

1. Plaintiff Trevor Farragut criticized Defendant Congressperson Ken Calvert, a public official, in an online forum that he had created for discussion of official business. Because Calvert disagreed with the viewpoint Farragut expressed, Calvert deleted Farragut's speech and barred him from the forum. The First Amendment forbids this. Farragut brings this action seeking an injunction restoring him to the forum and forbidding Calvert from barring him because of the content of his protected speech and a declaratory judgment that barring him from the forum violates the First Amendment.

Parties

2. Plaintiff Trevor Farragut is a military veteran and resident of California's 42nd Congressional District who participates in political discussions on social media. Farragut holds public officials and other public figures to account by commenting on their policy positions using twitter. His twitter account is @tfarragut8435.

3. Defendant Ken Calvert is the United States Representative for California's 42nd Congressional District. He was elected to Congress in November 1992 and took office in January 1993, and he has held office continuously since then. He uses the twitter account @KenCalvert to communicate with his constituents and others about official business, and to provide a forum for their input on issues of public concern. He uses no other twitter account for any official business.

Jurisdiction and Venue

4. This action arises under the Constitution and laws of the United States of America. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 and 28

U.S.C. §§ 2201–2202. Jurisdiction supporting Plaintiff’s claim for attorney’s fees and costs is conferred by the Equal Access to Justice Act, 28 U.S.C. § 2412 and 42 U.S.C. § 1988.

5. Venue is proper in this district because the events complained of occurred in this district. In particular, Farragut was blocked on April 22, 2021 when Representative Calvert was in the District of Columbia. The District of Columbia may exercise specific personal jurisdiction over Calvert.

Twitter

6. Twitter is a social-media platform on which users can send messages of a limited length to the public.

7. Users are identified by a unique name of their choosing, called a handle. Handles begin with the “@” character. (This leading character is sometimes unsaid or sometimes pronounced as “at,” like in an email address.)

8. Users can post messages (tweet), respond to the messages of others (reply), republish the messages of others (retweet), or convey approval of others’ messages (like).

9. All of a user’s twitter activity is collected on a continuously updated page, called a timeline. The timeline page contains a user’s handle alongside optional graphics, followed by an optional short description of the user (called a bio), followed by buttons to view the user’s tweets; tweets and replies; media, including videos and photographs; and likes. As of April 26, 2021, Calvert’s bio and heading appears as follows, with the timeline buttons underneath:



10. The “tweets” option is the default selection for what appears next. Users may choose to “pin” a tweet, which causes that tweet to appear first whenever users view tweets on their timelines. The pinned tweet, if there is one, is then followed by additional tweets in reverse chronological order, interspersed with advertising or promotional content. As of April 26, 2021, a recent section of Calvert’s “tweets” feed appears as follows:



11. When a user replies to another user's tweet, a comment thread is created. On this thread, users can see and reply to the original tweet, replies to the original tweet, replies to replies to that tweet, and so on. For example, clicking on one of Calvert's tweets from September 16, 2020, reveals the following comments, which are two of the eleven comments publicly listed:



12. Users can identify topics of conversation using the symbol #, called a hashtag. When a user inserts a hashtag, a link is created and any user who clicks on it can see all of the tweets, retweets, and replies containing that hashtag.

13. Users can choose other users whose activity they want to follow. When one user follows another, all of the followed user's tweets, replies, and retweets appear on a continuously updated page created for the following user, called a feed.

14. Twitter users can bar other users from interacting with them and their tweets, and from participating in the debate that the original user started, by taking an action called "blocking." When one user blocks another, the blocked user cannot see the blocking user's tweets, replies, or retweets, and the blocking user cannot reply to, retweet, or like the blocking user's twitter activity.

15. When a user blocks another user, the blocking user bars the blocked user from all comment threads created by the blocking user's tweets and from the blocking user's timeline. This means that blocked users cannot express their views regarding blocking users' tweets to the people to whom blocking users send tweets, retweets, or replies.

16. When someone who has been blocked attempts to view the entire feed or a single tweet of the blocker, the blocked user instead sees a message indicating that, indeed, the user has been blocked. The message looks like the following:¹



17. Users may cause other users' tweets not to appear in their feeds, an action called "muting." Whereas blocked users cannot post replies visible to the blocking users' *followers*, muted users are disabled from communicating with only the

¹ The image here was in fact posted to twitter by one of the many other people whom Calvert also had blocked. The accompanying message reads: "Hey do you want to unseat someone in 2020 why not ken Calvert since he blocked a 17 year old who grilled him about his NRA donations. #calvertblockedme #CA42." @TheAlanvargas, Twitter (Feb. 8, 2019, 9:15 PM) <https://twitter.com/TheAlanvargas/status/1094102413152145408?s=20>.

muting users *themselves*; muted users can still participate in the conversations created by muting users' tweets.

Calvert Blocks Farragut From a Twitter Account on Which He Has Created a Public Forum Because of the Viewpoint of Farragut's Protected Speech

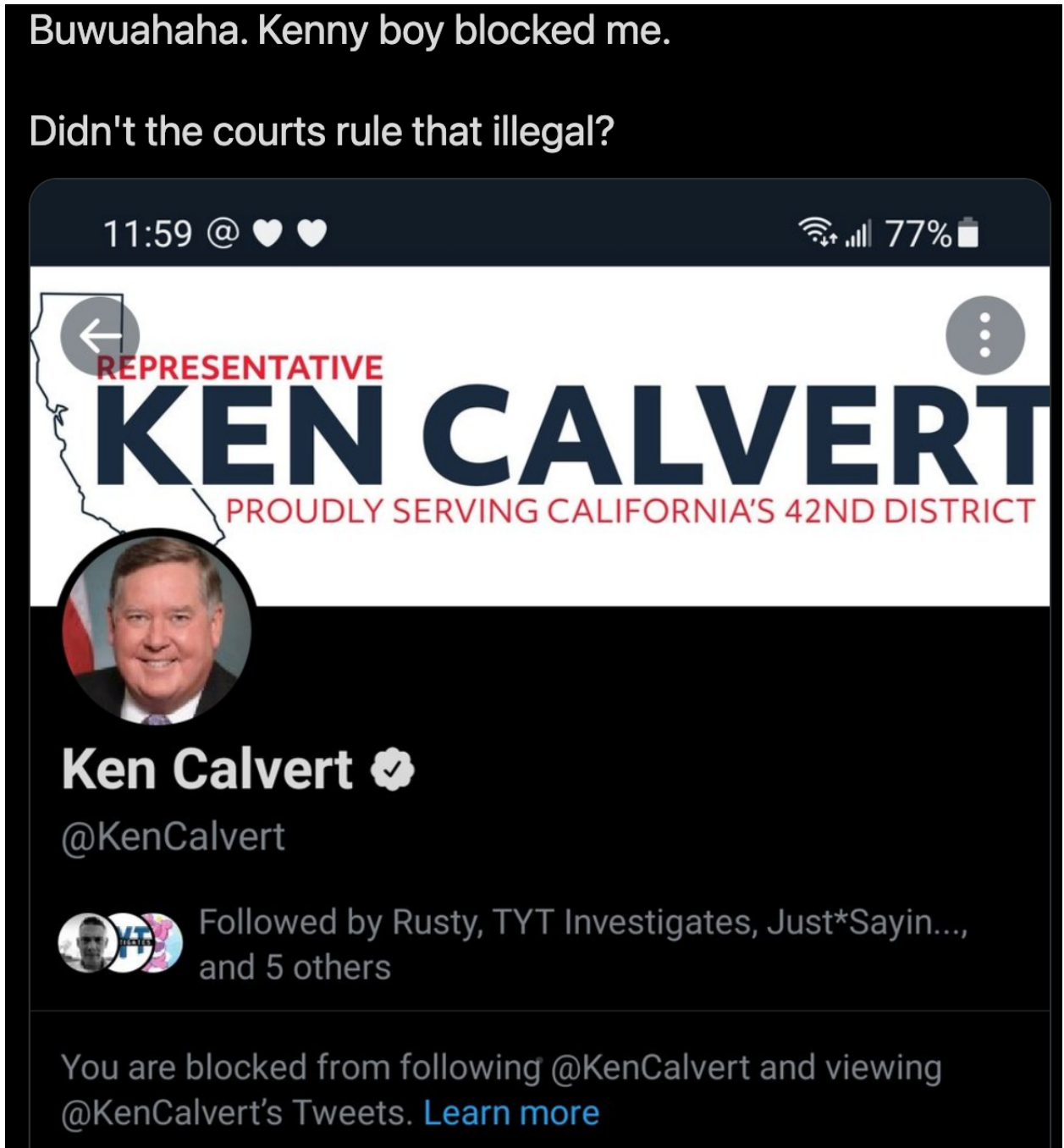
18. On April 22, 2021, at 1:17 pm eastern time, Calvert tweeted: "In my op-ed in today's Washington Times I explain how we can build infrastructure quicker and at a lower cost while maintaining environmental protections."² He then linked to his own op-ed from that day, which appeared in the same twitter post with the headline: "If you want to build it, streamline environmental regulations."

19. Farragut, via the handle @tfarragut8435, replied at 2:40 pm in the comment thread: "Oh. Word? So why haven't you tried to do anything about it since you were elected in '94? We all know the reason you're against it. Because it's going to be funded by increasing taxes on the rich. Now sit your ass down and shut up."

20. Calvert blocked Farragut and deleted his comment almost immediately—within 19 minutes or less.

21. After being blocked, Farragut posted another response, although only his followers could now see it. At 3:01 pm, Farragut posted a screenshot of the notice that he had been blocked by Calvert (pasted below) along with the note "Buwuahaha. Kenny boy [Calvert] blocked me. Didn't the courts rule that illegal?"

² <https://twitter.com/KenCalvert/status/1385281522953953284>.



22. After this exchange, Farragut contacted Calvert's congressional office notifying them that he was unconstitutionally blocked. He has not received a substantive response.

23. As of April 26, 2021, Farragut remains blocked from Calvert's account.

24. As of April 26, 2021, the public comment thread created by Calvert's April 22, 2021 tweet contained seventeen broadly visible, unblocked replies. Farragut's response, and his update that he had been blocked because of his response, do not appear in the thread.³

25. As of April 28, 2021, Farragut, using his account, cannot gain access to view or comment on that thread or any of Calvert's other tweets or threads.

Calvert's Twitter Account is Marked With the Trappings of His Office

26. Calvert's twitter handle is @KenCalvert.

27. Calvert created this account in March 2009.

28. As of April 26, 2021, approximately 23,500 users follow Calvert's account, and Calvert follows the accounts of 355 users.

29. The bio and banner for Calvert's account both make clear that the account is used for official purposes and is an organ of official government business.

30. The only sentence in the bio reads "Official Twitter Account for U.S. Representative Ken Calvert (CA-42)." It links to Calvert's official House website, calvert.house.gov. And the banner behind Calvert's twitter photo reads "Representative Ken Calvert: Proudly Serving California's 42nd Congressional District."

³ Calvert cannot delete Farragut's replies entirely. Thus, Farragut's replies remain visible only to those specifically searching for them or who follow Farragut. Farragut has 36 followers while Calvert has approximately 23,500, so there is a vast difference in reach between the two.

Calvert Uses His Twitter Account for Public Business

31. Calvert's account has posted over 7,000 tweets. A significant portion of these tweets are communications with constituents about public business.

32. Calvert does not use any other twitter account for communicating with her constituents about public business.

33. A true and correct text-only copy of the last 3,236 tweets sent by Calvert as of April 26, 2021, is attached to this Complaint as Exhibit A.

34. Calvert's recent tweets include, among many others:

35. An official statement of his regarding the Armenian Genocide and mentioning his membership in Congress's Armenian Caucus that appeared to be filmed in his office (April 24);

36. A notice that he joined with another Member "in asking the Pentagon to approve" a permit request and sharing a screenshot of a letter he signed on his official stationary (April 23);

37. A statement summarizing his position on troop withdrawal in Afghanistan, which a link to his official House website containing a more detailed statement (April 13);

38. An official announcement of the 38th Annual Congressional Art Competition, a competition sponsored by the House of Representatives, with a link to the official flyer explaining how to contact his office to make an official submission (April 1);

39. A statement that he was “proud to co-sponsor” a piece of legislation, containing a link to a tweet by another Member with a video explaining the Bill (March 30);

40. A retweet of a message by another House Member who had posted a letter on congressional stationary signed by Representative Calvert and others, in their official capacities (March 23).

41. Calvert tweets almost exclusively about official topics such as his policy positions, his public schedule, his political opinions and attitudes, or the availability of services and programs for constituents or other Americans.

42. Very few to none of the tweets from at least the last several years are posts of a personal nature about his family, friends, hobbies, sports, or any other non-official topics.

Farragut Is Not The Only User Blocked On The Basis Of Viewpoint

43. While Calvert does not censor every single negative comment, a public search using terms like @KenCalvert and “blocked” reveals that Farragut is not the only person Calvert has blocked apparently on the basis of viewpoint.

44. For instance, on October 21, 2019, Calvert tweeted an official letter he signed objecting to aspects of the first impeachment process of then-President Trump.

45. Linda Childers (@lindarchilders), a journalist with over fifty thousand followers, responded the next day by saying “Nothing says family values quite like being caught in your car with your pants down, accompanied by a prostitute.”

46. This tweet was not libelous. Instead, it referenced a documented incident in 1993 that was described in a publicly available police report,⁴ and reported by the Associated Press⁵ as follows: “Police in Calvert’s hometown of Corona spotted him . . . partially undressed and parked in a car with a woman that officers identified as a prostitute. When Calvert saw the officers he started to drive away, then stopped. Officers checked his driver’s license and let him go. Both Calvert and the woman denied having sex, although Calvert said in a [then-]recent letter to constituents that they were in ‘an embarrassing situation [and that his] conduct on that evening was inappropriate. It was inappropriate, not because it was illegal or violated the office I hold, but because it violated the values of the person I strive to be.’” Calvert was not charged with a crime.⁶

47. Calvert swiftly blocked Childers, apparently for mentioning this incident.

48. Childers later tweeted: “Sigh. GOP Congressman Ken Calvert was waxing on about ‘family values,’ and I reminded him about this little ‘incident’ he was involved with in California. He blocked me. Sending him thoughts and prayers. 🙏 #TiredOfHypocrites.”

49. In March of this year, Calvert blocked a user with the handle of @BlackCherry883 who posted two tweets critical of him. On March 10, 2021, the

⁴ <https://perma.cc/MLB4-6RR3>.

⁵ <https://perma.cc/VY32-Y2NV>

⁶ <https://perma.cc/J5NZ-A8C5>.

account tweeted “@KenCalvert @HouseAppropsGOP You are a disgrace to this community. You are just making sure that your pockets are getting \$\$\$\$ but you don’t care about your Constituents. #resignKenCalvert.” A second tweet read “@KenCalvert @HouseAppropsGOP You voted NO twice on the American Rescue plan. Screw you!”

50. Calvert blocked that user. After the block, on March 11, 2021 the user tweeted “@KenCalvert just blocked me. I guess he does not want to hear from his constituents! #ca42.”

51. Calvert’s frequent blocking has not gone unnoticed. On August 5, 2017, the Press Enterprise, a news outlet in Riverside County, California, wrote a story in which it disclosed that Congressperson Calvert had previously blocked users because of the content or viewpoint of their speech.⁷

52. Calvert’s spokesperson at the time claimed that the Congressperson had a social media policy.

53. The spokesperson stated that Calvert blocks users if they post tweets containing speech that is “unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, profane, indecent or otherwise objectionable to us.”

54. There is no evidence that this policy existed prior to the 2017 article, or that any policy has been published or adhered to since that time.

⁷ <https://perma.cc/2WVM-AHTY>.

55. Farragut was unaware of the existence of any of Calvert's policies regarding social media.

56. In any event, the policy itself violates the First Amendment. In public fora, the only type of speech that public officials may censor on the basis of its content—let alone its viewpoint—is speech that is categorically unprotected by the First Amendment, such as obscenity, true threats, fighting words, or libel, or speech that is itself unlawful, such as speech that violates copyright or constitutes child pornography.

57. Public officials may not constitutionally censor speech that is “abusive, profane, or vulgar” by the official's standards. And they clearly do not have the right to censor speech that is “otherwise objectionable to” the public officials. Indeed, reserving the right to censor on that basis is the primary evil that public forum doctrine is meant to prevent. Calvert, however, has explicitly purported to reserve the right to engage in this type of censorship.

Calvert Has Persisted In Illegal Blocking Even Though Several Of His Colleagues Have Acknowledge It Is Impermissible

58. Calvert has persisted in blocking users from his official twitter account because of the content or viewpoint of their speech even though several of his House colleagues have resolved federal cases where they have admitted wrongdoing and agreed to end the practice of online, viewpoint-based censorship.

59. In 2019, Representative Alexandria Ocasio-Cortez, Democrat of New York, was sued for blocking a social-media users on the basis of viewpoint.⁸ The case was settled, and Ocasio-Cortez acknowledged wrongdoing and promised not to block users. She stated upon reaching a settlement that she had erred and that the plaintiff had a “First Amendment right to express his views and should not be blocked for them.”⁹

60. In 2021, Representative Marjorie Taylor Greene, Republican of Georgia, was sued for similar behavior.¹⁰ She, too, settled the suit and agreed to stop engaging in blocking on social media.¹¹

61. Despite those results and many judicial decisions making clear that Calvert’s failure to adhere to public forum principles is illegal, Calvert has persisted in blocking Farragut and others on the basis of their speech.

Claim for Relief

Count One:

Viewpoint Discrimination in Violation of the First Amendment

62. Farragut incorporates all prior paragraphs here.

⁸ Case No. 19-cv-3956 (E.D.N.Y. 2019).

⁹ <https://www.axios.com/aoc-sorry-twitter-critic-block-settles-lawsuit-44e46497-b2be-4e6a-a2e7-1fe67a553c53.html>.

¹⁰ Case No. 21-cv-993 (C.D. Cal. 2021).

¹¹ <https://www.marketwatch.com/story/rep-marjorie-taylor-greene-settles-suit-agrees-not-to-block-critics-on-twitter-01616727466>.

63. Calvert is a public official who uses his twitter account for official business and has, therefore, created a public forum on his timeline and the comment threads created by his tweets.

64. Calvert has never created and shared consistent rules or guidance about what sorts of content will be allowed to remain in the public forum he has created on twitter and what sorts of content will cause a user to be blocked.

65. Calvert has, therefore, created a designated public forum (as opposed to a limited public forum) on his timeline and the comment threads created by his tweets.

66. In response to a tweet about official government business, Calvert barred Farragut from posting messages on his timeline and the comment threads created by his tweets.

67. Calvert barred Farragut because of the viewpoint expressed in his messages.

68. A fortiori, Calvert blocked Farragut because of the content of his messages.

69. Calvert violated the First Amendment by blocking Farragut from a public forum because of the viewpoint and content of his speech.

Prayer for Relief

Plaintiff Trevor Farragut respectfully requests:

- An injunction requiring Defendant Ken Calvert to un-block Farragut from the twitter account @KenCalvert and forbidding Calvert from blocking Farragut and others on the basis of protected speech;

- A declaratory judgment that Calvert's decision to block Farragut from the twitter account @KenCalvert violated the First Amendment;
- An award of reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412, 42 U.S.C. § 1988, or any other applicable statute; and
- All other relief that this Court may consider just and proper.

Respectfully submitted,

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