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

PETER MORGAN ATTWOOD,

Plaintiff, Case No. 1:18-cv-00038-MW-GRJ

v.

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

Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, through undersigned counsel, submits this memorandum in support of Plaintiff's Motion for Preliminary Injunction.

FACTS[1]

The material facts in this action are relatively straightforward. Defendant Charles W. "Chuck" Clemons, Sr. is the elected member of the Florida House of Representatives representing House District 21.

Defendant, through his public office, maintains Twitter and Facebook pages using the account name "@ChuckClemons21." Defendant also maintains a separate personal Facebook account, but this action relates only to Defendant's @ChuckClemons21 Facebook page, which is an account-type specific for public figures. Ex. 1. *See* Complaint, ¶ 23; Ex. 2 ("Pages are for businesses, brands, organizations and public figures to share their stories and connect with people.").[2]

[1] "At the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is 'appropriate given the character and objectives of the injunctive proceeding.'" *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (quoting *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986)).

[2] *See Davison v. Loudoun Cty. Bd. of Supervisors*, 227 F. Supp. 3d 605, 610 (E.D. Va. 2017):

> The website is not Defendant Randall's personal Facebook profile. Rather, it is a Facebook "Page" - a public-facing platform through which public figures and organizations may engage with their audience or constituency. *See* Matt Hicks, *Facebook Tips: What's the Difference between a Facebook Page and Group?*, http://tinyurl.com/jtb5hoa (Feb. 24, 2010) (last visited December 9, 2016).

At the time Plaintiff was blocked from the account and when the initial Complaint in this action was filed, the @ChuckClemons21 Facebook page was titled, "State Representative Chuck Clemons District 21." Ex. 3. After the Complaint was filed, Defendant changed the title of his page to "Chuck Clemons." Ex. 4. The description of Defendant's Facebook, however, still reads: "State Representative, Florida District 21. Proudly representing Alachua, Gilchrist, and Dixie Counties." Ex. 1. Defendants' Twitter account has similar markings. Ex. 13.

Defendant regularly issues official statements through his Twitter and Facebook accounts. In fact, around the same time that Defendant blocked Plaintiff for his views on gun control, Defendant published an official statement on his Twitter and Facebook accounts regarding gun control. Exs. 4 & 5. In the statement, Defendant indicates that he is speaking as a State Representative:

> What I will do as an elected official representing District 21, is to protect the constitutional rights that are provided to us as citizens of this great state and nation and to work with Republicans and Democrats alike to bring about the best possible solution to stop this violence.

Ex. 17 (emphasis added).

Defendant uses his official accounts to communicate directly with constituents and to broadcast important information about the government. During Hurricane Irma, Defendant Clemons used Twitter and Facebook to post important updates on government services and road closures in his house district. Exs. 6 & 7.

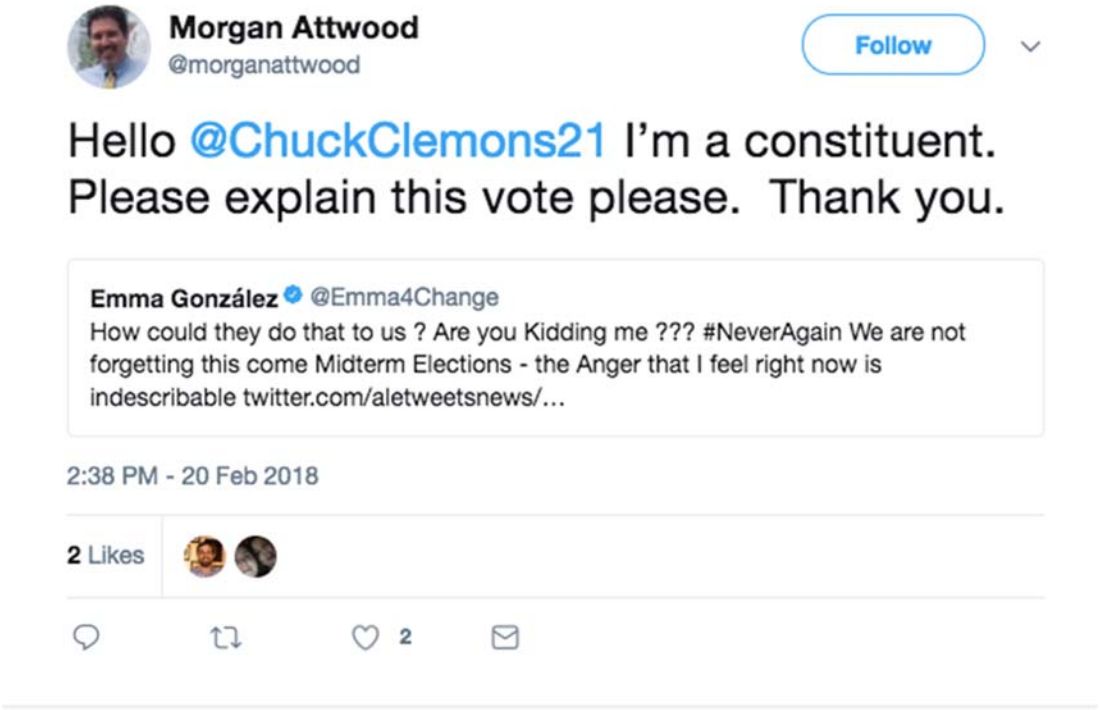
Using settings in his Twitter and Facebook accounts, Defendant Clemons intentionally made his official Twitter and Facebook accounts open to the public for viewing and interaction. Anyone can draft a reply tweet which will appear on Defendant Clemons' Twitter timeline. *See* Ex. 5 (offering undersigned counsel, who does not follow the @ChuckClemens21 account, the ability to "Tweet your Reply"). Anyone can post a comment or interact with posts on Defendant Clemons' Facebook Page. *See* Ex. 4 (offering undersigned counsel, who does not "follow" or "like" the @ChuckClemens21 account, the ability to publish "Your comment here...").

Defendant Clemons in fact allows his Twitter and Facebook accounts to be used as forums for the public to share information and opinions. As of February 28, 2018, Defendant's Statement Regarding Recent Gun Control Debate had generated 44 comments on Facebook (Ex. 4) and 13 comments on Twitter (Ex. 5). Not all of these comments were supportive of Defendant Clemons, creating the appearance of an unmoderated town hall-style exchange of viewpoints.

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. With some of the students from Marjory

Stoneman Douglas High School in the public gallery, Defendant Clemons voted against the motion, and the motion failed. *Florida S. Jour.* 617 (Reg. Sess. 2018).[3]

Shortly after the vote, Emma González, a student from Marjory Stoneman Douglas High School, tweeted a critique of the Florida House of Representatives for failing to take up debate on the assault weapons ban. Plaintiff Attwood retweeted Ms. González' tweet, linked to Defendant Clemons' official Twitter account, and stated, "Hello @ChuckClemons21 I'm a constituent. Please explain this vote please. Thank you."



Ex. 8.

[3] Available at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Session&CommitteeId=&Session=2018&DocumentType=Journals&FileName=House%20Journal%20No.26,%20February%2020,%202018%20(Tuesday).pdf.

Shortly thereafter, Defendant Clemons blocked Plaintiff Attwood on Twitter. Ex. 9 (screenshot of Plaintiff's Twitter account attempting to view the @ChuckClemons21 Twitter timeline).

Plaintiff Attwood then posted a comment on Facebook toward Defendant Clemons' official Facebook page, criticizing Defendant Clemons for blocking him on Twitter. Ex. 10. Defendant Clemons responded by also blocking Plaintiff Attwood on Facebook. *See* Ex. 11 (screenshot of Plaintiff's Facebook account attempting to view the @ChuckClemons21 Facebook page after being blocked, demonstrating that a blocked user cannot post or interact with posts and cannot "follow" the Page).

Consequently, Plaintiff Atwood is now excluded from participating in conversations that are still accessible to the rest of the public on Defendant's official Twitter and Facebook pages. Plaintiff is excluded from posting comments on Defendant's Twitter or Facebook timelines. Plaintiff is unable to view or retweet Defendant's tweets on Twitter. And Plaintiff is unable to receive notifications when Defendant publishes new content on Twitter or Facebook.

ARGUMENT

I. Legal Standard

Plaintiff must establish four elements in order to obtain a preliminary injunction: (1) a substantial likelihood that Plaintiff will succeed on the merits; (2)

Plaintiff will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to the Plaintiff outweighs whatever damage the granting of the proposed injunction might cause the Defendant; and (4) the granting of the proposed injunction will not harm or be adverse to the public interest. *McMahon v. City of Panama City Beach*, 180 F. Supp. 3d 1076, 1092 (N.D. Fla. 2016).

II. Plaintiff Has a Substantial Likelihood of Succeeding on the Merits.

A public official may not suppress speech based on ideology regardless of the type of forum—even in non-public forums. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985). "[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993).

Speech on Twitter and Facebook is subject to the same First Amendment protections as any other speech. *See Packingham v. North Carolina*, 137 S. Ct. 1730, 1732 (2017) (usage of social media is a First Amendment right); *Bland v. Roberts*, 730 F.3d 368, 386 (4th Cir. 2013) (public employee pressing the "like" button on Facebook was First Amendment protected activity).

While the same principles apply, the specific conduct at issue in this case—whether a public official may block a constituent on official social media accounts—

is novel. The only Court to rule on this issue found that official social media accounts are public forums. *Davison v. Loudoun Cty. Bd. of Supervisors*, 267 F. Supp. 3d 702, 706 (E.D. Va. 2017) (finding after a bench trial that a County Chair's Facebook Page was a public forum and that the Chair acted under color of law to deprive plaintiff's First Amendment right when she blocked him from the account based on his viewpoint); *see also Davison v. Plowman*, 247 F. Supp. 3d 767, 771 (E.D. Va. 2017) (finding that the Loudon County Attorney's Facebook page was likewise a public forum, but that the County Attorney was entitled to enforce a viewpoint neutral policy prohibiting "off-topic" comments).[4]

A. First Amendment Principles Govern Defendant's Twitter and Facebook Accounts Because Defendant Operates Those Accounts as a Public Official, Not as a Private Citizen.

The First Amendment and likewise Section 1983 claims only apply to state action. Defendant Clemons is of course free to discriminate on his personal social media accounts. But the @ChuckClemons21 Twitter and Facebook accounts are not personal accounts. They are operated in Defendant's official capacity as a State Representative.

[4] A case pending against President Trump for blocking users on Twitter is scheduled for hearing on March 8, 2018. *Knight First Amendment Institute v. Trump*, Case No. 17-Civ-5205-NRB (S.D.N.Y. Jan 8, 2018) (order scheduling oral argument on cross motions for summary judgment). A similar case was filed against the Governor of Maryland settled before judgment. *Laurenson v. Hogan*, Case No. 8:17-cv-02162-DKC (D. Md. Feb. 14, 2018) (order dismissing case).

Even private conduct is treated as state action if there is a sufficient nexus with the state. *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass'n*, 531 U.S. 288, 295 (2001). "Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action." *Evans v. Newton*, 382 U.S. 296, 299 (1966). In *Brentwood Acad.* the Court held that a private athletic association that regulated athletics programs for both public and private schools was engaged in state action where it was overwhelmingly composed of public school officials who met to work during official school hours and performed an integral function of public schooling. *Id.*

Motivation is an important factor when a public officer's off-duty conduct is at issue. "Where the sole intention of a public official is to suppress speech critical of his conduct of official duties or fitness for public office, his actions are more fairly attributable to the state." *Rossignol v. Voorhaar*, 316 F.3d 516, 522 (4th Cir. 2003) (holding that police officers' off-duty conduct in removing newspapers from circulation was action under color of law because their public office was the impetus for the action—wanting to avoid public criticism of their official conduct).

In *Davison v. Loudoun Cty. Bd. of Supervisors*, 267 F. Supp. 3d 702, 706 (E.D. Va. 2017), the Court found that the Chair of the County Board operated a Facebook page under color of law under similar circumstances as here. Although she

occasionally posted about personal matters, did not use County equipment to operate the account, and much of her activity was outside of her official working hours, the Court found state action where (1) she used the page as a tool of governance, by communicating back and forth with constituents; (2) her official staff helped her manage the page; (3) the title and appearance of the page indicated that it was an official page; and (4) her motivation for banning the plaintiff arose out of public, not personal, circumstances. *Id*. at 712–14.

Likewise, Defendant uses the @ChuckClemons21 accounts as tools to perform his official duties. He uses the accounts to communicate back and forth with constituents; he issues official statements on the accounts; he posts important information about the government and public safety; and his posts are largely or exclusively related to his public office not his private life. Defendant's recently published statement on gun control shows that Defendant views himself as a public official when he uses the accounts. Ex. 17 ("What I will do as an elected official representing District 21, is...") (emphasis added). The statements posted on Defendant's accounts do not seem to appear anywhere else, meaning that but for these accounts Defendant would have to find another channel to make public statements.

Defendant's Capitol staff seems to help him maintain the @ChuckClemons21 accounts. Ex. 3 (listing Defendant's intern, David Allen, as a manager of

Defendant's Facebook page); Ex. 12 ("Adding yourself as a team manager on your Page is a way to show other people on Facebook that you're a manager of that Page.")

The appearance of the @ChuckClemons21 accounts indicates that they are operated by a State Representative, not a private individual. Both account names include Defendant's house district number. Before the Complaint was filed, Defendant's Facebook page was titled, "State Representative Chuck Clemons District 21." Ex. 3. Even after Defendant's post-complaint scrubbing, the Facebook page description still reads: "State Representative, Florida District 21. Proudly representing Alachua, Gilchrist, and Dixie Counties." Ex. 1. The profile picture on the Facebook page is Defendant speaking as a Representative on the floor of the Florida House of Representatives. Ex. 4. Defendant posted his Capitol contact information on the Facebook Page. Ex. 14. Defendant's Twitter account has similar markings and its biography line reads: "Proven, Experienced Leadership for Alachua, Gilchrist, and Dixie Counties." Ex. 13. When Defendant releases public statements on Facebook, he also releases them on his Twitter account, and frequently links between the two accounts.

The @ChuckClemons21 accounts are often managed during times when Defendant Clemons would be expected to be working as a State Representative. For example, Defendant's "Statement Regarding the Recent Gun Control Debate" was

posted on Facebook and Twitter on February 21, 2018, around 10:00 am and edited again at 1:09 pm. Exs. 4 & 5. The Florida House of Representatives was in session throughout that week, including at 1:30 pm on February 21. Ex. 15.

Finally, Defendant's motivation for blocking Plaintiff further illustrates that Defendant operates his @ChuckClemons21 accounts under color of law. As in *Rossignol v. Voorhaar*, 316 F.3d 516, 522 (4th Cir. 2003), it was Defendant's official, not personal, capacity that was the impetus for Defendant's blocking. Plaintiff questioned Defendant Clemons' vote on the floor of the House. In response to the scrutiny of his official actions, Defendant attempted to suppress Plaintiff's speech by blocking his account.

It doesn't matter that Twitter and Facebook are private platforms. First Amendment principles govern the @ChuckClemons21 accounts because Defendant operates them in his official capacity. *See, e.g.*, *Se. Promotions Ltd. v. Conrad*, 420 U.S. 546, 555 (1975) (holding that a privately owned theater leased by a city was a public forum); *Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) (holding that the First Amendment rights of a media organization and its public viewership were violated by blocking their access to a mayoral debate, even though the debate was held in the private facility).

B. The @ChuckClemons21 Twitter and Facebook Accounts Are Public Forums.[5]

A public official may create a public forum by designating "a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects." *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802 (1985). The place or channel of communication need not be a forum in a spatial or geographic sense. *See, e.g.*, *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 830 (1995) (ruling that university was a limited public forum and could not engage in viewpoint discrimination in allocation of funds to student groups).

Although the government is not "not required to create the forum in the first place," nor "required to indefinitely retain [its] open character . . .[,] as long as it does so it is bound by the same standards as apply in a traditional public forum." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45–46 (1983).

Courts have long appreciated that the internet is an important channel of communication. More than 20 years ago, the Supreme Court recognized that, "Through the use of chat rooms, any person with a phone line can become a town

[5] For purposes of granting this preliminary injunction, the Court does not even need to find that the @ChuckClemons21 accounts are public forums because the evidence clearly shows that Defendant engaged in viewpoint discrimination, which is unlawful even in a nonpublic forum. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985) ("Control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.").

crier with a voice that resonates farther than it could from any soapbox." *Reno v. ACLU*, 521 U.S. 844, 870 (1997). More recently, the Court recognized that the internet and "social media in particular" are among "the most important places . . . for the exchange of views." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

Here, Defendant Clemons created public forums by "deliberately permitting public comment" on his Twitter and Facebook accounts. *See Davison v. Loudoun Cty. Bd. of Supervisors*, 267 F. Supp. 3d 702, 716 (E.D. Va. 2017) ("When one creates a Facebook page, one generally opens a digital space for the exchange of ideas and information."). Using settings in his Twitter and Facebook accounts, Defendant Clemons intentionally made his Twitter and Facebook accounts open forums for public comment. Anyone can draft a reply tweet, which will appear on Defendant Clemons' Twitter timeline. *See* Ex. 5. Anyone can post a comment or interact with posts on Defendant Clemons' Facebook Page. *See* Ex. 4.

And Defendant Clemons in fact allows his Twitter and Facebook accounts to be used as a forum for the public to share information and opinions. As of February 28, 2018, Defendant's Statement Regarding Recent Gun Control Debate had generated 13 comments on Twitter (Ex. 5) and 44 comments on Facebook (Ex. 4).

The @ChuckClemons21 spaces act like a continuous virtual town hall event and the interactions are multidirectional: individuals contact Defendant Clemons;

Defendant Clemons responds to individuals and sometimes retweets their replies; and individuals share information and opinions between themselves. Take for example, Ex. 16, where Defendant published his statement regarding gun control on his Twitter account. This tweet generated comments, including one by user @CMcKWest, which Defendant then retweeted. Defendant's Twitter and Facebook accounts are a "hub for sharing information and opinions with one's larger community." *Davison v. Loudoun Cty. Bd. of Supervisors*, 227 F. Supp. 3d 605, 611 (E.D. Va. 2017), quoting *Liverman v. City of Petersburg*, 844 F.3d 400, 408, 410 (4th Cir. 2016) (writing on social media is like "writing a letter to a local newspaper" (citations omitted)).

C. Defendant Violated the First Amendment By Excluding Plaintiff From His Official Accounts Based on Plaintiff's Viewpoint.

The @ChuckClemons21 Twitter account blocked Plaintiff immediately after Plaintiff retweeted a statement critical of the Legislature for failing to take up debate on the assault weapons ban and mentioned the @ChuckClemons21 Twitter account.

Plaintiff then published a complaint on Facebook about Defendant Clemons blocking him on Twitter, linking to the @ChuckClemons21 Facebook account. In response, the @ChuckClemons21 Facebook account blocked Plaintiff on Facebook.

The circumstances and timing of Defendant's blocking Plaintiff overwhelmingly indicates that Defendant blocked Plaintiff *because of* Plaintiff's viewpoints.

Legitimate criticism of a public official warrants the strongest protection from government suppression. "Expression of dissatisfaction with the policies of this country [is] situated at the core of our First Amendment values." *Texas v. Johnson*, 491 U.S. 397, 411 (1989). "In suppressing criticism of [his] official conduct" Defendant Clemons "did more than compromise some attenuated or penumbral First Amendment right; [he] struck at its heart." *Rossignol v. Voorhaar*, 316 F.3d 516, 522 (4th Cir. 2003).

D. Plaintiff Is Also Substantially Likely to Prevail On His Claims that Defendant's Conduct Unconstitutionally Limits His Access to Official Statements and His Right to Petition For Grievances.

Even if the @ChuckClemons21 accounts do not constitute a public forum, Defendant is violating the First Amendment and the Florida Constitution by excluding Plaintiff from official statements and important notices regarding public services in House District 21. *See Matal v. Tam*, 137 S. Ct. 1744, 1760–61 (2017) ("[T]he Government may not deny a benefit to a person on a basis that infringes [the First Amendment] even if he has no entitlement to that benefit." (internal citations omitted)); *Los Angeles Police Department v. United Reporting Publishing Corporation*, 528 U.S. 32, 43 (1999) (resolved on standing grounds, but a majority would have held that the defendant violated the First Amendment by engaging in viewpoint discrimination in the distribution of information concerning arrests); *Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) ("We think that once

there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable.").

Moreover, Plaintiff's initial tweet was a petition for the redress from his State Representative regarding gun control and the Legislature's failure to act on the issue. *See Packingham*, 137 S. Ct. at 1735 ("on Twitter, users can petition their elected representatives"). Independent of public forum analysis, the First Amendment and the Florida Constitution prohibit the state from retaliating against an individual for filing a petition for redress. *See Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011) ("The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives, whereas the right to speak fosters the public exchange of ideas that is integral to deliberative democracy as well as to the whole realm of ideas and human affairs."); *Cate v. Oldham*, 450 So. 2d 224, 226 (Fla. 1984) ("The presentation of a complaint to government concerning its conduct is now expressly held central to the right to petition that government for the redress of grievances against it.").

III. Plaintiff Will Suffer Irreparable Injury If the Injunction Is Not Granted.

In a free speech claim, establishing irreparable harm is not demanding because the injury is to a fundamental right not compensable with money. "The loss of First

Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Nevertheless, Plaintiff's injury here is particularly stark given that Defendant blocked Plaintiff's speech on gun control while public interest in gun control is surging in the wake of the Marjory Stoneman Douglas High School shooting on February 14, 2018. Turkewitz & Yee, "With Grief and Hope, Florida Students Take Gun Control Fight On the Road," *The New York Times* (Feb. 20, 2018), available at https://www.nytimes.com/2018/02/20/us/parkland-students-shooting-florida.html ("Many of the protests around the country have arrived semi-spontaneously, apparently ignited by the impassioned pleas of young Parkland survivors ... Facebook and Twitter have amplified attendance"). Speech on gun control is at an acme of importance. What a moment to be blocked from your own State Representative's official social media accounts, where constituents are actively debating how your Representative should act on gun control!

IV. The Injury to Plaintiff Outweighs Any Damage to Defendant.

Plaintiff's First Amendment injury is profound. During a moment of important civic debate on gun control, Plaintiff is excluded from the discussion of that issue occurring on his own State Representative's designated discussion forum.

In contrast, it is difficult to imagine any harm that unblocking Plaintiff will have on Defendant Clemons. His accounts are already open to public comment, and

not all of these comments are supportive. As of February 28, 2018, more than 3,600 people currently follow Defendant Clemons on Facebook (Ex. 4) and more than 660 people follow his Twitter account (Ex. 13). Beyond those active followers, anyone in the world can comment on Defendant's pages because they are open to the public at large. Permitting Plaintiff's one additional voice to join this milieu is extraordinarily unlikely to injure Defendant in any appreciable way.

V. Granting the Proposed Injunction Is in the Public Interest.

There is great public benefit in preventing viewpoint discrimination on official social media accounts. "The First Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

As Justice Blackmun once wrote:

> In addition to furthering the First Amendment rights of individuals, the use of government property for expressive activity helps further the interests that freedom of speech serves for society as a whole: it allows the "uninhibited, robust, and wide-open" debate about matters of public importance that secures an informed citizenry, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); it permits "the continued building of our politics and culture," *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972); it facilitates political and societal changes through peaceful and lawful means, *see Carey v. Brown*, 447 U.S. 455, 467 (1980); and it helps to ensure that government is "responsive to the will of the people," *Stromberg v. California*, 283 U.S. 359, 369 (1931).

Cornelius v. NAACP Legal Def. & Educ. Fund, 473 U.S. 788, 815–16 (1985) (Blackmun, J., dissenting).

When people scroll through the debate on gun control occurring on Defendant's Twitter and Facebook accounts, people should be able to expect that these comments represent something of a cross-section of the viewership. Defendant's conduct secretly distorts the substance of the public debate. No one would have known that Plaintiff was excluded from this debate; except that Plaintiff spoke up.

Almost every elected public official in the United States and many public agencies now maintain official social media spaces which are important sources of speech by, to, and about the government. These digital spaces are the "modern public square." *Packingham*, 137 S. Ct. at 1732.

Failing to recognize that Defendant's Twitter and Facebook accounts are public forums would set a precedent that the government can silence critics, mislead the public as to how the government is viewed, and chill dissent. Other public officials will be watching the outcome of this case, and Defendant's approach foreshadows a sharp deterioration in political engagement if officials need not abide by the First Amendment's constraints in utilizing social media. Public officials may release official statements, hold town halls, and conduct news conferences on their social media accounts if they know they can censor their audience.

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. As Justice Kennedy cautioned:

> In my view the policies underlying the [public forum] doctrine cannot be given effect unless we recognize that open, public spaces and thoroughfares that are suitable for discourse may be public forums, whatever their historical pedigree and without concern for a precise classification of the property. ... Without this recognition our forum doctrine retains no relevance in times of fast-changing technology and increasing insularity. ... our failure to recognize the possibility that new types of government property may be appropriate forums for speech will lead to a serious curtailment of our expressive activity.

Int'l Soc'y for Krishna Consciousness v. Lee, 505 U.S. 672, 697 (1992) (Kennedy, J., concurring).

CONCLUSION

Plaintiff respectfully requests that this Court enter a preliminary injunction, ordering Defendant to unblock Plaintiff from the @ChuckClemons21 Twitter and Facebook accounts.

Dated: March 5, 2018.

Respectfully submitted,

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CERTIFICATE REGARDING COMPLIANCE WITH LOCAL RULE 7.1(F)

Undersigned counsel certifies that this memorandum contains 5,323 words and is in compliance Local Rule 7.1(F).

/s Eric Lindstrom
Eric Lindstrom

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on March 5, 2018 this memorandum along with the exhibits were emailed to Adam S. Tanenbaum (Adam.Tanenbaum@myfloridahouse.gov).

/s Eric Lindstrom
Eric Lindstrom