

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

BRENDA BOHANAN,

Plaintiff,

vs.

DOUGLAS COUNTY
COMMISSIONER KELLY G.
ROBINSON,
in his individual and official capacities,

Defendant.

JURY TRIAL DEMANDED

CIVIL ACTION NO.
1:20-cv-02641-JPB

FIRST AMENDED VERIFIED COMPLAINT

Plaintiff Brenda Bohanan (“Plaintiff Bohanan” or “Plaintiff”) files this amended pleading in her action against Defendant Douglas County Commissioner Kelly G. Robinson (“Defendant Robinson” or “Defendant”) pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments of the United States Constitution, as well as pendent state law claims for breach of the parties’ Settlement Agreement.

1. Plaintiff is a civic-minded taxpayer who in 2015 criticized how Defendant had responded to some of his concerned constituents. Defendant

retaliated against Plaintiff by blocking her from his interactive Facebook Page which he used to interact with members of the public about his official duties and activities as county commissioner.

2. In May 2020, Defendant entered into a Settlement Agreement with Plaintiff due to having blocked her from his Facebook Page wherein Defendant acknowledged that the interactive comments sections of the Page constituted a designated or limited public forum where viewpoint discrimination is prohibited. Central to the Settlement, Defendant agreed to unblock and restore access to his Facebook Page for Plaintiff and other blocked users, and to refrain in the future from blocking or censoring Plaintiff or others based on their protected speech.

3. In material breach of the Settlement Agreement, Defendant did not unblock Plaintiff. He instead changed the username of his Facebook Page – analogous to changing the license plate on a car, but it is still the same car – in order to try to avoid compliance.

4. After giving Defendant ample time to cure, but still remaining blocked, Plaintiff filed the original Verified Complaint (“Complaint”) in this action seeking to protect her First Amendment right to participate and speak in a government-created public forum.

5. Shortly before Defendant’s deadline for responding to the original Complaint, Defendant closed the public forum existing on his Facebook Page by

converting the Page to be private – i.e., only accessible to his Facebook “friends.” Consistent with Defendant’s ongoing pattern of viewpoint-based discrimination against Plaintiff, he closed the public forum for the purpose of excluding Plaintiff and others whose speech Defendant disfavors and avoiding being required to give Plaintiff access.

6. Plaintiff now amends her Complaint to incorporate these newly-arisen facts and unconstitutional forum-closure claim. Plaintiff also seeks: to redress Defendant’s having blocked and censored her from his Facebook Page during the time period when it operated as a public forum, to prevent recurrence of such unconstitutional conduct by Defendant in the future, and to recover for Defendant’s material breach of the parties’ Settlement Agreement pursuant to O.C.G.A. § 13-6-11.

PARTIES

7. Plaintiff Brenda Bohanan is a resident of Douglas County, Georgia. Plaintiff is politically active in her community and engages in public political speech via social media, including Facebook.

8. At all times relevant herein, Defendant Kelly G. Robinson was Douglas County Commissioner for District 2, acting under color of state law. He is sued in both his individual and official capacities.

JURISDICTION AND VENUE

9. This action arises under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

10. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

11. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

12. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 1983.

13. Venue in the Northern District of Georgia, Atlanta Division, is proper under 28 U.S.C. § 1391(b) because Douglas County is located within this district and division and is where the events giving rise to Plaintiff's claims occurred.

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS

Defendant's Facebook Presence

14. Defendant Robinson maintains a Facebook page located at <https://www.facebook.com/commissionerkellyrobinsonofficial> (“Defendant's Official Page”) which is a designated or limited public forum from which Plaintiff has not been blocked.¹

¹ Defendant also maintains a re-election Facebook page located at <https://www.facebook.com/reelectkellyrobinson/> from which Plaintiff is not blocked.

15. Sometime before June 21, 2015, Defendant Robinson created a separate Facebook page (“Defendant’s Facebook Page”), with the original username of “commissionerkelly.robinson,” which he subsequently changed in May 2020 to “kellyrobinsonsr.”²

16. By 2020, Defendant’s Facebook Page had over 4900 associated “friends.” *See* Exhibit A.

17. Although Defendant simultaneously maintained his Official Page, he more frequently used his Facebook Page to interact with constituents and the public about his official duties and activities, operating his Facebook Page in his official capacity as county commissioner.

18. First, Defendant clearly identified himself on his Facebook Page as a government official by virtue of the fact that the Page displayed his name as “Commissioner Kelly Robinson” and the Page’s username, and therefore its URL, included the word “commissioner.” *See id.*

² As further discussed below, under “General Account Settings,” Facebook allows the owner of a page to log into their account and regularly change the “username” for their page which, in turn, changes the URL of the page, but does not create a new page. *See* https://www.facebook.com/help/203523569682738?helpref=search&sr=2&query=url&search_session_id=328c1a030dece2f1b28eaa9f2ec5903d (“How do I change the username for my Facebook page?”) (last visited September 11, 2020); Exhibit I (Screenshot of How to Change Username of a Facebook Page).

19. Additionally, Defendant posted on his Facebook Page about his official activities, initiatives, accomplishments, and legislative agenda as Douglas County Commissioner for District 2, as well as posting photographs of himself in front of the “Douglas County Georgia” emblem or otherwise engaging in official business. *See, e.g.*, Exhibits A & F.³

20. For example, and without limitation, Defendant authored posts on his Facebook Page regarding: the March 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act for small business owners addressed to “citizens, constituents, friends and family”; information on Douglas County’s response to COVID-19; information regarding Defendant’s mental health initiative including a Douglas County Virtual Forum on Mental Health; an update from an April 20, 2020 Finance Committee meeting; an invitation to his third annual “How to Do Business for Douglas County” event hosted in his capacity as County Commissioner; discussion of a September 2019 trip to Washington, D.C. to help advance Douglas County’s legislative agenda; an invitation and reminder about Douglas County’s 2019 Budget Town Hall in which he participated as county commissioner; introduction of his District 2 Summer 2019 intern; discussion of the launch of new

³ Exhibit A contains examples of Defendant’s official-capacity posts on his Facebook Page under the username “commissionerkelly.robinson.” Exhibit F contains examples of official-capacity posts that appeared on Defendant’s Facebook Page after he changed the username of the Page to “kellyrobinsonsr.”

transportation services he helped bring about as county commissioner; and announcement of the positive outcomes he achieved for citizens by the end of 2018 in his role as county commissioner. *See, e.g.*, Exhibits A & F.

21. In sum, Defendant's Facebook Page sported the trappings of his government office and the posted content on the Page had a strong tendency toward matters relating to Defendant's public-official role.

22. Thus, there existed a close nexus between Defendant's management of his Facebook Page and his position as county commissioner, thereby constituting state action and official-capacity conduct.

23. Meanwhile, Constituents and members of the public enjoyed unrestricted use of the interactive features of Defendant's Facebook Page to express their opinions and viewpoints both to Defendant in his capacity as Douglas County Commissioner and to other viewers/users of the Facebook Page. *See, e.g.*, Exhibits A & F.

24. Defendant, in managing his Facebook Page, did not define or curtail the topics that members of the public could discuss in the comments section of his Facebook Page.

25. The interactive spaces on Defendant's Facebook Page therefore constituted a designated or limited public forum.

26. In the now-breached Settlement Agreement with Plaintiff, Defendant himself acknowledged that the comments section of his Facebook Page was, in fact, a designated or limited public forum. *See* Exhibit B (Settlement Agreement) at ¶ 1(a)(ii)(1).

Defendant Blocked Plaintiff from Facebook Page

27. In 2015, Plaintiff Bohanan was an active member of the “Douglasville & Douglas County for Civic Action” Facebook Group (“the Facebook Group”).

28. The Facebook Group functioned as an online forum where members of the public discuss political issues and other matters of public concern relevant to the Douglas County and Douglasville communities.

29. On or about June 21, 2015, Plaintiff, Defendant Robinson, and other participants in the Facebook Group engaged in an online discussion (“the Discussion”) started by the Facebook Group’s administrator Brian Miller.

30. Specifically, on or about June 21, 2015, Mr. Miller posted a group message expressing concern about Douglas County’s heightened property taxes and summarizing some “highlights” from Defendant Robinson’s “Mid Year State of the District” town hall meeting that had been held sometime during approximately the past week. *See* Exhibit C.

31. Facebook Group members participating in the Discussion likewise expressed concern about the county property tax rate, and voiced disapproval of

what had transpired at the town hall meeting, including criticizing Defendant Robinson's spending priorities in his role as a Douglas County Commissioner. *See id.*

32. Plaintiff Bohanan posted a message in the Discussion asking if the town hall meeting had been videotaped and stating, "Thanks for the recap btw. UGH!" *See id.*

33. Defendant Robinson responded more than once during the Discussion, explaining and defending his opinions and actions. *See id.*

34. Defendant Robinson's responses during the Discussion included several golfing analogies. *See id.*

35. Plaintiff Bohanan then commented, "I can't figure out if Mr. Robinson is dismissive or just clueless. I am certain that the people asking questions are very serious. Taxpayers are being hit from every single direction on all levels and we've just about had it with flippant condescending elected officials. I can't speak for everyone but serious answers to serious questions would be MUCH appreciated." *See id.*

36. Another Facebook Group member named Bill Smith replied to Plaintiff Bohanan, “Yes Brenda, he should take a mulligan⁴ oh please” (ellipses in the original), to which Plaintiff Bohanan answered, “He’d do well to take it, Bill!” *See id.*

37. Defendant Robinson replied stating, among other things, “As opposed to the mulligan, simply delete my comments and block my user name.” *See id.*

38. The foregoing comment by Defendant Robinson illustrates his belief that censoring speech is the appropriate mechanism by which to address opinions or viewpoints expressed in a public online forum that one does not like or disagrees with.

39. In response to Defendant Robinson’s reply, Plaintiff Bohanan commented, “Figures,” accompanied by a frustrated-face emoji. *See id.*

40. After the foregoing Discussion, when Plaintiff Bohanan attempted to access Defendant’s Facebook Page, she found that she was blocked.

41. Due to being blocked, Plaintiff could not view the content of Defendant’s Facebook Page.

⁴The Merriam-Webster Dictionary defines “mulligan” as “a free shot sometimes given a golfer in informal play when the previous shot was poorly played.” *See* <https://www.merriam-webster.com/dictionary/mulligan> (last visited September 11, 2020).

42. Due to being blocked, Plaintiff could not receive the speech of Defendant and others on Defendant's Facebook Page relating to matters of public concern, including Defendant's duties and activities as county commissioner.

43. Due to being blocked, Plaintiff could not use the publicly-accessible, interactive comments sections of Defendant's Facebook Page to engage in protected speech – i.e., to express her own beliefs and viewpoints relating to matters of public concern, including petitioning Defendant for grievances.

The Settlement Agreement

44. By February 2020, Plaintiff Bohanan was still blocked from Defendant's Facebook Page. *See* Exhibit D.

45. Around this time, Plaintiff became aware of the growing body of law establishing that it is unconstitutional for a government official to censor a member of the public from accessing or interacting with a social media account that the official uses to communicate with the public about their official role based on the official's disagreement with or dislike of that individual's expressed viewpoint.

46. On or about February 21, 2020, Plaintiff Bohanan sent Defendant Robinson an email pointing out the unconstitutionality of his having blocked her from his Facebook Page and requesting that he unblock her.

47. Upon information and belief, Defendant Robinson received and read Plaintiff's e-mail.

48. Defendant Robinson did not respond to Plaintiff's email.

49. On or about March 31, 2020, counsel for Plaintiff wrote to Defendant Robinson also pointing out the unconstitutionality of his having blocked Plaintiff from his Facebook Page and demanding that he unblock her.

50. In response to Plaintiff's demand letter, Defendant Robinson retained private counsel paid by county funds.

51. By no later than May 25, 2020, Plaintiff Bohanan, Defendant Robinson, and Douglas County entered into a Settlement Agreement and Release of All Claims ("the Settlement Agreement") to resolve the matter of Defendant having blocked Plaintiff from his Facebook Page. *See* Exhibit B.

52. Plaintiff, Defendant and Douglas County were each represented by counsel in negotiating the Settlement Agreement. *See id.*

53. The Settlement Agreement was drafted by Defendant's counsel and none of the relevant terms were altered by Plaintiff in finalizing the agreement.

54. The Settlement Agreement was signed by Plaintiff and her counsel, Defendant and his counsel, the Douglas County Chairperson, the County Clerk, and the attorney for Douglas County, reflecting the fact that the Settlement was intended to resolve claims arising from Defendant's official-capacity conduct.

55. The Settlement Agreement specifies in the first “Whereas” clause that Plaintiff is blocked from Defendant’s Facebook Page with the username “commissionerkelly.robinson.” *See id.*

56. The Settlement Agreement states in paragraph 1(a)(ii)(1) that the parties agree that the comments sections of Defendant’s Facebook Page constitute either a limited public forum or designated public forum. *See id.*

57. The Settlement Agreement provides that in consideration for Plaintiff’s waiver and release of all claims against Defendant and Douglas County, Defendant agrees to unblock and restore access to blocked users as to Defendant’s Facebook Page, which would include Plaintiff. The agreement specified a 24 hour time period for unblocking. *See id.* at ¶¶ 1(a), 1(a)(ii) & 2(a).

58. The Settlement Agreement further provides that in consideration for Plaintiff’s waiver and release of all claims against Defendant and Douglas County, Defendant agrees not to delete users’ comments from the interactive spaces on his Facebook Page or ban users from viewing or commenting on publicly posted content based on the users’ protected speech. *See id.* at ¶ 1(a)(ii)(1).⁵

⁵The Settlement Agreement further provides that in consideration for Plaintiff’s waiver and release of all claims against Defendant and Douglas County, Defendant Robinson and Douglas County will pay Seven Hundred and Fifty Dollars (\$750.00) in general damages to Plaintiff Bohanan, with an additional Seventeen Hundred and Fifty Dollars (\$1,750.00) paid in attorneys’ fees, for a gross sum of Twenty-Five Hundred Dollars (\$2,500). *See* Exhibit B. These payments have been made by Douglas County.

59. The Settlement Agreement containing the foregoing terms of offer, acceptance, and consideration was mutually and voluntarily entered into by Plaintiff, Defendant and Douglas County and was fully executed by all parties and their respective counsel by no later than May 25, 2020. *See id.*

60. Counsel for Defendant was the last signatory to execute the agreement, doing so sometime between May 20, 2020 and May 25, 2020.

61. Upon signing, Defendant's counsel was in possession of the fully executed Settlement Agreement, triggering the 24-hour window specified in the Agreement for unblocking and restoring Plaintiff's and other blocked users' access to Defendant's Facebook Page. *See id.* at ¶ 1(a)(ii).

Defendant Materially Breached the Settlement Agreement and Continued to Violate Plaintiff's Constitutional Rights

62. By May 27, 2020, which was beyond the 24-hour window for unblocking and restoring Plaintiff's access to Defendant's Facebook Page, Plaintiff still remained blocked in material breach of the Settlement Agreement.

63. When Plaintiff's counsel repeatedly raised this fact with Defendant's counsel, he at first incorrectly asserted that Plaintiff was not blocked.

64. Defendant's counsel then ultimately asserted that Defendant's Facebook Page, identified in the Settlement Agreement, was "personal." *See Exhibit J (May 27, 2020 Email from Samuel S. Olens to Clare Norins and Gerald Weber -*

“While it may say Commissioner, and he may be able to revise that, this is clearly his personal page.”).

65. This assertion was directly contrary to Paragraph 1(a)(ii)(2) of the Agreement -- which Defendant’s counsel himself had drafted and signed -- that expressly stipulated that the comments section of Defendant’s Facebook Page was, not personal, but constituted a designated or limited public forum. *See* Exhibit B.

66. From that point forward, Defendant and his counsel eschewed compliance with the Settlement Agreement.

Defendant Changed the Username of His Facebook Page to Avoid Compliance with the Settlement Agreement

67. By no later than May 28, 2020, Defendant changed the username of his Facebook Page to “kellyrobinsonsr” and continued to block Plaintiff. *See* Exhibit E (Screenshot Showing Page With Username “commissionerkelly.robinson” Not Found); Exhibit F (Screenshots of Defendant’s Facebook Page as of May 28, 2020); and Exhibit G (Screenshot of Brenda Bohanan’s Blocked Access to “kellyrobinsonsr”).

68. As noted above, under “General Account Settings,” Facebook allows the owner of a page to change the “username” for their page regularly which, in turn, changes the URL of the page, but does not create a new page. *See* Exhibit I.

69. Once a Facebook page has been renamed by changing the username, the page can no longer be found by searching for the prior username, nor by entering the URL containing the prior username into an internet browser.

70. Changing the username on a Facebook page can be analogized to changing the license plate on a car. No matter how many times the license plate is changed, making it harder to trace the car, it is still the same vehicle with the same Vehicle Identification Number.

71. So, too, a Facebook page's username can be changed multiple times, making it harder to find the page, but it remains the same page that was originally created by the Facebook account owner.

72. Thus, notwithstanding the new username of "kellyrobinsonsr," Defendant's Facebook Page was the same page as to which Defendant had entered into the Settlement Agreement, only renamed. Put another way, it was the same car just with a new license plate.

73. After Defendant changed his Facebook Page's username, the picture at the top of the page was the same as before, although Defendant's title of "Commissioner" was removed. *Compare Exhibit A with Exhibit F.*

74. Defendant's Facebook Page hosted the same myriad posts about his official activities, initiatives, accomplishments, and issues of priority as Douglas

County Commissioner, as well as the posted photographs of Defendant in official settings or otherwise engaging in official business. *See* Exhibit F.

75. Defendant's Facebook Page included the same interactive features allowing viewers to express their views and opinions that Defendant had acknowledged in the Settlement Agreement constituted a limited or designated public forum. *See id.*

76. And Plaintiff was still blocked from this forum in violation of the Settlement Agreement.

77. On June 1, 2020, in a further attempt to resolve the matter pre-litigation, Plaintiff's counsel wrote to Defendant's counsel pointing out Defendant's non-compliance with the terms of the Settlement Agreement and continuing violation of Plaintiff's First Amendment rights.

78. Defendant's counsel responded on June 3, 2020 that Defendant was in the process of deleting "political" posts from his Facebook Page.

79. Plaintiff's counsel responded that this did not satisfy the terms or fulfill the purpose of the fully executed Settlement Agreement.

80. As of June 15, 2020, and continuing as of at least July 21, 2020, Defendant had culled his Facebook Page of some of its content relating to his official position as Douglas County Commissioner, moving some of those posts to his Official Page (<https://www.facebook.com/commissionerkellyrobinsonofficial>).

81. However, Defendant's Facebook Page still contained numerous posts relating to Douglas County politics, projects, and functions that Defendant Robinson had attended in his capacity as a Douglas County Commissioner, including posts associated with the hashtags #DouglasCounty and #CommissionerKellyRobinson. *See* Exhibit H (Screenshots from Defendant's Facebook Page as of June 15, 2020 and continuing as of June 22, 2020); Exhibit K (July 21, 2020 email, at 4:45 p.m., from Clare Norins to Gerald Weber, "Here's the current Facebook page: <https://www.facebook.com/kellyrobinsonsr>. I don't see that much (if anything) has been removed since we filed the complaint.") (Privileged & confidential attorney work product redacted).

82. Additionally, the comments section of Defendant's Facebook Page continued to exist as a designated or limited public forum where members of the public could express their views and opinions to and about Defendant Robinson in his capacity as Douglas County Commissioner and could respond to other users' comments on the page. *See, e.g.*, Exhibit H (comments posted by constituents in response to Defendant's December 9, 2017 post).

Defendant Closed the Public Forum on His Facebook Page for a Viewpoint-Discriminatory Purpose

83. Subsequently, on or before August 21, 2020 – a few days before Defendant's response to the original Complaint in this action was due – Defendant closed this public forum that had existed for years on his Facebook Page by

converting the Page to a private setting such that only individuals whom Defendant has “friended” on Facebook can access any of the posts or comments on the Page.

84. Defendant also, for the first time, unblocked Plaintiff such that she can now see Defendant’s name and banner photographs, but not the contents of the page because Plaintiff and Defendant are not Facebook “friends.” *See* Exhibit L (Screenshot of Defendant’s Facebook Page After Conversion to Private Setting).

85. To be sure, Defendant was free to timely unblock Plaintiff from his public-forum Facebook Page as the Settlement Agreement required and then create a new and separate Facebook page accessible only to his Facebook “friends” on which he posts personal content. But this Defendant did not do.

86. He instead shuttered a long-standing public forum by converting his existing Facebook Page to be private in order to exclude from that forum Plaintiff and others whose speech he disfavors.

87. In short, Defendant closed a public forum for a viewpoint-discriminatory purpose.

88. Meanwhile, Defendant’s having blocked Plaintiff from his Facebook Page from approximately on or about June 21, 2015 until approximately on or about August 21, 2020 -- during which time the Page’s comments sections constituted a designated or limited public forum, as Defendant himself acknowledges in the Settlement Agreement -- deprived Plaintiff of the ability to speak, and the ability to

receive the speech of others. This was because: (1) she could not view the posts and comments of Defendant and others in the public forum, and (2) she could not participate in the interactive features that were available to other members of the public who had not been blocked, such as posting comments on or “liking” Defendant’s posts, or replying to other users’ comments.

89. Further, Defendant’s deliberate and material breach of the Settlement Agreement by not restoring access to Plaintiff and other blocked users to Defendant’s Facebook Page and instead continuing to violate Plaintiff’s First Amendment rights constitute actions taken by Defendant in bad faith.

90. These actions by Defendant have caused Plaintiff unnecessary trouble and expense including, without limitation, requiring Plaintiff to make additional pre-litigation efforts to obtain Defendant’s compliance with the terms of the Settlement Agreement and necessitating that Plaintiff file and litigate the instant action in order to obtain durable relief from Defendant’s unconstitutionally discriminatory and retaliatory practices in violation of the First and Fourteenth Amendments. None of this additional outlay of resources and expenses would have been necessary had Defendant simply complied with the Settlement Agreement.

Defendant Admits He Excluded Plaintiff Based on Viewpoint

91. In response to Plaintiff's original Complaint, Defendant has now essentially admitted that he excluded her from his Facebook Page based on viewpoint.

92. Defendant asserts that, in or around 2015, Plaintiff was affiliated with two Facebook groups – “Douglasville & Douglas County for Civic Action” and “The Authority” – whose members, Defendant alleges, engaged in racial “hate speech” and that this is why he blocked Plaintiff from his Facebook Page.

93. Plaintiff is affiliated with the Facebook group “Douglasville & Douglas County for Civic Action.”

94. Plaintiff is not affiliated with the Facebook group “The Authority.”

95. Plaintiff vehemently denies engaging in or endorsing “hate speech.”

96. “Hate speech,” nonetheless, is a type of viewpoint that is protected by the First Amendment.

97. A private entity like Facebook may prohibit speech that it determines violates its community standards on “hate speech,” but Facebook, not Defendant, is responsible for the enforcement of its community standards.

98. If Defendant believed Plaintiff to be violating Facebook's community standards on “hate speech,” the proper recourse was for Defendant to make a report to Facebook.

See “How to report things on Facebook,” <https://www.facebook.com/help/www/181495968648557?ref=u2u> (explaining how to report alleged community standards violations) (last visited September 11, 2020).

99. Instead, Defendant blocked Plaintiff from his public-forum Facebook Page because, he concedes, he did not like her alleged viewpoint.

Defendant’s Stated Commitment to Keep His Facebook Page “Compliant with Applicable Law” Does Not Assure Actual Compliance

100. In response to Plaintiff’s original Complaint, Defendant submitted a declaration stating he is committed to keeping his now-private Facebook Page “purely personal” and “compliant with applicable law.” See Exhibit M (Declaration of Kelly G. Robinson, dated September 2, 2020) at ¶ 4.

101. While a declaration subjects the declarant to penalty of perjury for false statements made therein, it is not binding on Defendant’s future actions.

102. In light of Defendant’s having failed to comply with a fully executed and binding contract signed by Defendant, his counsel, his employer Douglas County, and his employer’s counsel, his non-binding declaration provides thin assurance that – once free from the scrutiny of this litigation – he will not re-open his Facebook Page to the public, resume using it as a platform to communicate with constituents and the public about his official duties and activities, and block users with whose views he does not agree.

103. Defendant's pattern of viewpoint-based exclusion is evidenced by his admission that he initially blocked Plaintiff from his public-forum Facebook Page based on viewpoint, by his having violated the Settlement Agreement his own counsel drafted rather than admit Plaintiff back into the public forum on his Facebook Page, and, finally, by his closing that public forum for the purpose of continuing to exclude Plaintiff.

104. In the past, Defendant more frequently posted about his activities as County Commissioner on his then-public Facebook Page than on his Official Page.

105. Defendant's non-binding declaration does not preclude his eventually doing the same with his now-private Facebook Page – i.e., using the Page as a non-public government forum to communicate with invited constituents and members of the public (i.e., anyone he accepts as a Facebook “friend”) about his official duties and activities while excluding other constituents and members of the public whose viewpoint he disfavors.

106. Defendant's potential use of his Facebook Page as a non-public government forum would be difficult to detect given that only those individuals Defendant chooses to admit to his now-private Facebook Page can see the content of his posts, precluding external oversight of whether Defendant is using the Page to communicate with selectively-admitted constituents and members of the public about his official duties.

107. Finally, Defendant's non-binding declaration does nothing to remedy the past deprivation of rights Plaintiff suffered by being blocked from Defendant's Facebook Page when it was a public forum, nor to remedy the violation created by Defendant's closing a public forum for a viewpoint-discriminatory purpose.

CLAIMS FOR RELIEF

Applicable to Counts I through V
Violation of First and Fourteenth Amendments
under 42 U.S.C. § 1983

108. Plaintiff incorporates by reference all of the factual allegations set forth above in paragraphs 1 through 107.

109. As a result of Defendant Robinson's blocking Plaintiff Bohanan from his public-forum Facebook Page based on her protected speech, and then closing the public forum for the viewpoint-discriminatory purpose of excluding Plaintiff and others whose speech Defendant disfavors, Plaintiff has suffered deprivation and violation of her constitutional rights, along with associated emotional, reputational, and other injuries.

110. Defendant's actions violated a clearly established constitutional right of which any reasonable government official should have known – i.e., the right of members of the public to speak freely on topics relevant to the government in a government-established forum, including an online forum, without suffering

viewpoint-based discrimination, retaliation, prior restraint, or interference with their right to petition the government for grievances.

111. Plaintiff's First Amendment rights were violated each time she was prevented from viewing, commenting on, or otherwise interacting in any way in the public-forum comments section of Defendant's Facebook Page.

Count I
Viewpoint-Based Discrimination and Retaliation
in Violation of First Amendment
under 42 U.S.C. § 1983

(Against Defendant Robinson in his individual and official capacities)

112. Count I incorporates by reference all of the factual allegations set forth above in paragraphs 1 through 111.

113. Defendant Robinson operated and managed his Facebook Page in his official capacity as an elected government official.

114. The interactive comments sections of Defendant's Facebook Page constituted a designated or limited public forum. Defendant acknowledged this in the now-breached Settlement Agreement with Plaintiff.

115. Plaintiff Bohanan engaged in constitutionally protected speech when she criticized Defendant Robinson's conduct in his role as Douglas County Commissioner.

116. Defendant thereafter discriminated and retaliated against Plaintiff by blocking her from his public-forum Facebook Page because of her viewpoint, thereby denying her the ability to access or to speak in that forum.

117. Defendant's conduct toward Plaintiff would deter a person of ordinary firmness in Plaintiff's position from exercising their First Amendment right to criticize Defendant's conduct as an elected government official.

118. Defendant's conduct directly and implicitly chilled Plaintiff's free expression, as well as that of all citizens who wish to express viewpoints Defendant may not like or may disagree with.

Count II
Prior Restraint and Unbridled Discretion in Violation of
First and Fourteenth Amendments
under 42 U.S.C. § 1983
(Against Defendant Robinson in his individual and official capacities)

119. Count II incorporates by reference all of the factual allegations set forth above in paragraphs 1 through 111.

120. Defendant Robinson operated and managed his Facebook Page in his official capacity as an elected government official.

121. The interactive comments sections of Defendant's Facebook Page constituted a designated or limited public forum. Defendant acknowledged this in the now-breached Settlement Agreement with Plaintiff.

122. Plaintiff Bohanan engaged in constitutionally protected speech when she criticized Defendant Robinson's conduct in his role as Douglas County Commissioner.

123. Defendant thereafter blocked plaintiff from his public-forum Facebook Page, thereby denying her the ability to access or to speak in that forum.

124. This constituted a viewpoint-based restriction and prior restraint on Plaintiff's speech and deprived Plaintiff of the ability to engage in First Amendment protected activity.

125. Plaintiff was given no notice or opportunity to be heard before being deprived of her First Amendment rights and was given no opportunity to appeal once the deprivation was occurring.

126. Plaintiff was therefore deprived of her First Amendment rights without procedural due process.

127. Additionally, online speech in a virtual public forum is subject to the same First Amendment protections as any other form of speech.

128. Defendant's lack of standards for blocking members of the public from his public-forum Facebook Page constituted unbridled discretion by a government official in regulating private speech in a public forum in violation of the First and Fourteenth Amendments.

129. This unbridled discretion also constituted content and viewpoint restrictions on speech in a public forum in violation of the First Amendment.

Count III
Violation of Plaintiff's First Amendment Right to Petition
under 42 U.S.C. § 1983
(Against Defendant Robinson in his individual and official capacities)

130. Count III incorporates by reference all of the factual allegations set forth above in paragraphs 1 through 111.

131. Defendant Robinson operated and managed his Facebook Page in his official capacity as an elected government official.

132. The interactive comments sections of Defendant's Facebook Page constituted a designated or limited public forum. Defendant acknowledged this in the now-breached Settlement Agreement with Plaintiff.

133. Plaintiff Bohanan engaged in constitutionally protected speech when she criticized Defendant Robinson's conduct in his role as Douglas County Commissioner.

134. Defendant thereafter blocked Plaintiff from his public-forum Facebook Page, thereby denying her the ability to access or to speak in that forum.

135. This interfered with and deprived Plaintiff of her ability to express her ideas, hopes, and concerns to Defendant Robinson as her elected representative in

violation of Plaintiff's First Amendment right to petition the government for grievances.

136. Defendant's conduct has directly and implicitly chilled Plaintiff's right to petition, as well as that of all citizens who wish to express viewpoints Defendant may not like or may disagree with.

Count IV
***Closure of a Public Forum in Violation of First Amendment
under 42 U.S.C. § 1983***

137. Count IV incorporates by reference all of the factual allegations set forth above in paragraphs 1 through 111.

138. Defendant Robinson operated and managed his Facebook Page in his official capacity as an elected government official.

139. The interactive comments sections of Defendant's Facebook Page constituted a designated or limited public forum. Defendant acknowledged this in the now-breached Settlement Agreement with Plaintiff.

140. Plaintiff Bohanan engaged in constitutionally protected speech when she criticized Defendant Robinson's conduct in his role as Douglas County Commissioner.

141. Defendant thereafter blocked Plaintiff from his public-forum Facebook Page, thereby denying her the ability to access or to speak in that forum.

142. Defendant subsequently entered into a Settlement Agreement with Plaintiff wherein he agreed to unblock her from his public-forum Facebook Page and she agreed to release all legal claims relating to Defendant's having blocked her.

143. In violation of the Settlement Agreement, Defendant did not unblock Plaintiff and continued to exclude her from the public forum existing on his Facebook Page because of dislike of or disagreement with Plaintiff's expressed viewpoint.

144. Plaintiff then filed the instant lawsuit seeking access to the public forum existing on Defendant's Facebook Page from which she had persistently been blocked.

145. Shortly before having to respond to Plaintiff's lawsuit, Defendant closed the public forum existing on his Facebook Page by converting the page to be private and only accessible to individuals who are Facebook "friends" with Defendant.

146. Defendant closed the public forum existing on his Facebook Page for the viewpoint-discriminatory purpose of continuing to exclude Plaintiff.

147. Put another way, Defendant closed the public forum existing on his Facebook Page for the viewpoint-discriminatory purpose of avoiding being required to unblock Plaintiff and allow her access to the public forum.

148. The First Amendment prohibits government closure of a public forum for the discriminatory purpose of excluding speakers based on their viewpoint.

149. Defendant therefore violated the First Amendment when he closed the public forum existing on his Facebook Page.

Count V

***Declaratory and Injunctive Relief under 28 U.S.C. §§ 2201 and 2202
and 42 U.S.C. § 1983***

(Against Defendant Robinson in his individual and official capacities)

150. Count V incorporates by reference all of the factual allegations set forth above in paragraphs 1 through 149.

151. An actual controversy exists between Plaintiff Bohanan and Defendant Robinson concerning Plaintiff's rights under the United States Constitution.

152. Plaintiff alleges that Defendant's actions violated the First and Fourteenth Amendments to the United States Constitution.

153. No interim relief has completely and irrevocably eradicated the effects of the alleged violations that occurred and it cannot be said with assurance that there is no reasonable expectation that the alleged violations will recur.

154. Plaintiff is entitled to declaratory relief regarding Defendant's having blocked her from his public-forum Facebook Page from approximately on or about June 21, 2015 to approximately on or about August 21, 2020.

155. Plaintiff is entitled to declaratory relief regarding Defendant's closing his public-forum Facebook Page approximately on or about August 21, 2020 for the viewpoint-discriminatory purpose of excluding Plaintiff and other members of the public whose viewpoints he dislikes or disagrees with;

156. Further, Plaintiff seeks a declaration that it is a violation of freedom of speech under the First and Fourteenth Amendments of the United States Constitution for Defendant Robinson to exclude or censor any member of the public based on their viewpoint from any Facebook page that Defendant uses to interact with the public regarding his duties and activities as a Douglas County Commissioner and therefore as a state actor.

157. Plaintiff seeks injunctive relief prohibiting Defendant from engaging in viewpoint-based exclusion or censorship of Plaintiff or other individuals on any Facebook page that Defendant uses to interact with the public regarding his duties and activities as a government official and therefore as a state actor.

Count VI

***Breach of Settlement Agreement & Litigation Expenses
under O.C.G.A. § 13-6-11***

(Against Defendant Robinson in his individual and official capacities)

158. Count VI incorporates by reference all of the factual allegations set forth above in paragraphs 27 through 90.

159. Plaintiff and Defendant entered into a Settlement Agreement that was fully executed by all parties and their respective counsel no later than on or about May 25, 2020.

160. Pursuant to the terms of the Settlement Agreement, Defendant Robinson was required to unblock and restore access to blocked users, including Plaintiff, to Defendant's public-forum Facebook Page within a 24-hour period.

161. Plaintiff performed all material conditions, covenants and promises required to be performed on her part in accordance with the terms and conditions of the Settlement Agreement.

162. Defendant deliberately and materially breached the Settlement Agreement by not timely unblocking Plaintiff from his Facebook Page and instead changing the username of his Facebook Page and then closing the public forum that existed therein.

163. Defendant Robinson's deliberate and material breach of the Settlement Agreement constitutes action taken by Defendant in bad faith that has caused Plaintiff unnecessary trouble and expense.

164. The unnecessary trouble and expense include, without limitation, Plaintiff's having to make additional pre-litigation efforts to obtain Defendant's compliance with the terms of the Settlement Agreement and necessitating that Plaintiff file and litigate the instant action in order to obtain durable relief from

Defendant's unconstitutionally discriminatory practices. None of this additional outlay of resources and expenses would have been necessary had Defendant simply complied with the Settlement Agreement.

165. As a direct result of Defendant's breach of the Settlement Agreement, Plaintiff has incurred litigation damages well in excess of \$20,000 for the attorney time, along with filing fees.

REQUEST FOR RELIEF

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

- a) Assume jurisdiction over this action;
- b) Hold a trial by jury on all issues so triable;
- c) Declare Defendant's actions to be in bad faith and a material breach of the Settlement Agreement that caused Plaintiff unnecessary inconvenience and expense;
- d) Declare unconstitutional Defendant's viewpoint-based exclusion and censorship of Plaintiff from Defendant's Facebook Page for the time period of approximately on or about June 21, 2015 until approximately on or about August 21, 2020;
- e) Declare unconstitutional Defendant's closing his public-forum Facebook Page approximately on or about August 21, 2020 for the viewpoint-

discriminatory purpose of excluding Plaintiff and other members of the public whose speech he dislikes or disagrees with;

f) Enjoin Defendant from engaging in viewpoint-based exclusion or censorship of Plaintiff or other individuals on any Facebook page that Defendant uses to interact with the public regarding his duties and activities as a government official and therefore as a state actor;

g) Award general and special compensatory damages to Plaintiff in an amount determined by the enlightened conscience of fair and impartial jurors for Defendant's material breach of the Settlement Agreement;

h) Award general and special compensatory damages to Plaintiff in an amount determined by the enlightened conscience of fair and impartial jurors for other damages;

i) Award punitive damages against Defendant Robinson in his individual capacity;

j) Award reasonable attorney's fees, expenses, and costs of litigation pursuant to 42 U.S.C. § 1988, Ga. Code Ann., § 13-6-11, and other applicable law; and

k) Award such other and further relief as this Court deems just and proper.

Respectfully submitted this 11th day of September, 2020.

/s/ Clare Norins

Clare Norins, Director

Georgia Bar No. 575364

cnorins@uga.edu

FIRST AMENDMENT CLINIC⁶

University of Georgia School of Law

Post Office Box 388

Athens, Georgia 30603

(706) 542-1419 (phone)

(706) 369-5794 (fax)

/s/ Gerald Weber

Gerald Weber

Georgia Bar No. 744878

wgerryweber@gmail.com

LAW OFFICES OF

GERRY WEBER, LLC

Post Office Box 5391

Atlanta, Georgia 31107

(404) 522-0507 (phone)

Attorneys for

Plaintiff Brenda Bohanan

⁶ This Amended Complaint has been prepared in part by law students Mark Bailey, Anish Patel, and Davis Wright, and Clinic Fellow Samantha Hamilton.

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

BRENDA BOHANAN,

Plaintiff,

vs.

DOUGLAS COUNTY COMMISSIONER
KELLY G. ROBINSON,
in his individual and official capacities,

Defendant.

JURY TRIAL DEMANDED

CIVIL ACTION NO.
1:20-cv-02641-JPB

VERIFICATION OF PLAINTIFF BRENDA BOHANAN

I, Brenda Bohanan, am named as the Plaintiff in the above-captioned matter and have read and know the contents of the First Amended Verified Complaint.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts and matters set forth therein are true and correct.

/s/ Brenda Bohanan

Brenda Bohanan

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

BRENDA BOHANAN,

Plaintiff,

vs.

DOUGLAS COUNTY COMMISSIONER
KELLY G. ROBINSON,
in his individual and official capacities,

Defendant.

JURY TRIAL DEMANDED

CIVIL ACTION NO.
1:20-cv-02641-JPB

CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that on September 11, 2020, I filed the foregoing **FIRST AMENDED VERIFIED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record. I also certify this date that the foregoing was prepared in accordance with N.D. Ga. L.R. 5.1, using Times New Roman font, 14 point.

*/s/ Clare Norins
Attorney for
Plaintiff Brenda Bohanan*