

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DENNIS ENLOE,)	
)	
Plaintiff,)	
)	
v.)	
)	
ROY BLUNT,)	Case No. 20-4107
U.S. SENATOR FOR MISSOURI,)	
)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. U.S. Senator for Missouri Roy Blunt operates a Facebook page where he and/or government officials acting at his direction post frequently about issues of national and local importance.

2. These issues are discussed and debated in the comment sections of Senator Blunt's posts, sometimes generating hundreds of comments by Facebook users. Some comments are supportive of Senator Blunt's political views or actions as an elected official and some are critical.

3. Plaintiff Dennis Enloe is a constituent of Sen. Blunt who uses Facebook to participate in political discourse. He has frequently commented on posts on Senator Blunt's Facebook page.

4. Senator Roy Blunt and/or the government officials acting at his direction, however, have suppressed Mr. Enloe's ability to participate in a government-controlled public forum by

hiding comments made by Mr. Enloe that were critical of Senator Blunt's political views or actions as an elected official.

5. By hiding Mr. Enloe's comments on Senator Blunt's Facebook page because of their political content, Senator Blunt and/or the government officials acting at his direction have engaged in unconstitutional viewpoint discrimination and violated Mr. Enloe's First Amendment right to free speech.

Jurisdiction and Venue

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201-2202.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and (e)(1).

8. A substantial part of the events giving rise to this claim occurred in this District, and Defendant is an officer of the United States sued in his official capacity.

Parties

9. Plaintiff Dennis Enloe, who resides in Union, Missouri, is a veteran who follows and comments on current political events using social media.

10. Mr. Enloe operates a personal Facebook account that he uses to read and comment on posts by Missouri's elected officials.

11. Defendant Roy Blunt is a U.S. Senator for Missouri and is sued in his official capacity.

12. Senator Blunt operates and oversees the policy behind the operation of the Office of U.S. Senator Roy Blunt's use of the verified Facebook account, "Senator Roy Blunt."

Factual Allegations

A. Facebook

13. Facebook is a social networking website where individuals can create personal profiles and public pages and use those platforms to share content including pictures, links and text, as well as comment on others' posts.

14. Facebook users can add other users as "friends" with their confirmation.

15. Users can create "pages" that can also make and comment on posts. A page can represent a public figure or organization.

16. When a public figure posts on their Facebook page, Facebook users can leave comments on those posts.

17. Facebook users can see and respond to comments made by others on public posts, unless the user who made the original post has hidden the comment.

18. When a user hides a comment, the total count of comments listed remains unchanged, but the comment is not visible to anyone except the user hiding the comment, the original commenter, and the commenter's Facebook friends.

19. Facebook users are given no notification when a comment they leave is hidden.

B. Senator Blunt's Facebook Page

20. Senator Blunt has a verified Facebook page titled "Senator Roy Blunt." The page can be found at the handle @SenatorBlunt and is titled "Senator Roy Blunt."

21. Senator Blunt operates and directs the Office of U.S. Senator Roy Blunt's policy to operate the Senator Roy Blunt verified Facebook page in a way that has created a government-controlled public forum. Senator Blunt holds out and directs the Office of U.S. Senator Roy Blunt

to hold the page out in an official, governmental capacity and encourages interactive engagement in the comment threads created under his posts.

22. The Senator Roy Blunt page provides contact information including the phone number for Senator Blunt's office in Washington, D.C. and a link to his government website, <http://www.blunt.senate.gov>.

23. Facebook uses a blue verification badge to confirm that a page is an authentic page for a public figure.

24. The Senator Roy Blunt page is verified with a blue verification badge.

25. The "About" section of the Senator Roy Blunt page reads, in part:

Welcome to Senator Blunt's official Facebook page. We encourage comments and hope that all discussion will be polite and civil. We request that all postings refrain from: any profane, obscene, violent, or racist language; suggestions of illegal or illicit activity; advertisements or solicitations of any kind; and discussions of political campaigns. We retain the right to remove comments and/or block users who offend this policy.

26. Senator Blunt's Facebook page designates him a "Government Official."

27. Facebook's "Town Hall" feature provides users who opt in with a list of their government representatives and nearby public officials with official Facebook pages.

28. Government officials can also opt in to the Town Hall feature.


29. The Senator Roy Blunt page is listed as a verified public official for users in Missouri who use the Town Hall feature.

30. Contact information for Senator Blunt is provided through Town Hall, including a phone number that can be called directly from the Facebook website or app.

31. Figure 1 below reflects an example list of federal representatives given to a Facebook user in Missouri who opts-in to the Town Hall feature.

Federal Representatives


We found 5 on Facebook



Lacy Clay
US Representative for Missouri District 1
New to Town Hall

Contact


Follow



Josh Hawley
US Senator for Missouri

Contact


Follow



Roy Blunt
US Senator for Missouri

Contact


Follow



Donald Trump
President of the United States

Contact

Follow



Mike Pence
Vice President of the United States

Contact

Follow

Figure 1

32. Senator Blunt uses the Facebook page to comment on current events of national- and state-level interest, inform the public of his policy positions, and communicate updates from his office.

33. Senator Blunt posts on the page about his positions on pending and completed legislation.

34. For example, on August 13, 2019 Senator Blunt made a post supporting the USMCA free trade agreement. A screenshot of this post appears as Figure 2 below.



Figure 2

35. On September 12, 2019, Senator Blunt made a post supporting an increase in the military budget provided for in the fiscal year 2020 defense spending bill. A screenshot of this post appears as Figure 3 below.



Senator Roy Blunt ✓

September 12 · 🌐

The number one priority of the Congress is to make sure our nation's armed forces have the tools they need to carry out their missions and keep Americans safe.

The fiscal year 2020 defense funding bill, which the Appropriations Committee advanced today, prioritizes resources for equipment, training, and research to ensure our military has every advantage on the battlefield. In addition, the bill provides the largest military pay raise in a decade and includes key resources for Missouri's military installations, which play a vital role in our nation's defense.

Figure 3

36. Posts on the Senator Roy Blunt Facebook page routinely generate hundreds of comments and replies.

37. The comment space on the posts made by the Senator Roy Blunt page is a designated public forum.

C. The Hiding of Mr. Enloe's Comments

38. Mr. Enloe has posted a number of comments on the Senator Roy Blunt Facebook page critical of Sen. Blunt's policies and actions as an elected official.

39. Several of Mr. Enloe's critical comments have been hidden, preventing almost all other Facebook users from seeing, responding to, or otherwise interacting with them. The comments remain visible only to Mr. Enloe, the operators of the Senator Roy Blunt page, and individuals who are Mr. Enloe's "friends" on Facebook.

40. For example, on August 31, 2019, Sen. Blunt posted about his visit to a dairy farm in Osborn, Missouri. Mr. Enloe commented on this post: "Another mass shooting and Senator

Blunt show us cows. Will it ever be time to care about our murdered children? Will it ever be time face this gun violence?”

41. This comment was concealed from the public by Senator Blunt due to its political viewpoint.

42. On October 22, 2019, Senator Blunt created a post stating the efforts by the Democrats in the House of Representatives to impeach President Trump lacked fairness and transparency. Mr. Enloe commented on this post: “You are good at following orders.”

43. This comment was concealed from the public by Senator Blunt due to its political viewpoint.

44. By excluding Mr. Enloe’s comments, Senator Blunt and/or government officials acting at his direction have prevented Mr. Enloe from participating in public discourse in a government-controlled public forum and have prevented others from being able to read and respond to Mr. Enloe’s comments.

45. The exclusion of Mr. Enloe’s comments due to their political viewpoint violates the First Amendment.

Cause of Action

Violation of First Amendment of the U.S. Constitution

46. Plaintiff repeats the allegations set forth above as if fully set forth herein.

47. Defendant encouraged, solicited, and allowed public comments and discussions on the Senator Roy Blunt Facebook page.

48. The Senator Roy Blunt Facebook page as established and operated by Senator Blunt and/or government officials acting at his direction pursuant to a policy set by him was at all times pertinent hereto and is a public forum.

49. Citizens' views, comments, and opinions expressed thereon are expressions of political speech protected by the First Amendment of the U.S. Constitution.

50. Mr. Enloe's right to access, join in, and participate in discussions in the public forum established by Senator Blunt and/or government officials operating at his direction is protected by the First Amendment. Viewpoint-based discrimination against speech in a designated public forum is a presumptive violation of the First Amendment right to free speech. *See e.g., Knight First Amendment Inst. v. Trump*, 928 F.3d 226 (2d Cir. 2019) (holding the interactive space of President Donald Trump's Twitter account is a public forum and that his practice of blocking critics from his account violates the First Amendment); *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019) (holding the interactive component of the Facebook page of the Chair of the Loudoun County Board of Supervisors is a public forum and that her decision to block a constituent from posting on the page is unconstitutional viewpoint discrimination); *Campbell v. Reisch*, No. 2:18-CV-4129-BCW, 2019 WL 3856591 (W.D. Mo. Aug. 16, 2019) (holding the interactive space of the Twitter account of a member of the Missouri House of Representatives is a public forum and that her decision to block a constituent for posting critical comments constitutes unconstitutional viewpoint discrimination in violation of the First Amendment).

51. Senator Blunt and his agents violated Mr. Enloe's First Amendment rights by concealing Mr. Enloe's comments from the public due to their political viewpoint.

52. The violation of Mr. Enloe's free speech is continuing and will continue without the intervention of this Court.

53. Mr. Enloe has suffered and will continue to suffer irreparable harm.

Prayer for Relief

54. WHEREFORE, Plaintiff requests that this Court:

- (a) Declare that Senator Blunt's hiding of Mr. Enloe's Facebook comments due to their political viewpoint violates the First Amendment and is unconstitutional;
- (b) Enter an injunction requiring that Senator Blunt unhide Mr. Enloe's comments and cease from hiding his comments in the future;
- (c) Award Plaintiff his costs, including reasonable attorneys' fees, pursuant to 28 U.S.C. § 2412 and any other applicable provision of law; and
- (d) Allow any other further relief as the Court deems just and proper.

DATED: June 23, 2020

Respectfully Submitted,

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