

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JAMES HERNDON,

*Plaintiff,*

v.

SHERIFF BUDDY NEIL WARREN,  
in his individual and official capacities,  
LIEUTENANT COLONEL ROBERT  
QUIGLEY and DEPUTY GLENN DANIEL,  
in their individual and  
official capacities,

*Defendants.*

CIVIL ACTION  
FILE NO.

**VERIFIED COMPLAINT**  
**FOR INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff, James Herndon, brings this action against Defendants under 42 U.S.C. § 1983, and the First Amendment of the United States Constitution for equitable relief and small damages concerning the blocking of his ability to post, comment and “like” on the social media Facebook page for the Cobb County Sheriff’s Office because plaintiff posted critical comments about the Sheriff’s performance of his duties.

PARTIES

1. Plaintiff James Herndon (“Plaintiff”) is a resident of Cobb County, Georgia and has worked for sixteen years in the Cobb County Sheriff’s Office (hereinafter referred to as “CCSO”).
2. Defendant Cobb County Sheriff Buddy Neil Warren (“Sheriff Warren”) is sued in his individual and official capacities. At all times relevant to the complaint, Sheriff Warren acted under the color of law.
3. Defendants Robert Quigley and Glenn Daniel serve as public information officers and help administer the Cobb County Sheriff’s Department Facebook Page and other social media, and are sued in their individual and official capacities. At all times relevant to the complaint, these Defendants acted under the color of law.

JURISDICTION AND VENUE

4. This action arises under the authority vested in this Court by virtue of 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1343 (a)(3), the First Amendment of the United States Constitution, and Georgia law.
5. This Court has supplemental jurisdiction of Plaintiff’s state law claims under 28 U.S.C. § 1367.

6. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2201-02 and 42 U.S.C. § 1983.
7. Venue in this Court is proper under 28 U.S.C. § 1391 because the events giving rise to Plaintiff's claims arose in this district and division and because Cobb County is located within this district and division.

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS

8. Plaintiff James Herndon is a resident of Cobb County, Georgia and has worked for sixteen years in the Cobb County Sheriff's Office as a fugitive unit investigator, a fraud investigator, and special investigator.
9. Plaintiff also worked in the detention center, as court security, as a deputy sheriff serving warrants, as a field training officer and as a supervisor. As a supervisor, he oversaw the Crime Scene Unit, the Records Unit, the drug lab, and supervised in CID. Plaintiff also oversaw the detention and field operations division where he supervised the serving of warrants and civil papers. Plaintiff also served as a special investigator within the detention and field operations division.
10. Herndon is a Cobb County citizen who wishes to engage in constitutionally protected speech within the designated public forum created by the CCSO for citizens. Herndon desires to voice his beliefs and viewpoints to the

Sheriff, to the Sheriff's staff who view the page, and to other citizens who participate in the forum to debate and comment on issues concerning Cobb County.

11. The Facebook page @neil.warren.58 (hereinafter referred to as "CCSO Facebook Page") is CCSO's designated public forum for the social media platform Facebook. *See Exhibit A.* The page was created in June 2011, seven years after Defendant Warren was first elected to public office in Cobb County. *Id.*
12. Two unofficial and inactive Facebook pages, titled "Cobb County Sheriff's Office," exist independently from the active CCSO Facebook Page. The two accounts have been "merged" together but maintain two separate links. Neither of the Facebook pages titled "Cobb County Sheriff's Office" contain any posts, pictures, stories, nor any other information. *See Exhibit B.*
13. Another pseudo account, titled "Cobb County Sheriff's Department" (hereinafter referred to as "CCSD Facebook Page") also exists. This pseudo account contains a link to CCSO's website, and provides CCSO's contact information, specifically indicating Defendant Robert Quigley's email address. However, one sole post (a picture depicting CCSO cars) has been

published as of March 28<sup>th</sup>, 2019, and there is no other activity on behalf of CCSO on this page. *See* **Exhibit C**.

14. According to the CCSD Facebook Page, CCSO has a Facebook user rating of 1.3 out of 5. The CCSO Facebook Page contains several reviews posted by other users. Many of the comments criticize CCSO and make allegations of racism, abuse of power, and Sheriff Warren's lackluster leadership. *See* **Exhibit D**. Comments cannot be deleted by any Facebook page host, but posts can be deleted by the host.

During the current election cycle, Plaintiff became a vocal opponent of Sheriff Warren. Plaintiff raised concerns about the health and safety standards of food sold by CCSO, the appropriateness of seminar speakers, the honesty and trustworthiness of CCSO, and Sheriff Warren's leadership.

15. Plaintiff was also concerned with Sheriff Warren's reputation for abusing his power to silence his critics and others that he personally disliked. *See* **Exhibit E**.
16. During this election cycle, and before Plaintiff decided to run for Sheriff himself in July 2019, Plaintiff voiced his concerns on various Facebook pages. Plaintiff routinely commented on CCSO's Facebook Page, as well as CCSD's Facebook Page.

17. Plaintiff posted on CCSO's Facebook Page, his own page, and other Facebook pages about CCSO's staffing shortages, unacceptable jail conditions, inmate complaints and deaths, First Amendment violations of others, and lack of transparency and heightened secrecy, among other concerns.
18. On or about September 12, 2018, Plaintiff posted on CCSO's Facebook Page criticizing the appropriateness of a lobbyist speaker at a seminar on law enforcement.
19. On or about September 17, 2018, Plaintiff posted on CCSO's Facebook Page concerning food that was stored in a rat-infested prison unit, and subsequently sold by the Sheriff's Office during a county fair.
20. On both occasions, Defendants deleted Plaintiff's comments within a few hours of posting.<sup>1</sup>
21. In February 2019, the American Civil Liberties Union of Georgia sent a letter to Sheriff Warren, on behalf of Plaintiff, demanding Sheriff Warren and the CCSO stop censoring speech. *See Exhibit F.*

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<sup>1</sup> These posts no longer exist on Facebook and Plaintiff was unable to memorialize this activity because Defendants deleted these comments and blocked Plaintiff from the CCSO Facebook Page.

22. Shortly after receiving the letter from the ACLU of Georgia, Defendants completely blocked Plaintiff from ever posting, commenting or liking on CCSO's Facebook Page.
23. None of Plaintiff's comments were defamatory, pornographic, obscene, or incitements to violence.
24. Plaintiff is currently blocked from posting, liking and commenting on CCSO's Facebook Page.
25. Deleting a comment from a Facebook page also deletes the comment from the user's Activity Log.
26. CCSO maintains CCSO's Facebook Page to permit and encourage any and all constituents to communicate directly with the Sheriff's office and to post comments on public issues. The CCSO Facebook Page announced official policies, was prominently displayed in other CCSO official materials and updated local citizens on the official activities of the CCSO.
27. Defendants encouraged and permitted public expression on the CCSO Facebook Page, including commenting on and "liking" posts on matters of public concern, as well as public comments made in response to those posts.

28. Defendants do not have any specific written policy with respect to the public's engagement and participation in public discussions using the Defendants' social media platforms.
29. Defendants created a policy on employee "Social Media Participation," however the regulation and management of citizens' engagement with Defendants social media platforms is left to Defendant Warren's unfettered discretion. *See generally* **Exhibit G**.
30. According to 1-03-09.01(B) of Sheriff Warren's "Social Media Participation" Policy, Sheriff Warren participates in social media as a representative of CCSO. Therefore, posts made by Defendants on the CCSO Facebook Page are direct representations, and are made on behalf of, CCSO.
31. Defendants Robert Quigley and Glenn Daniel help administer the CCSO Facebook Page as part of their job duties.
32. Defendants log onto and participate in the CCSO Facebook Page during their work hours.
33. Almost 400 people "follow" the CCSO Facebook Page, meaning that they have registered to receive notifications whenever new information is posted to the page.



34. Defendants have linked the CCSO Facebook Page to other CCSO official social media platforms, including embedding the existence, identity and location of the CCSO Facebook Page during an official CCSO recruitment video posted on the CCSO official You Tube channel.<sup>2</sup> *See Exhibit H* (screenshot of 1:35:00 of the video identifying @neil.warren.58 (the CCSO Facebook Page) during a video produced by the Cobb County Sheriff Department about officer recruitment.)
35. Despite the creation of a public forum for public discussion, Defendants have engaged in targeted censorship of the speech of Plaintiff and others on the CCSO Facebook Page through a variety of methods.
36. Defendants have censored Plaintiff and other citizens by deleting and/or hiding their comments from the CCSO Facebook Page.
37. Defendants have censored Plaintiff and other citizens by “banning” them from making any further posts on the CCSO Facebook Page and banning them from expressing an opinion using the reaction feature (e.g., “Likes”).
38. Defendants have censored Plaintiff and other citizens by hiding reviews they posted to the CCSO Facebook Page.

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<sup>2</sup> The entire video exists on YouTube and can be viewed by following this link:  
<https://www.youtube.com/watch?v=9ui1QFuPshI>

39. Defendants delete and/or hide comments and ban users because of political disagreement with the viewpoint of the messages posted.
40. Defendants, as a matter of policy and practice, routinely and customarily censored the protected speech of citizens on the CCSO Facebook Page solely because the speech was not favorable to the CCSO or to Sheriff Warren.
41. As recently as last month (October 2019), Defendants deleted the comment of Mr. Blake Shugart, a retired Cobb County Sheriff Deputy, who exposed the sheriff's embellishment of a recent arrest of a wanted man. Following comments about how the law enforcement officers "made this happen", Mr. Shugart posted a comment stating the fugitive, "peacefully surrendered with his attorney." *See Exhibit I.* This comment was immediately deleted from the CCSO Facebook Page.
42. Another citizen, T. Brett McMahan was blocked by Defendants after posting a comment regarding the Kennesaw State University cheerleaders that were disciplined for their on-field protest in 2018. Mr. McMahan's comments were made over a year ago and he is still blocked from the CCSO's Facebook Page.

43. Sheriff Warren had actual and constructive knowledge that comments were being deleted from the CCSO Facebook Page and that citizens were being banned from the CCSO Facebook Page based solely on political disagreement with the viewpoints expressed.
44. Sheriff Warren is the final policymaker with regard to CCSO's social media policies and their application.
45. On information and belief, Sheriff Warren instructed Defendants Robert Quigley and Glenn Daniel, who help administer the CCSO Facebook Page, to ban and/or delete comments of Plaintiff and other citizens from the CCSO Facebook Page solely because their viewpoint was critical of him or his office.
46. Plaintiff suffered and continues to suffer loss of first amendment rights and distress as a result of this campaign of harassment and intimidation and denial of his First Amendment rights.

### **CLAIMS FOR RELIEF**

#### **Count I**

#### ***Retaliation for Exercise of First Amendment Free Expression under 42 U.S.C. § 1983***

(Against all Defendants in their individual capacities)

47. This Count incorporates the factual allegations set forth above.

48. Plaintiff engaged in constitutionally protected speech in opposition of Sheriff Warren during the 2020 Cobb County Sheriff election.
49. Defendants silenced Plaintiff's protected speech. They censored Plaintiff's speech by denying him the right to speak publicly on the official CCSO Facebook Page.
50. Such conduct would deter a person of ordinary firmness from the exercise of First Amendment rights. Moreover, the blocking of Plaintiff from posting prevents Plaintiff from exercise of his First Amendment rights and is a prior restraint on speech.

**Count II**

***Viewpoint Discrimination in Violation of Plaintiff's First Amendment Right to Free Speech under 42 U.S.C. § 1983***

(against Defendants in their individual and official capacities)

51. This Count incorporates the factual allegations set forth above.
52. Speech utilizing official Facebook and other social media pages for governmental bodies is subject to the same First Amendment protections as any other speech.
53. Defendants' banning of Plaintiff and removal of his comments from the Cobb County Sheriff Facebook Page violates Plaintiff's right to freedom of expression because they impose content or viewpoint-based restrictions on Plaintiff's participation in a limited public forum.

54. Defendants lack of standards for blocking posters or censoring posts lead to unfettered discretion and content and viewpoint restrictions on speech.
55. By banning Plaintiff and/or by deleting his comments from the CCSO Facebook Page, Defendants have both directly and implicitly chilled Plaintiff's free expression, as well as that of all Cobb County citizens.
56. Defendants violated and continue to violate a clearly established constitutional right – the right to speak freely on topics relevant to the government in a government-established forum, and particularly an online social-media-based forum – of which all reasonable government officials should have known.
57. Plaintiff is denied this right to free expression each time he is prevented from commenting, liking posts, or interacting in any way on the CCSO Facebook Page.
58. The denial of constitutional rights is irreparable injury *per se*, and Plaintiff is entitled to declaratory and injunctive relief to restore his access to the CCSO Facebook Page.
59. Additionally, Plaintiff experienced emotional and other injuries as a consequence of being denied his First Amendment rights.

**Count III**

***Declaratory and Injunctive Relief under 28 U.S.C. § 2201, et seq.***  
(against Defendants in their official capacities)

60. This Count reincorporates all preceding paragraphs as if set forth fully herein below.
61. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning Plaintiff's rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Count II above.
62. As described above, Plaintiff alleges that Defendants' actions violate the First Amendment to the United States Constitution.
63. Plaintiff seeks a declaration that Defendants' censorship of posts on his official page that are critical of him and/or his policies is unconstitutional and violates Plaintiff's rights to freedom of speech under the First and Fourteenth Amendments to the United States Constitution.
64. Plaintiff seeks injunctive relief requiring Defendants to (1) Enjoin their unlawful practice of censoring Plaintiff's comments on the any Cobb County Sheriff's Department Facebook page due to their content or viewpoint (2) Enjoin the current unconstitutional and standardless practice of deleting comments; (3) restore Plaintiff's posting privileges that were

blocked and afford Plaintiff full access afforded any other citizen to the CCSO Facebook Page.

REQUEST FOR RELIEF

WHEREFORE, on the basis of the foregoing, Plaintiff respectfully prays that this Court:

- a) Assume jurisdiction over this action;
- b) Hold a trial by jury on all issues so triable;
- c) Declare Defendant's viewpoint-based censorship of Plaintiff from Defendant's Official Facebook Page to be unconstitutional;
- d) Enjoin Defendants' unlawful practice of censoring Plaintiff's comments on the Cobb County Sheriff's Department Facebook page due to their content or viewpoint;
- e) Enjoin the current unconstitutional and standardless practice of deleting platform activity and banning users from the Cobb County Sheriff's Department Facebook page due to their content or viewpoint;
- f) Enter an injunction restoring Plaintiff's posting privileges that were blocked and afford Plaintiff full access afforded any other citizen to the Facebook page;

- g) Award general and special compensatory damages to Plaintiff in an amount determined by the enlightened conscience of fair and impartial jurors;
- h) Award punitive damages against Sheriff Warren in his individual capacity;
- i) Award reasonable attorney's fees, expenses, and costs of litigation pursuant to 42 U.S.C. § 1988 and other applicable law; and
- j) Award such other and further relief as this Court deems just and proper.

Respectfully submitted this 6<sup>th</sup> day of November, 2019.

/s/ Gerald Weber

Gerald Weber  
Georgia Bar No. 744878

s/Jennifer Hickey

Jennifer Hickey  
Georgia Bar No. 440019

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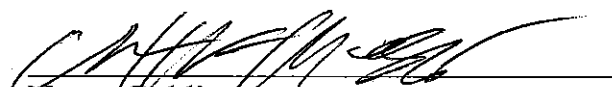
*Defendants.*

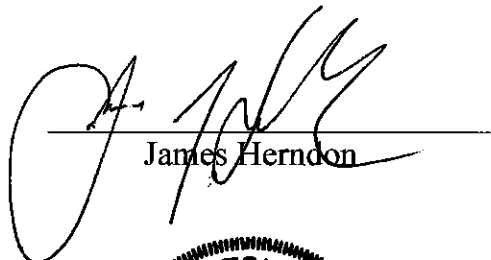
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**VERIFICATION OF PLAINTIFF JAMES HERNDON**

I, Mr. James Herndon, appearing before the undersigned officer and after being first duly sworn, depose and state on oath and under penalty of perjury that the facts set forth in the foregoing Complaint are true and correct.

Sworn to and subscribed before me  
this 1 day of November, 2019.

  
Notary Public

  
James Herndon

