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9 Individual and MARLENE BURKITT, an Individual
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

A. SUZANNE RUMMEL, an Individual;
and MARLENE BURKITT, an Individual,

Plaintiffs,

v.

RICHARD PAN, California State Senator,

Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, OR OTHER RELIEF**

**COMPLAINT AND REQUEST
FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. Introduction

1. The exercise of free speech is fundamental to a thriving democracy. The First Amendment, as applied to the states by the Fourteenth Amendment, protects the exercise of free speech in public forums. As the U.S. Supreme Court has stated, “A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

1 2. Public forums have always been important to the exercise of free speech. The U.S.
2 Supreme Court has recognized that the “spatial elements” of modern public forums are very
3 different in the current “Cyber Age,” as the internet and social media platforms have dramatically
4 changed the look of, and accessibility to, public forums. Recognizing social media websites as the
5 modern public forum, the Court has noted that “social media users employ these websites to engage
6 in a wide array of protected First Amendment activity.” *Id.*, at 1735-1736.

7 3. Elected officials across the land maintain social media accounts, which, in many
8 cases, are important spaces for two-way communication *with* public officials and *between*
9 interested member of the public *about* governmental actions and social policies. These social media
10 spaces have become the modern-day public square, an open marketplace of ideas and free
11 expression. *Id.* At 1735-1736. Of course, elected officials are entitled to express themselves in
12 these public forums; just as certainly, the public has the same rights of free speech. Governmental
13 action to restrict speech based on the content is “is presumptively unconstitutional” and “may be
14 justified only if the government proves that they are narrowly tailored to serve compelling state
15 interests.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

16 4. California State Senator Richard Pan uses various forms of digital forums to
17 communicate with the public, including digitally-delivered newsletters, E-mail, Facebook, and
18 Twitter. Senator Pan converses on Twitter several times a day. His Twitter site is found at
19 <https://twitter.com/DrPanMD> and his Twitter “handle” is @DrPanMD (both are used herein
20 interchangeably). Twitter is his most active, consistent, and interactive form of communication, on
21 which he and his Senatorial staff post and receive many messages every day.

22 5. Plaintiffs are informed and believe that Senator Pan communicates directly via his
23 Twitter feed by posting his own comments and by reading what is posted therein. Plaintiffs are
24 informed and believe that Senator Pan also uses government staff, on government time, and other
25 public resources to manage and administer the site but that Senator Pan has full knowledge of the
26 site activity.

27 6. Senator Pan’s Twitter site is a modern public forum which hosts a lively exchange
28 regarding governmental events, official announcements, legislative policies and other activities.

1 The public can interact with each other and with Senator Pan online and in a direct manner. These
2 online public forums are becoming increasingly common and the U.S. Supreme Court has
3 recognized them as important places for the “exchange of views”. *Packingham*, 137 S. Ct. 1730,
4 1735.

5 7. Senator Pan treats his public Twitter site as if it were his personal domain. He picks
6 and chooses the Twitter users who may participate in the public forum discussion and he blocks
7 others with dissenting viewpoints. This case arises from Senator Pan’s efforts to block dissenters,
8 including Plaintiffs, from his Twitter page, based solely on his unconstitutional viewpoint
9 discrimination. To the extent that Senator Pan’s staff manage the site, Plaintiffs are informed and
10 believe that Senator Pan participates in the management of his Twitter feed and is aware of the
11 ongoing, unconstitutional deprivation of Plaintiff’s rights.

12 8. Plaintiffs respectfully ask this Court to (i) declare that Senator Pan’s blocking of
13 Plaintiffs from the <https://twitter.com/DrPanMD> site violates the First Amendment; (ii) order that
14 Senator Pan restore Plaintiffs’ access to this important public forum; (iii) award damages, fees and
15 costs to Plaintiffs pursuant to 42 U.S.C. § 1983; and (iv) provide further relief as is necessary or
16 proper.

17 **II. Jurisdiction, Venue and Parties**

18 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343
19 and 28 U.S.C. §§ 2201–2202 arising from Senator Pan’s actions which violate the Constitution and
20 laws of the United States, particularly the First and Fourteenth Amendments and 42 U.S.C. §1983.

21 10. Venue is proper in this Court under 28 U.S.C. § 1391(b). Senator Richard Pan,
22 M.D., is a California State Senator, representing approximately 930,000 constituents in Senatorial
23 District 6, which lies within the Eastern District, California. Senator Pan resides in the Eastern
24 District of California. A substantial number of the events that have given rise to this Complaint
25 occurred therein.

26 11. Plaintiffs Burkitt and Rummel reside within the Eastern District of California.

27 12. Plaintiff A. Suzanne Rummel is a constituent in District 6 and resides within the
28 Eastern District of California. Ms. Rummel considers Twitter to be an important public forum.

1 She has a strong interest in engaging in a fair and open debate with Senator Pan and with others on
2 his Twitter feed. She had replied on the @DrPanMD twitter forum using her Twitter handle,
3 @SuzieQT11, and was then blocked from further access to the Twitter site. She knows of no reason
4 for being blocked other than Senator Pan's unconstitutional viewpoint discrimination. Ms.
5 Rummel has been deprived of her ability to express her viewpoints and to listen to other viewpoints
6 within the public forum found @DrPanMD.

7 13. Plaintiff Marlene Burkitt also considers <https://twitter.com/DrPanMD> to be an
8 important public forum. She participated in discussions on the Twitter site, using her Twitter
9 handle, @rockefellerilly, regarding Senator Pan's efforts to reduce medical freedom, parental
10 decision-making rights, and other issues. Senator Pan subsequently blocked Ms. Burkitt from the
11 @DrPanMD forum; she is no longer able to participate in the public discussions at that site. Ms.
12 Burkitt is unaware of any reason for Senator Pan's decision to block her, other than his
13 unconstitutional viewpoint discrimination.

14 **III. Factual Allegations**

15 Senator Pan's Twitter Account

16 14. What is Twitter? As Twitter itself explains, "Twitter is happening. Follow
17 everything from breaking news and entertainment, to sports, politics, and everyday interests. Then,
18 join the conversation." (*Let's Go Twitter*, https://about.twitter.com/en_us/lets-go-twitter.html, last
19 visited on July 27, 2018). Twitter allows discourse on all sorts of topics, from personal discussions
20 about pets, to public discourse on matters of civic and political import. To join that worldwide
21 "conversation" one must create a Twitter username, often called a "handle." Access to Twitter is
22 free.

23 15. Senator Pan's Twitter Account. Senator Pan administers and maintains a Twitter
24 account, <https://twitter.com/DrPanMD>, which he opened in February 2011. Senator Pan's Twitter
25 "handle" or name is @DrPanMD. This may seem to refer to his personal status but there can be
26 no doubt that this Twitter site serves as a quintessential public forum. Senator Pan and members
27 of the public freely interact on this Twitter feed, speaking about matters of public importance, issues
28 related to Senator Pan's official duties, and issues⁴ of particular concern to his constituents and the

1 public. Dr. Pan had another Twitter identity, @PanforAssembly, which he retired in 2011. The
2 newer account, @Dr.PanMD serves as the Senator's official forum on Twitter, as seen here:



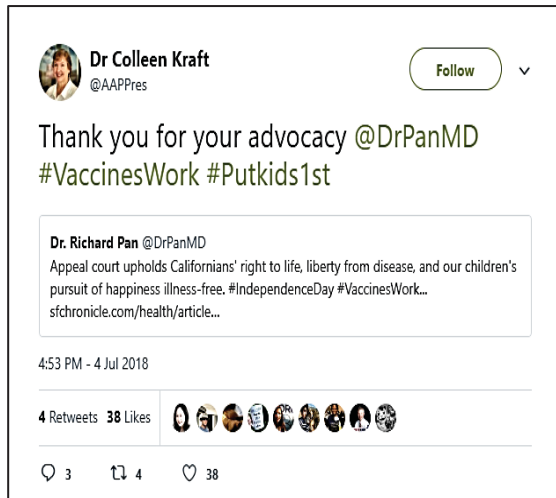
13 16. Tweets: On Twitter, a “user” (that is, either a person or organization) can express
14 themselves in several ways. A user may “tweet” by posting a comment, document, photo and/or
15 video. Each tweet shows the date and time that it was posted. Recent examples of Senator Pan’s
16 tweets include the following:



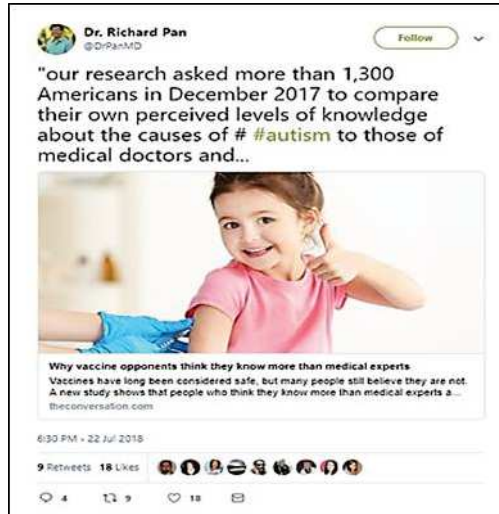
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17. Retweets. A user may also “retweet” the tweet so that the original tweet then shows up on that user’s Twitter feed. Examples of Senator Pan’s recent retweets include:



1 18. Other interactions on Twitter. A Twitter user who views the tweet may comment
2 upon it, either by posting a “Reply” or by clicking the “Like” icon (which records the user’s
3 favorable reaction to the tweet). For example, on July 22, 2018, Senator Pan tweeted:



12
13 19. That tweet quickly inspired an interactive online conversation with twenty-six
14 people who liked the tweet or who replied to Senator Pan and to each other.

15 20. Following Users: There are several ways to stay current on Twitter, notably using
16 “Follows” and “Hashtags”. One can follow another Twitter user very easily, simply by clicking on
17 that user’s “Follow” button, see in the first photograph shown above.

18 21. Following Topics of Interest. In addition, one can follow topics of interest flagged
19 with a “hashtag” or “#”. For example, Senator Pan pointed others to follow #SB277, to learn more
20 about the law he co-sponsored in 2015 which eliminated personal choice exemptions from
21 mandatory childhood vaccinations in California in this retweet:



1 22. Content Control. Twitter allows its users to control the content of their Twitter feed
2 in several ways. The most complete form of content control is to “block” another user. As the
3 Twitter Help pages explain, “Twitter gives people a variety of tools to control their experience,
4 including blocking. Blocking helps people in restricting specific accounts from contacting them,
5 seeing their Tweets, and following them.” (*How to block accounts on Twitter*. Retrieved from
6 <https://help.twitter.com/en/using-twitter/blocking-and-muting>. Last visited on July 26, 2018).
7 Blocking a Twitter user can be a very useful tool for a private person. For example, victims of
8 domestic violence may block a dangerous predator from viewing or commenting upon their
9 personal Twitter feed. The blocked users are not notified that they have been blocked and are not
10 always aware that they have been excluded from the conversation. They are informed that they
11 have been silenced only if they try to view the subject Twitter site, at which time they will see a
12 message stating that they have been blocked. The blocked user cannot read or tweet within the
13 subject forum.

14 23. Individuals Blocked by Senator Pan. The blocking feature can be misused, such as
15 when an elected official or governmental agency blocks a member of the public from participating
16 in a public debate. Twitter users who have been blocked by Senator Pan receive this kind of
17 message if they try to view or participate in the discussion on Senator Pan’s Twitter site:



1 24. #BlockedbyPan. Twitter users who have been blocked by Senator Pan have started
2 a hashtag identifier, #blockedbyPan. Twitter users can follow that hashtag to find various postings
3 by others who have been similarly blocked by Senator Pan. The fact that these people can
4 communicate in another part of social media does not mitigate Senator Pan’s unconstitutional
5 exclusion of these Twitter users from the active exchange of views that occurs every day at
6 <https://twitter.com/DrPanMD>. Moreover, Senator Pan’s sanitized Twitter page, from which
7 Plaintiffs are blocked, floods the public forum with viewpoints complementary to his own while
8 stifling opposing viewpoints offered by individuals such as Plaintiffs. As a result, the rights of
9 other Twitter users to hear the dissenting viewpoints is also violated.

10 **IV. Senator Pan’s Twitter Account is a Public Forum**

11 25. Although Twitter is not Senator Pan’s only online communication venue, his Twitter
12 account serves as his primary source of communications to and from his constituents, other
13 professionals, and the public. Senator Pan typically tweets and retweets approximately two to four
14 times per day.

15 26. Senator Pan does not use other social media sites as much as Twitter. He maintains
16 an official webpage (<http://sd06.senate.ca.gov/>) which provides links to his newsletters. On
17 average, Senator Pan publishes one newsletter every three months. The newsletters are purely
18 unilateral in nature and do not offer a forum for the public to exercise their free speech rights.
19 Senator Pan also maintains two Facebook pages, one of which he has designated his “official”
20 Facebook page (<https://www.facebook.com/SenRichardPan/>). On average, Senator Pan posts on
21 Facebook every two or three weeks, which is barely a fraction of the multiple posts that Senator
22 Pan tweets and retweets nearly every day.

23 27. Plaintiffs are informed and believe that Senator Pan uses his taxpayer-funded staff,
24 on regular staff time, and other taxpayer-funded resources to maintain and monitor his Twitter site.
25 Senator Pan has required social media skills of his staff members, including his Chief of Staff, as
26 can be seen on his Job Announcement for his Chief of Staff in 2015.
27 ([https://www.senate.ca.gov/sites/senate.ca.gov/files/cos_-_senator_pan_-_announcement_-_](https://www.senate.ca.gov/sites/senate.ca.gov/files/cos_-_senator_pan_-_announcement_-_letter_and_questionnaire_2015_0.pdf)
28 [letter_and_questionnaire_2015_0.pdf](https://www.senate.ca.gov/sites/senate.ca.gov/files/cos_-_senator_pan_-_announcement_-_letter_and_questionnaire_2015_0.pdf)) As a practical matter, unless Senator Pan is delegating at

1 least some of his constant activity on Twitter to his staff, he would not have much time for his
2 legislative activities. His personal touch is evident, however, so Plaintiffs are informed and believe
3 that Senator Pan is aware of the unconstitutional viewpoint discrimination that has occurred in the
4 public forum for which he is responsible.

5 28. Senator Pan represents nearly one million Californians and maintains a busy Twitter
6 feed. The @DrPanMD Twitter page invites one (if one is not blocked) to “Tweet to Dr. Richard
7 Pan.” Senator Pan has posted (or has caused to be posted) over 11,300 tweets since the @DrPanMD
8 Twitter account was opened in 2011. As of July 22, 2018, Senator Pan has followed another 1,446
9 Twitter feeds (and often reposts their tweets) and his Twitter feed has caused over 67,100 users to
10 “like” his comments. This is a very prolific level of interactive communication within a very active
11 public forum. In addition, the @DrPanMD Twitter account is followed by 8,932 followers, which
12 means that there are 8,932 Twitter users who actively follow the discussion on
13 <https://twitter.com/DrPanMD>.

14 **V. Unconstitutional Viewpoint Discrimination**

15 29. Plaintiffs have sought to exercise their freedom of speech, and of political speech,
16 on Senator Pan’s Twitter feed, but have been prohibited from participating in the ongoing
17 discussion on <https://twitter.com/DrPanMD>. They are informed and believe that they have been
18 excluded solely because they expressed their personal viewpoints on issues related to family
19 medical decision-making healthcare, topics of great interest to Plaintiffs. Senator Pan’s Twitter
20 site is an important public forum on these very issues. Even a cursory review of the @DrPanMD
21 Twitter feed shows that Senator Pan uses this public forum to promote his legislative agenda, which
22 includes his focus on new laws that would restrict a parent’s right to choose the medications
23 administered to their children. Senator Pan’s disdain for dissenting viewpoints is palpable in his
24 tweets and retweets in which he regularly deems anyone who holds dissenting viewpoints to be a
25 purveyor of “fake science.” One article that Senator Pan retweeted on July 15, 2015 scoffed at
26 those who question universal vaccinations as “climate-change deniers with less gluten and more
27 Prada” who suffer from “gutless groupthink” (July 7, 2015). In fact, Senator Pan has urged his
28 Twitter followers to “combat” his dissenters on this issue (July 13, 2018).

1 30. Not everyone agrees, however, with Senator Pan's opinion. Several Twitter users
2 have tweeted or retweeted their concerns the loss of medical freedom and related issues. Plaintiffs
3 and, it appears, several others, have been expelled from the discussion of all such issues within
4 Senator Pan's Twitter feed due to Senator Pan's viewpoint discrimination. Senator Pan has silenced
5 the Plaintiffs' voices within this public forum and has prevented Plaintiffs from hearing whatever
6 debate occurs therein.

7 31. In addition, the thousands of @DrPanMD followers are denied the opportunity to
8 hear Plaintiffs' viewpoints or the viewpoints of other silenced dissenters. The censorship is
9 invisible and there is no indication within the Twitter feed that Plaintiffs and other dissenters have
10 been erased from view. There is also another, more subtle force at work, because the public cannot
11 easily see that the discussions on <https://twitter.com/DrPanMD> have been sanitized and flooded
12 with posts that support Senator Pan's own opinions. As a result, although the discussions on
13 <https://twitter.com/DrPanMD> would appear to be a public debate, Senator Pan's followers are
14 deprived of the opportunity of an open debate on these healthcare issues because of the content
15 control imposed by Senator Pan.

16 32. When Richard Pan was a private individual, he was certainly entitled to impose
17 blinders on his social media pages. But when he took the Oath of Office as a State Senator, his
18 responsibilities changed. As stated in State of California Social Media Comment Policy,

19
20 A Senator may use a variety of social media platforms to communicate
21 with the public. Any social media page that is established or maintained
22 by a Senator or Senate staff using legislative resources is subject to this
23 comment policy. These pages are for the purpose of discussing
legislative and policy matters relevant to the Senator's constituents and
the people of California. Emphasis added.

24 Senate Rules Committee (2017). Social Media Comment Policy.
25 [http://senate.ca.gov/sites/senate.ca.gov/files/2017_senate_social_medi
a_comment_policy_website.pdf](http://senate.ca.gov/sites/senate.ca.gov/files/2017_senate_social_media_comment_policy_website.pdf)

26 33. All Californians are entitled to a free and open debate of policy decisions and
27 governmental actions. The First Amendment functions as a check on governmental power to ensure
28

1 the protection of free speech, particularly when such speech relates to governmental decision-
2 making. *Landmark Communications, Inc. v Virginia*, 435 US 829 (1978). As an elected official,
3 Senator Pan owes a high duty of protecting First Amendment rights, even when the free expression
4 of dissenting viewpoints may offend his sensibilities or cause political fallout.

5 34. Senator Pan's unconstitutional viewpoint discrimination within an online public
6 forum is part of a dangerous trend which is only recently coming to the attention of the courts. A
7 case has been brought against President Trump for similar actions; President Trump was ordered
8 to reinstate the plaintiffs therein to his Twitter site (the ruling is under appeal). *Knight First*
9 *Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541 (2018), (notice of appeal filed
10 06.04.2018). Likewise, an individual has sued Florida State Rep. Charles "Chuck" Clemmons,
11 who allegedly blocked the constituent after he questioned the Representative's position on gun
12 rights after the Parkland shooting tragedy. *Attwood v. Clemons*, Case No. 1:18-cv-00038-MW-
13 GRJ (2018), <https://ecf.ca11.uscourts.gov> (notice of appeal filed May 23, 2018).

14 35. Even where elected officials, including President Trump, have appealed the courts'
15 decisions, these cases have forced elected officials to ensure that their public social media sites be
16 accessible and allow robust discussions between varying viewpoints. Surprisingly, Senator Pan
17 has not responded to these parallel cases. He still operates within the <https://twitter.com/DrPanMD>
18 public forum as if it were his private domain. Plaintiffs' freedom of speech must be protected
19 within the @DrPanMD public forum and they have no choice but to seek redress from the courts.

20 **FIRST CAUSE OF ACTION**

21 **Violation of the First Amendment of the U.S. Constitution**

22 **(Declaratory and Injunctive Relief)**

23 36. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

24 37. Defendant's actions to block the Plaintiffs from <https://twitter.com/DrPanMD>
25 violates the First Amendment because Plaintiffs are prevented from expressing their viewpoints in
26 a public forum.

1 38. Defendant's actions to block the Plaintiffs from <https://twitter.com/DrPanMD>
2 violates the First Amendment because Plaintiffs are deprived of accessing public statements posted
3 by Defendant.

4 39. Defendant's action to block the Plaintiffs from <https://twitter.com/DrPanMD> based
5 on their viewpoints violates the First Amendment because Plaintiffs are prevented from petitioning
6 the government for redress of grievances.

7 40. Defendant's action to block the Plaintiffs from <https://twitter.com/DrPanMD> based
8 on their viewpoints violates the First Amendment because Plaintiffs are deprived of their right to
9 hear the dissenting viewpoints of others.

10 41. Plaintiff respectfully request that the Court declare that Defendant's action to block
11 their free speech within the <https://twitter.com/DrPanMD> public forum is an act of unconstitutional
12 viewpoint discrimination and order Senator Pan to restore their full access to the @DrPanMD
13 public forum and all other social media platforms supported by Senator Pan and/or his staff.

14 **SECOND CAUSE OF ACTION**

15 **Attorney's Fees Pursuant to 42 U.S.C. §§ 1983 and 1988**

16 42. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

17 43. Defendant's actions have deprived Plaintiffs of their Constitutional rights of free
18 speech. Pursuant to 42 U.S.C. §§1983 and 1988, Plaintiffs request an award equivalent to the
19 attorney's fees incurred in bringing and prosecuting this action.

20
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs request that this Court:

23 1. Declare Defendant's viewpoint-based restrictions Plaintiffs' exercise of free speech
24 on <https://twitter.com/DrPanMD> to be unconstitutional;

25 2. Enter an injunction demanding Defendant unblock Plaintiffs and each of them from
26 <https://twitter.com/DrPanMD>, and prohibiting Defendant from blocking the Plaintiffs or other from
27 the account on the basis of viewpoint;

