

PARTIES

1.

Plaintiff is a resident of Oconee County, Georgia. Plaintiff is also a concerned citizen in Oconee County and is politically active in his community. Plaintiff engages in public debate via social media, specifically Facebook.

2.

Defendant is named in her individual capacity for small actual and nominal damages and official capacity for equitable relief. At all times relevant to the complaint, Defendant acted under the color of law.

JURISDICTION AND VENUE

3.

This action arises under 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 and Fourteenth Amendment of the United States Constitution, and Georgia law.

4.

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

5.

This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2201-02 and 42 U.S.C. § 1983.

6.

Venue in this Court is proper under 28 U.S.C. § 1391 because the events giving rise to the Plaintiff's claims arose in this district and division and because Oconee County is located within this district and division.

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS

7.

Plaintiff is a resident of Oconee County, Georgia. Plaintiff is a concerned and active citizen that has voiced his opposition to Deborah Gonzalez's platform and handling of certain cases as District Attorney.

8.

Plaintiff wishes to engage in constitutionally protected speech within the designated or limited public forum created by the Defendant for citizens. Plaintiff desires to voice his beliefs and viewpoints to the Defendant as District Attorney, to the staff who view the page, and to Defendant's constituents and other citizens who participate in the forum to debate and comment on such matters of public concern.

Defendant's District Attorney Facebook Page

9.

The Facebook page "Deborah Gonzalez for DA" (hereinafter "Defendant's Facebook Page") is a designated or limited public forum for District Attorney Deborah Gonzalez on the social media platform Facebook.

10.

Defendant's Facebook Page was created in July 2019.

11.

Defendant's Facebook Page identifies Defendant as "District Attorney – Western Judicial Circuit." A true and correct screenshot of Defendant's Facebook Page is attached hereto and incorporated herein as Exhibit "A."

12.

Defendant's Facebook Page contains multiple posts in which Defendant speaks on behalf of the District Attorney's Office or publishes the same posts as the official Western Judicial Circuit District Attorney's Office Facebook account, identified as "Western Judicial Circuit DA" (hereinafter "Office Facebook Page"). A true and correct copy of a screenshot evidencing these actions are attached hereto and incorporated herein as Exhibit "B." A true and correct copy of a screenshot evidencing these actions is attached hereto and incorporated herein as Exhibit "C."

13.

The Office Facebook Page outlines in its Social Media Terms of Use that its affiliated social media pages are managed as limited public forums. A true and correct copy of the Office Facebook Page's Social Media Terms of Use is attached hereto and incorporated herein as Exhibit "D."

14.

By posting in an official capacity as the District Attorney on Defendant's Facebook Page, Defendant subjects Defendant's Facebook Page to be held to the same standard as any other social media account affiliated with the Western Judicial Circuit District Attorney's Office. Therefore, Defendant's Facebook Page is a limited public forum.

15.

Defendant's Facebook Page contains multiple posts that restrict who is able to comment on the post prior to the posting of such comments. A true and correct copy of a screenshot evidencing these actions is attached hereto and incorporated herein as Exhibit "E."

16.

The Office Facebook Page contains multiple posts that restrict who is able to comment on the post prior to the posting of such comments. A true and correct copy of a screenshot evidencing these actions is attached hereto and incorporated herein as Exhibit "F."

17.

Defendant's Facebook Page contains multiple posts in which some or all comments are invisible to viewers of the post. A true and correct copy of

screenshots evidencing these actions is attached hereto and incorporated herein as Exhibit “G”

18.

Plaintiff has made multiple comments on posts on Defendant’s Facebook Page which were later made invisible to viewers of such posts without any reasoning provided.

19.

Defendant’s Facebook Page contains multiple posts which do not feature a comment button or any method to comment at all. A true and correct copy of screenshots evidencing these actions is attached hereto and incorporated herein as Exhibit “H.”

20.

The Office Facebook Page contains multiple posts which do not feature a comment button or any method to comment at all. A true and correct copy of screenshots evidencing these actions is attached hereto and incorporated herein as Exhibit “I.”

CLAIMS FOR RELIEF

Count I

Retaliation for Exercise of First Amendment Free Expression

under 42 U.S.C. § 1983

(Against Defendant in her individual capacity)

21.

Plaintiff engaged in constitutionally protected speech in opposition of Defendant's throughout 2024, specifically via commenting on Defendant's Facebook Page.

22.

Defendant's Facebook Page is directly affiliated with the Western Judicial Circuit District Attorney's Office due to the fact that Defendant repeatedly acted in her official capacity as District Attorney of the Western Judicial Circuit on Defendant's Facebook Page both by making posts speaking on behalf of her office or posting the same content as the Office Facebook Page and she is identified in her official capacity as "District Attorney – Western Judicial Circuit." True and correct screenshots evidencing these actions are attached and incorporated hereto as Exhibit "A," Exhibit "B," and Exhibit "C."

23.

Due to its direct affiliation with the Western Judicial Circuit District Attorney's Office, Defendant's Facebook Page constitutes a limited public forum per the Western Judicial Circuit District Attorney's Office Social Media Terms of Use. A true and correct copy of such terms of use are attached and incorporated hereto as Exhibit "D."

24.

Defendant chilled and censored Plaintiff's protected speech by denying him the right to speak publicly on Defendant's Facebook Page via restricting his comments on posts.

25.

Defendant's Facebook Page features multiple posts with no method of commenting available to viewers of the post due to restrictions on who is able to comment and the absence of a comment button altogether, thus chilling Plaintiff's speech, and that of all citizens preemptively. True and correct screenshots evidencing these actions are attached and incorporated hereto as Exhibit "E" and Exhibit "H."

26.

Such conduct would deter a person of ordinary firmness from the exercise of First Amendment rights. Moreover, the blocking of Plaintiff from posting comments

prevents Plaintiff from exercising his First Amendment rights and is a prior restraint on speech.

27.

Defendant also retroactively chilled Plaintiff's speech by making his comments invisible to viewers of posts on Defendant's Facebook Page without providing any reasoning for doing so. True and correct screenshots evidencing a post from Defendant's Facebook page in which the viewer is unable to see all comments is attached and incorporated hereto as Exhibit "G."

COUNT II

Violation of Plaintiff's First and Fourteenth Amendment Right to Free Speech

under 42 U.S.C. § 1983

(Against Defendant in her official capacity)

28.

Speech utilizing official Facebook and other social media pages for governmental bodies is subject to the same First Amendment protections as any other speech.

29.

The Office Facebook Page and all social media pages affiliated with the Western Judicial Circuit District Attorney's Office, including Defendant's Facebook Page are managed as limited public forums according to the official Western Judicial

Circuit District Attorney's Office Social Media terms of Use. A true and correct copy of such terms of use are attached and incorporated hereto as Exhibit "D."

30.

While acting in her official capacity as District Attorney of the Western Judicial Circuit, Defendant restricted Plaintiff's speech by limiting who is able to comment on her posts both on Defendant's Facebook Page and the Office Facebook Page, thus preventing Plaintiff and all citizens from commenting on such posts.

31.

Defendant removed Plaintiff's comments on certain posts on Defendant's Facebook Page with no defined reason for taking such action. True and correct screenshots evidencing a post from Defendant's Facebook page in which the viewer is unable to see all comments is attached and incorporated hereto as Exhibit "G."

32.

Defendant's restriction of Plaintiff's comments from Defendant's Facebook Page and the Office Facebook Page violates Plaintiff's right to freedom of expression because she imposes viewpoint-based restrictions on Plaintiff's participation in a designated or limited public forum.

33.

Defendant's lack of defined standards and failure to provide reasoning for censoring Plaintiff's comments lead to unbridled discretion in decision-making in

violation of the First and Fourteenth Amendments and content and viewpoint-based restrictions on speech in violation of the First Amendment.

34.

By deleting Plaintiff's comments from Defendant's Facebook Page and the Office Facebook Page, Defendant has both directly and implicitly chilled Plaintiff's free expression, as well as that of all citizens.

35.

By limiting who is able to comment on Defendant's Facebook Page and the Office Facebook Page, Defendant has created a prior restraint on Plaintiff's free expression, as well as that of other citizens.

36.

Defendant violated and continues 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.

37.

Plaintiff is denied this right to free expression each time he is prevented from commenting or interacting in any way on Defendant's Facebook Page.

38.

The denial of constitutional rights is an irreparable injury *per se*, and Plaintiff is entitled to declaratory and injunctive relief to restore his ability comment and interact with Defendant's Facebook Page.

39.

Additionally, Plaintiff experienced emotional, reputational, and other injuries as a consequence of being denied his First Amendment rights for a sustained period of time on issues of critical importance to him and the public at large.

Count III

Declaratory and Injunctive Relief under 28 U.S.C. § 2201, et seq.

(Against Defendant in her official capacity)

40.

An actual controversy has arisen and now exists between Plaintiff and Defendant concerning Plaintiff's rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Count II above.

41.

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

42.

Plaintiff seeks a declaration that Defendant's censorship of comments on her official page and that are critical of her and/or her policies is unconstitutional and violates Plaintiff's rights to freedom of speech under the First and Fourteenth Amendments to the United States Constitution.

43.

Plaintiff seeks injunctive relief requiring Defendant to (1) Enjoin their unlawful practice of censoring Plaintiff's comments on Defendant's Facebook Page and the Office Facebook Page due to his viewpoint (2) Enjoin the current unconstitutional and standardless practice of deleting comments and blocking posters; (3) Restore Plaintiff's posting privileges that were blocked and afford Plaintiff full access afforded any other citizen to Defendant's Facebook Page and the Office 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 Defendant's unlawful practice of censoring Plaintiff's comments on the official State Representative Ginny Ehrhart Facebook Page due to his viewpoint;
- e) Enjoin the current unconstitutional and standardless practice of deleting platform activity and banning users from the social media pages affiliated with the Western Circuit District Attorney's Office due to their content or viewpoint;
- f) Enter an emergency interlocutory and permanent injunction restoring Plaintiff's posting privileges that were blocked and afford Plaintiff full access afforded any other citizen to social media pages affiliated with the Western Circuit District Attorney's Office.
- 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 Defendant Gonzalez in her 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 9th day of September 2024.

/s/ Kevin E. Epps

KEVIN E. EPPS

Georgia Bar No. 785511

TYLER M. GAINES

Georgia Bar No. 855701

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/s/ Barry Lane Fitzpatrick

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Phone: (706) 353-1806

lane.fitzlaw@gmail.com

VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, **Richard Miley**, who states that the facts set forth in the within and foregoing Pleading are true and correct and based on my personal knowledge.

This 9th day of September 2024.

Richard Miley 

Sworn to and subscribed before me
this 9th day of September 2024.



Notary Public

My Commission Expires: _____



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

RICHARD MILEY

Plaintiff(s)

v.

DEBORAH GONZALEZ, in her official capacity as District Attorney

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Deborah Gonzalez
325 E. Washington Street
Athens, Georgia 30601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

KEVIN E. EPPS
1220 LANGFORD DRIVE
BLDG. 200-101
WATKINSVILLE, GA 30677

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

5:07

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Western Judicial Circuit DA



Aug 29

Each social media page developed for the Western Judicial Circuit (WJC) DA Office shall clearly indicate that the WJC DA Office moderates third-p... See more



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Western Judicial Circuit DA

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Each social media page developed for the Western Judicial Circuit (WJC) DA Office shall clearly indicate that the WJC DA Office moderates third-party content on its social media sites and reserves the right to restrict or remove comments that contain the following type of language:

- a. Threatening, discriminatory, obscene, hateful, or profane;
- b. Offensive terms that target protected classes;
- c. Harmful to the reputation of any person or organization;
- d. Suggesting or encouraging violent or illegal activity;
- e. Information that reasonably could compromise individual or public safety;
- f. Advertisements or solicitations of any kind;
- g. Off-topic posts or repetitive posts, posts that are copied and pasted or automated;
- h. Promotion or endorsement of political campaigns or candidates;
- i. Personal information including, but not limited to, identification numbers, phone numbers, and emails.



Western Judicial Circuit DA limited who can comment on this post.

4:42

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DISTRICT ATTORNEY
DEBORAH GONZALEZ

Deborah Gonzalez for DA

3.1K followers • 23 following

District Attorney - Western Judicial Circuit
(Athens-Clarke & Oconee Counties). Justice is on
the Agenda.

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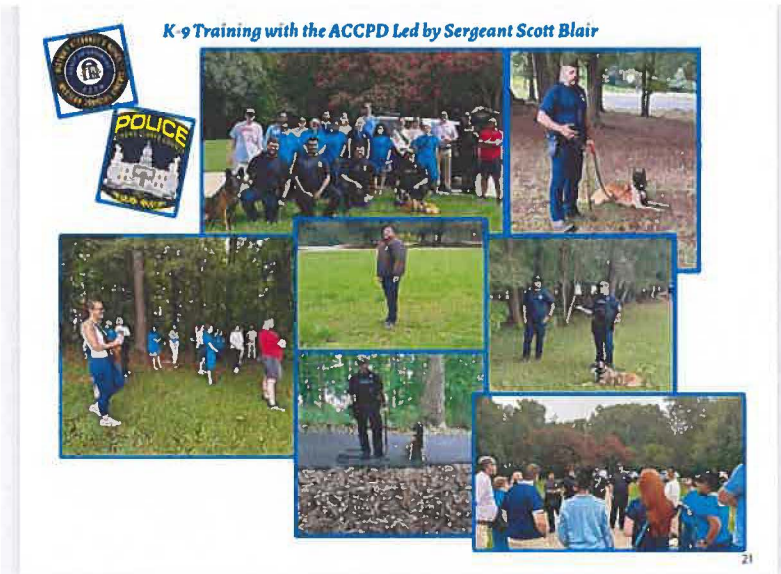
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Our team works tirelessly to focus our resources on prosecuting cases involving serious crimes such as murder, aggravated assault, rape,... See more



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Don't forget to join us this weekend!

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Our team works tirelessly to focus our resources on prosecuting cases involving serious crimes such as murder, aggravated assault, rape, and sexual assault. We continue to be intentional in our hiring, training, and screening process to ensure we bring in and retain experienced, highly competent prosecutors, courtroom team members, and other professionals who work alongside law enforcement counterparts to gain valuable insight into what is needed to successfully prosecute a case.

Ongoing training is a critical component in creating a better, safer, more just and equitable future for Clarke and Oconee County residents. Our office frequently participates in training activities to ensure we are continuing to learn and grow.

The pages and photos that follow highlight some of our 2023-2024 training activities.

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and retain experienced, highly competent prosecutors, courtroom team members, and other professionals who work alongside law enforcement counterparts to gain valuable insight into what is needed to successfully prosecute a case.

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#dg4da #deborahgonzalez #gapol #themoreyouknow



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Social Media Terms of Use- Western Judicial Circuit DA Office

WJC DA Office social media pages were created to provide our followers access to information about the WJC DA OFFICE DA Office and a platform to interact with the office. The WJC DA OFFICE Director of External Relations monitors and manages these pages.

The WJC DA OFFICE DA social media pages are managed as a **limited public forum**, **and therefore** the following conditions apply:

- A posting on any of these pages constitutes acceptance of these terms.
- Third-party comments posted on WJC DA OFFICE DA's social media pages are not to be considered the opinion of the WJC DA OFFICE, nor does the WJC DA OFFICE endorse any third-party comments on these pages. Additionally, the WJC DA OFFICE DA Office does not promote commercial endorsements.
- Likes, links, and follows do not suggest that WJC DA OFFICE is promoting or in agreement with third-party content.
- The agency reserves the right to hide posts, remove, and/or block anyone who posts inappropriate material as determined by WJC DA OFFICE.

These pages are intended to create an open, productive forum for discussion. To foster an engaging environment, **we reserve the right to restrict comments that:**

- are threatening, discriminatory, graphic, obscene, defamatory, profane or hateful;
- contain information that reasonably could compromise the safety, well-being, or reputation of any person or organization, including personal attacks;



- spam or advertise;
- are off-topic or repetitive;
- promote or endorse political campaigns or candidates;
- contain personal information about another person or that violates a person's privacy;
- include copyrighted material that belongs to another person;
- contain links to inappropriate websites.

Remember that regardless of your opinion, there are real victims behind the crimes committed and real people who work in the WJC DA OFFICE. Be respectful of the people and families involved. Please try to keep these things in mind:

- Real people are behind every news story and every case.
- Don't harass victims and their families.
- Don't harass the family and friends of a defendant. They are not responsible for the actions of others.
- Show kindness and respect to others in the comments.

4:51

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3d · 🌐



In collaboration with ACCPD and Drug-Free Athens, our office hosted its first-ever S.A.F.E Fall Resource Fair. S.A.F.E, the bold idea initiated from a partnership between Chief Saulters of ACCPD and DA Gonzalez, stands for Strategically Addressing the Fentanyl Epidemic. Athens Clarke County saw a 48% decrease in the number of Fentanyl overdose related deaths from 2023 to 2024.

#dg4da #deborahgonzalez #gapol #TheMoreYouKnow #athensga



Deborah Gonzalez for DA limited who can comment on this post.

9:23



Western Judicial Circuit DA

Aug 24 · 🌐



Our office's top priorities are the safety of our community, ensuring that justice is served with due process, and holding those who commit crimes accountable. Over the past year, our office continued to work hard to ensure we resolved multiple criminal cases throughout the year.

#wjcdca #publicsafety #community #accountability



Man sentenced in shooting that took 5-year-old's eye, injured 14-year-old in Athens

By NO Editor's Note | Updated 2:53 PM EDT | Athens Daily | 151 views



ATHENS, Ga. — The man who fired a gun outside an Athens dance studio will spend the next three decades in prison for injuring two girls, ages 5 and 14. Ruben Scott was sentenced Tuesday to 30 years for the shooting, which took place on April 26, as part of a plea deal.

Case 3:24-cr-00010-DAJ Document 1-7 Filed 08/24/24 Page 1 of 1

Athens man convicted of sexually assaulting child, receives lifetime sentence

Updated 10:11



The man who sexually assaulted a child in Athens was sentenced to life in prison.

NEWS

Gwinnett County man arrested in Connecticut, charged with molesting child in Oconee County

Wayne Ford | ATHENS BANNER-HERALD

Victor Jimenez Paster 30-year sentence, DA Gonzalez



Local News
Sex abuse and child molestation in Oconee County
Victor Jimenez Paster, 30, was arrested in Connecticut and charged with molesting a child in Oconee County. He was sentenced to 30 years in prison.

'Sex, Money, Murda' gang members plead in Athens armed robbery case, are sentenced to prison



By Joe Johnson
They're a force of the local street gang known as Sex, Money, Murda, and were charged with robbing a safe in the two-story building in downtown Athens, Ga. On Tuesday, during a separate court hearing on Thursday, four men pleaded guilty to the robbery.

Man charged with raping juvenile relative in Athens



The man charged with raping a juvenile relative in Athens was arrested.



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(((Tech)))

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No trials this week as we resolved majority of the cases on the trial calendars. So me and my team taking advantage of Prosecuting Attorney... See more



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No trials this week as we resolved majority of the cases on the trial calendars. So me and my team taking advantage of [Prosecuting Attorneys' Council of Georgia Impaired Driving training](#). Thank you [Athens-Clarke County Police Department](#) for hosting.



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