

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

PETER MORGAN ATTWOOD,

Plaintiff,

Case No. _____

v.

CHARLES W. "CHUCK" CLEMONS,
SR., State Representative,

Defendant.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Almost every elected public official in the United States now maintains social media accounts, which are an important source of news and information about the government and important spaces for speech by, to, and about public officials. These digital spaces are the "modern public square." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1732 (2017). As our democracy increasingly moves online, it is crucial that our First Amendment principals are equally applied to digital forums so that the internet does not become a haven for public officials to avoid free speech.

2. This case involves the effort of a State Representative to suppress dissenting speech on his official social media accounts. In retaliation for Plaintiff's dissenting speech on gun reform, Defendant Clemons blocked Plaintiff from Defendant's Twitter and Facebook accounts.

3. Plaintiff respectfully asks this Court to declare that Defendant's viewpoint-based exclusion of Plaintiff from Defendant's official social media accounts violates the First Amendment, and order Defendant to restore Plaintiff's access.

Jurisdiction, Venue, and Parties

4. The Court has jurisdiction, pursuant to 28 U.S.C. §§ 1331, 1367, and 1343, over the claims in this case because they arise under the Constitution and laws of the United States, namely the First and Fourteenth Amendments and 42 U.S.C. § 1983; the state claims are so related to claims in this case that they form part of the same case or controversy; and the claims in this case seek redress for civil rights violations committed under color of state law.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (b)(2) because Defendant resides in this district and a substantial part of the events giving rise to this claim occurred in this district.

6. Plaintiff Peter Morgan Attwood resides in Gainesville, Florida, within the bounds of House District 21.

7. Defendant Charles W. "Chuck" Clemons, Sr. is the elected member of the Florida House of Representatives representing House District 21, which includes Gainesville, Florida. Defendant Clemons resides in Alachua County and has offices here. Defendant Clemons is sued in his official capacity only.

General Allegations

A. Background on Twitter and Facebook

8. Twitter and Facebook are social media platforms that allow users to publish and share content with each other.

9. On both platforms, users can post content. On Twitter users publish “tweets.” On Facebook users publish “posts.”

10. On both platforms, users have a profile page which contains the user’s profile and a timeline in reverse chronology of all of the user’s tweets or posts.

11. Both platforms allow users to subscribe to other users’ content. On Twitter, users “follow” each other. On Facebook, users can “friend” (a verb) individuals or “follow” organizational accounts called “Pages.”

12. Both platforms provide users a personal “feed” which displays the tweets or posts for the accounts they follow.

13. Both platforms allow users to interact with other user’s content—in fact, this interaction is the defining feature of Twitter and Facebook. Users can comment on other user’s posts, or comment on other comments. These comments appear on users’ timelines in conversation chains, such that one user’s timeline includes not only their own posts but also the posts and comments of other users. Each users’ timeline is thus a digital forum for dialogue, with multiple overlapping conversation threads by and between different users.

14. Both platforms allow users to decide whether their content is public or private.

15. Both platforms also allow users to “block” other users.

16. On Twitter, a blocked user cannot view the blocking party’s timeline or their individual tweets. Nor can the blocked user comment on or otherwise interact with the blocking party’s timeline or individual tweets.

17. Likewise, on Facebook, a blocked user cannot comment on, or otherwise interact with the blocking party’s timeline or individual posts.

18. On both platforms, blocked users are excluded from the blocking party’s digital forum in several ways.

19. First, blocked users do not receive real-time notifications of the blocking party’s posts. In the context of the rapid interactions that occur on Twitter and Facebook, the absence of instant notification impedes a user’s ability to participate in and shape a conversation.

20. Second, a blocked user cannot publish a comment in the blocking party’s timeline—the digital forum. A blocked user is excluded from participating in the public dialogue that occurs in that forum. Conversely, the participants who remain on these public forums are unable to receive the blocked user’s viewpoint.

21. Additionally, on Twitter, a blocked user cannot republish or “retweet” a blocking party’s tweets. There is a special value in being able to repost another

user's tweet juxtaposed with interpretation or commentary. Nor can users retweet older posts by the same user exposing inconsistencies in the user's tweets over time.

B. Defendant Clemons' Use of Twitter and Facebook

22. Defendant Clemons maintains a Twitter account, @ChuckClemons21, which he uses in his official capacity as a State Representative to make official statements, share information about legislative activities and other government functions, and to communicate with the public.

23. Facebook allows individuals to create individual accounts, and Facebook allows organizations and public officials to create "Pages." Like personal accounts, the Page of a public official contains profile information and a timeline with posts. Users can interact with a public official's Page just like a personal account timeline, by publishing content, posting replies, "liking" content, or sharing content.

24. Defendant Clemons maintains a Facebook Page, @ChuckClemons21, which he uses in his official capacity as a State Representative to make official statements, share information about legislative activities and other government functions, and to communicate with the public. Defendant Clemons' Facebook Page is titled, "State Representative Chuck Clemons District 21." Defendant Clemons' has posted his official Florida House of Representatives contact information on his

Facebook Page. Defendant Clemons has a separate personal Facebook account as an individual Facebook user.

25. Defendant Clemons uses the resources of his public office, including staff and equipment, to manage his official Twitter and Facebook accounts.

26. Using settings in his Twitter and Facebook accounts, Defendant Clemons intentionally made his official Twitter and Facebook accounts open to the public for viewing and interaction. Anyone can draft a reply tweet, which will appear on Defendant Clemons' official Twitter timeline. Anyone can post or interact with posts on Defendant Clemons' official Facebook Page.

27. Like a continuous virtual town hall event, the interactions on Defendant Clemons' official Twitter and Facebook accounts are multidirectional: individuals contact Defendant Clemons; Defendant Clemons responds to individuals; and individuals share information and opinions between themselves.

28. As an illustration, on February 21, 2018, at 1:09 pm, Defendant Clemons posted an official statement on his Facebook Page regarding gun control. After about 48 hours, the post had been shared 10 times, 78 users liked the post (or expressed some sort of emotional response through the "like" button), and 34 users left comments. Some of the comments were responses to other comments sparking sub-conversations.

29. At the same time, Defendant Clemons also posted the same statement on his Twitter account with a link to the same post on his Facebook Page. On Twitter, after about 48 hours, the post was liked 4 times and generated 13 comments. Again, some of these comments sparked their own replies and conversation chains.

30. If you were blocked from Defendants Clemons' official Facebook and Twitter accounts, you would not have been able to participate in these conversations.

C. Defendant's Limitation of Plaintiff's Speech

31. On February 20, 2018—6 days after the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida—the Florida House of Representatives voted on whether to debate House Bill 219, a bill which would have banned the sale and possession of assault weapons. Defendant Clemons voted against the motion, and the motion failed.

32. Later that day, Plaintiff Attwood retweeted a tweet from Emma González, a student from Marjory Stoneman Douglas High School. Ms. González' tweet was critical of the Florida House of Representatives for failing to take up debate on the assault weapons ban. In retweeting Ms. González' tweet, Plaintiff Attwood linked to Defendant Clemons' official Twitter account stating, "Hello @ChuckClemons21 I'm a constituent. Please explain this vote please. Thank you."

33. Shortly thereafter, Defendant Clemons' blocked Plaintiff Attwood on Twitter.

34. Plaintiff Attwood then posted a comment on Facebook toward Defendant Clemons' official Facebook page, criticizing Defendant Clemons for blocking him on Twitter. Defendant Clemons' responded by also blocking Plaintiff Attwood on Facebook.

35. Plaintiff was and continues to be excluded from the dialogue that continues to occur on Defendant Clemons' official Twitter and Facebook pages.

36. Defendant Clemons' viewpoint-based exclusion of Plaintiff from his official Twitter and Facebook accounts distorts the speech in those forums and causes a chilling effect for others from similarly expressing dissenting viewpoints.

FIRST CAUSE OF ACTION

Section 1983: Deprivation of Rights under the First and Fourteenth Amendments of the United States Constitution (Declaratory and Injunctive Relief)

37. By the acts set forth in paragraphs 1 through 36 above, Defendant violated 42 U.S.C. § 1983 by acting under color of state law to deprive Plaintiff's rights under the First and Fourteenth Amendments of the United States Constitution.

38. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts violates the First and Fourteenth Amendments because it imposes a viewpoint-based restriction on Plaintiff's participation in public forums.

39. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts also violates the First and Fourteenth Amendments

because it imposes a viewpoint-based restriction on Plaintiff's access to official statements that Defendant otherwise makes available to the general public.

40. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts also violates the First and Fourteenth Amendments because it imposes a viewpoint-based restriction on Plaintiff's ability to petition the government for redress of grievances.

41. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts has caused and continues to cause Plaintiff irreparable harm.

SECOND CAUSE OF ACTION

Violation of Article I, Section 4 of the Florida Constitution (Declaratory and Injunctive Relief)

42. By the acts set forth in paragraphs 1 through 36 above, Defendant has violated Article I, Section 4 of the Florida Constitution.

43. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts violates Article I, Section 4 because it imposes a viewpoint-based restriction on Plaintiff's participation in public forums.

44. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts also violates Article I, Section 4 because it imposes a viewpoint-based restriction on Plaintiff's access to official statements that Defendant otherwise makes available to the general public.

45. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts has caused and continues to cause Plaintiff irreparable harm.

THIRD CAUSE OF ACTION

Violation of Article I, Section 5 of the Florida Constitution (Declaratory and Injunctive Relief)

46. By the acts set forth in paragraphs 1 through 36 above, Defendant has violated Article I, Section 5 of the Florida Constitution.

47. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts violates Article I, Section 5 because it imposes a viewpoint-based restriction on Plaintiff's ability to petition the government for redress of grievances.

48. Defendant Clemons' blocking Plaintiff from Defendant's official Twitter and Facebook accounts has caused and continues to cause Plaintiff irreparable harm.

Prayer for Relief

WHEREFORE, Plaintiff requests that this Court:

1. Declare Defendant's viewpoint-based blocking of Plaintiff from the Defendant's official Twitter and Facebook accounts to be unconstitutional;

2. Enter an injunction requiring Defendant to unblock Plaintiff from Defendant's official Twitter and Facebook accounts, and prohibiting Defendant from blocking Plaintiff or others from the accounts on the basis of viewpoint;
3. Award Plaintiff his costs, including reasonable attorneys' fees; and
4. Grant any additional relief as may be just and proper.

Dated: February 26, 2018.

Respectfully submitted,

/s Eric Lindstrom

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