling a recent arrest of an alleged marijuana dealer and the seizure of allegedly \$15,000 worth of marijuana plants. *See* Exhibit A.

In response to one comment expressing gratitude that "10 lbs. of drugs won't end up in Worth Co Schools," Tom McCain, the Executive Director of Peachtree NORML, responded with a comment stating:

That's a hilarious statement, considering that the Sheriff and his deputies searched the entire student body of Worth County High, ran dogs through the parking lot sniffing cars, and found nothing. Got sued and indicted in the process, too. Wasn't the Sheriff's son arrested for possession with intent to distribute? Didn't the Sheriff interrupt a GBI interview of his son?

*See* Exhibit B. Your office deleted the comment soon after. *See* Exhibit C.

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<sup>1</sup> It is our understanding that Sheriff Jeff Hobby has been suspended. We presume Chief Deputy Carmichael is presently in charge but if not, please forward this letter to the appropriate person.

Selectively censoring comments that your office does not like is a violation of the First Amendment to the United States Constitution. 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, posted as a sticky comment on August 2:

This is the official Facebook page of the Worth County Sheriff’s Office (WCSO). . . .

- The WCSO reserves the right to remove off-topic posts and spam.
- The WCSO is not going to referee bickering among third parties. You are not obligated to read and respond to the content on this page. If you can’t accept that people may have opinions other than your own and you can’t engage in civil discourse with said people, you may exercise your right to not view this page.
- The WCSO reserves the right to block those people who engage in conduct that disrupts or detracts from the civil discourse or intended operation of this page.
- The WCSO reserves the right to remove posts that contain obscenity, vulgarity, defamatory and derogatory statements directed at others, etc.

*See* Exhibit D. The deleted comment, however, did not contain obscenity or vulgarity. And each of the facts described in the deleted comment are based on recent news articles.

You claim the right to delete any comment that “disrupts or detracts from . . . civil discourse,” 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” as well as language that is “vituperative, abusive, and inexact” are all protected by the First Amendment). Your prohibition on “derogatory statements directed at others” is also unconstitutional because it essentially forbids criticism, which is a critical ingredient for a healthy democracy. *See Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017) (anti-disparagement 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 demand that you immediately cease your unlawful practice of censoring the comments on your Facebook page. 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,

A handwritten signature in black ink, appearing to read "Sean J. Young". The signature is fluid and cursive, with a large initial "S" and "Y".

Sean J. Young  
Legal Director  
ACLU of Georgia

# **EXHIBIT A**



HOME

POSTS

PHOTOS

ABOUT

COM



**Worth County Sheriff's Office** added 2 new photos.

November 15 at 8:08 PM · 🌐

On Tuesday, November 14th, Deputy Cravey was conducting routine patrol in the vicinity of Hilltop Rd, which was on the increased patrol list, when he noticed a suspicious vehicle at an unoccupied residence. Deputy Cravey pulled into the residence to conduct further investigation and made contact with Efram Barber Jr. During his interaction with Barber, Deputy Cravey detected a strong odor of marijuana that subsequently led to locating a small bag of marijuana on Barber's person. Deputy Cravey contacted Narcotics Investigators who secured a search warrant for the premises. Upon execution of the search warrant, deputies located another 10 bags of marijuana and digital scales. In total, approximately ten pounds of marijuana (estimated street value of \$15,000) was removed from the residence. Deputies took 23-year-old Efram Demond Barber JR of Sylvester into custody and charged him with possession of marijuana with intent to distribute (felony). Barber remains in the Worth County Jail and has been denied bond.





possession of marijuana with intent to distribute (felony). Barber remains in the Worth County Jail and has been denied bond.



199 382 Comments 244 Shares

Like Comment Share

# **EXHIBIT B**



Send Message

Government Official

Very responsive to messages

Community  
Invite your friends to like this Page  
1,752 people like this  
2,017 people follow this  
See All

Jonathan Mcelhaneay  
elected for real 😊

Lot of potheads in laurens  
10 4

I told him if he ran with a plank of... legalizing marijuana in his place he'd win by a landslide.

Yep  
Call me

Type a message...

Facebook footer: About 229-... Typic Sent www Gove English (U Français ( Privacy Cookies Facebook Bobby Thornton

Jason Pearson Yeeyee  
Like · Reply · 31 mins  
Write a reply...

George Garlock GOOD JOB Deputy Cravey and Worth Co. Sheriff's Office. It's good to know that 10 lbs. of drugs won't end up in Worth Co Schools!!!  
Like · Reply · 1 - 23 mins

Tom McCain That's a hilarious statement, considering that the Sheriff and his deputies searched the entire student body of Worth County High, ran dogs through the parking lot sniffing cars, and found nothing. Got sued and indicted in the process, too. Wasn't the Sheriff's son arrested for possession with intent to distribute? Didn't the Sheriff interrupt a GBI interview of his son?  
Like · Reply · Just now  
Write a reply...

Sharon Ravert Young Mr. Barber, if marijuana is your only "crime", hold your head up, cause most people in Georgia don't think you are a criminal. Prohibition is a crime. Shame on our leaders for not changing this decades ago.  
Like · Reply · 16 mins

Sharon Ravert Jury nullification coming to a town near you. Don't know what that is? Google it. We juries get to judge the law too.  
Like · Reply · 13 mins · Edited  
Write a comment...

Worth County Sheriff's Office  
August 2 · Bobby Thornton

- Stephani Spencer Diane Ho...
- Monja No DG gig th... enjoyed m... yesterday
- Jeff Neal cousins! —
- Austin ST Lucinda V friends.
- Chuck M Coulter's
- Bobby TH comment... County SH
- YOUR PAGES  
Peachtree  
Peachtree  
Alabama
- CONTACTS  
Leah Gra
- Search




# **EXHIBIT C**



# **EXHIBIT D**



**Worth County Sheriff's Office**August 2 · 

This is the official Facebook page of the Worth County Sheriff's Office (WCSO). The WCSO is a constitutional office under the Constitution of the State of Georgia and not a department of or under the supervision of the county governing authority. Legal control of the Office of the Sheriff rests with the Sheriff. This page does not represent any other constitutional officer of Worth County, the county governing authority, or any sub-unit under the control of the governing authority. The Purpose and Mission of this page is to disseminate information in a direct and timely manner to the citizens of Worth County. Posting or sending a message to this page constitutes agreement on your part to the Terms of Use set forth by the WCSO for this page. The Terms of Use are as follows:

This page is not constantly monitored. Posting or sending a message to this page likely will not be immediately seen and likely will not result in the dispatch of WCSO or other emergency personnel. To report an item that needs immediate attention call 911 for emergencies or 229-776-8219 for non-emergencies.

Examples of things that need immediate attention are:





Examples of things that need immediate attention are:

- Things on fire that shouldn't be on fire
- People impaled with things which they would rather not be impaled
- Livestock running loose in the roadway
- People running loose in the roadway
- Generally anything in the roadway that shouldn't be there
- Significant traffic hazards
- People running off with things that don't belong to them
- Crimes in progress
- Medical Emergencies
- Anything that makes you go, "Somebody should do something about that quickly."

The above is not an exhaustive list. It is examples. Call an actual live person to report things that need immediate attention.

-The WCSO is not responsible for the posts of third parties.

-The WCSO reserves the right to remove off-topic posts and spam.

-The WCSO is not going to referee bickering among third parties. You are not obligated to read and respond to the content on this page. If you can't





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-The WCSO reserves the right to block those people who engage in conduct that disrupts or detracts from the civil discourse or intended operation of this page.

-The WCSO reserves the right to remove posts that contain obscenity, vulgarity, defamatory and derogatory statements directed at others, etc.

-Understand that if you make comments pertaining to an ongoing case or that identifies suspects in an ongoing case that you may be subject to a subpoena to appear as a witness in court.

52

4 Comments 4 Shares



Like

Comment

Share

