

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MARK HECKER,

Plaintiff,

V.

KATHRYN DENISE RUCKER KREPP,  
Advisory Neighborhood Commission  
Representative for Single-Member  
District 6B10, in her individual and  
official capacities,

Defendant.

Case No. 21-CV-839

## COMPLAINT

1. Plaintiff Mark Hecker criticized Defendant Kathryn Denise Rucker Krepp, a public official, in an online forum that she had created for discussion of official business. Because Krepp disagreed with the viewpoint Hecker expressed, Krepp deleted Hecker's speech and barred him from the forum. The First Amendment forbids this. Hecker brings this action seeking an injunction restoring him to the forum and forbidding Krepp from barring him because of the content of his protected speech; a declaratory judgment that barring him from the forum violates the First Amendment; and nominal damages.

### **Parties**

2. Plaintiff Mark Hecker is a D.C. resident who is active in local politics. As an educator and the founder of a youth-focused non-profit organization, Hecker is particularly active in developing strengths-based approaches to supporting teens and young adults and in the movement to end juvenile mass incarceration. Among other forms of activism, Hecker holds public officials to account by commenting on their policy positions using twitter.

3. Defendant Kathryn Denise Rucker Krepp is an Advisory Neighborhood Commission (ANC) representative in Washington, D.C. She was elected to single-member district 6B10 in November 2014 and took office in January 2015, and she has held office continuously since then. She uses the twitter account @kdrkrepp to communicate with her constituents and to provide a forum for their input on issues of municipal concern like traffic safety, crime, and real-estate development. She uses no other twitter account for any of her official business.

### **Jurisdiction and Venue**

4. Hecker brings this action pursuant to 42 U.S.C. § 1983, and this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5. Venue is proper in this district because the events complaint of occurred in this district and the District of Columbia may exercise general (and specific) personal jurisdiction over Krepp, who is a domiciliary and public official of the District of Columbia.

### **Twitter**

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

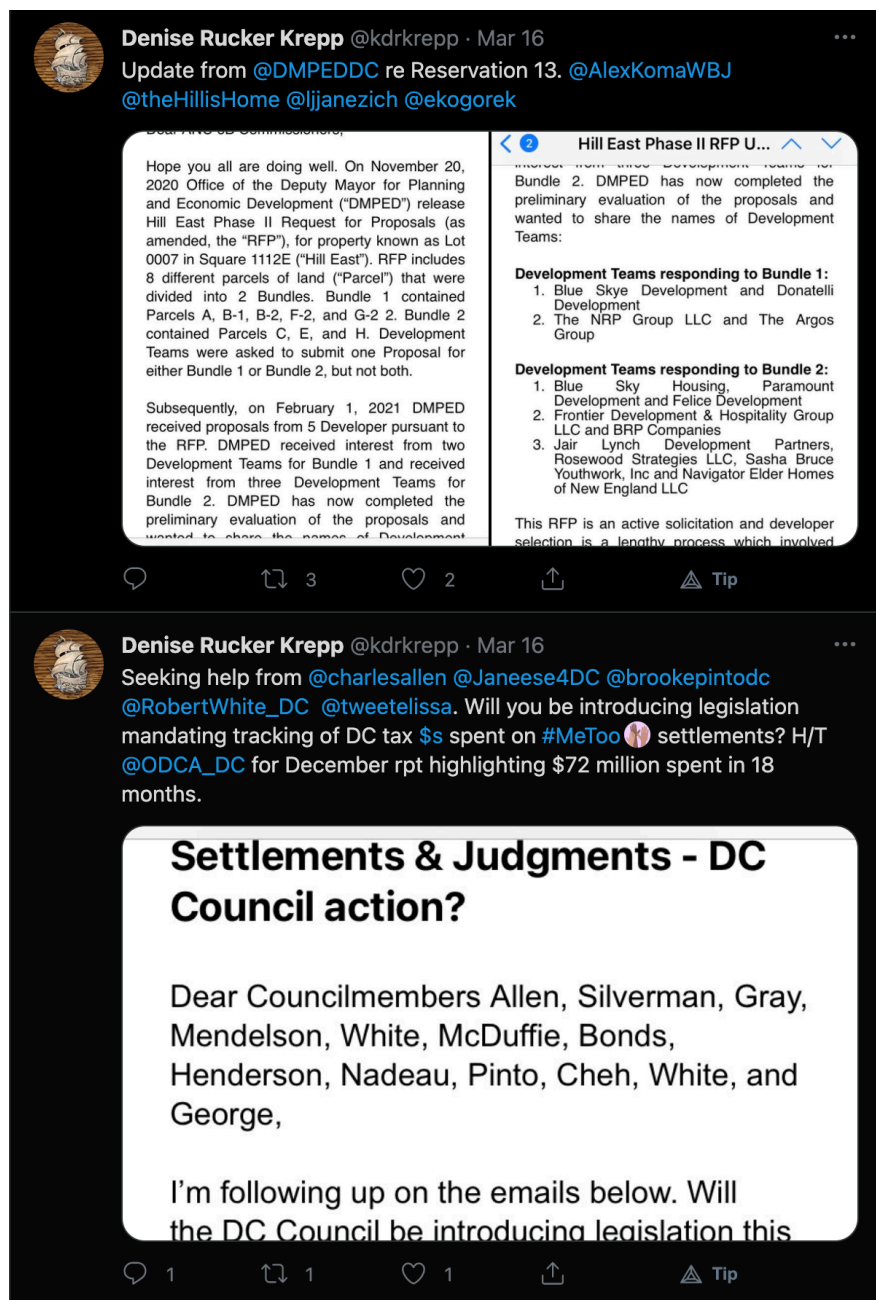
7. Users are identified by a unique name of their choosing, called a handle. Handles begin with the “@” character. (This leading character is sometimes unsaid or sometimes pronounced as “at,” like in an email address.)

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 March 24, 2021, Krepp’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 March 24, 2021, a recent section of Krepp’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 Krepp's tweets from March 8, 2021, reveals the following single comment:



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<sup>1</sup>:




---

<sup>1</sup> The image here was in fact posted to twitter by a fellow ANC representative whom Krepp also had blocked. The accompanying message reads: "Womp. [I] [g]uess liking tweets that Commissioner Krepp doesn't like is enough to get you blocked by your fellow ANC Commissioner... Aren't we supposed to work together for 6B? 🤖" @EdwardRyder, Twitter (Jan. 11, 2021, 7:39 AM) <https://twitter.com/EdwardRyder/status/1348610509793357830>.



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

**Krepp Blocks Hecker From a Twitter Account on Which She Has Created a Public Forum Because of the Viewpoint of His Protected Speech**

18. On December 24, 2020, Krepp tweeted: "Juveniles repeatedly committing violent crimes in DC. Juveniles arrested for the crimes but OAG's office refusing to share outcome of cases. FOIAed [sent a Freedom of Information Act request to] @DCPoliceDept [the D.C. Metropolitan Police Department's twitter handle] and @AGKarlRacine [the Attorney General of D.C.'s twitter handle] for info. If a lady is punched in the face in my neighborhood, I'm not going to be silent witness."

19. Another user replied the same day: "Every single detained youth in DC is BIPOC [Black, Indigenous, or Person of Color]. Literally *\*every\** single one. Being tough on crime with children exclusively means being tough on children of color, in our system. Extremely inappropriate."

20. Krepp replied in the comment thread: "I'm simply asking how violent juvenile crime is resolved in DC. I want to know if juveniles are connected to the 'puzzling' spike in crime."

21. A third user replied in the comment thread: "Also let's be precise. There is no 'spike in crime.' There has been an increase in homicides and car thefts. Almost



every other category of offense is down, including the number of violent crimes overall.”

22. To this, Krepp replied in the comment thread: “Violent crime is occurring in my single member district. MPD arrest data is available on line. I FOIAed DC OAG for juvenile prosecution data earlier this week and next week, I’ll FOIA DOJ [the U.S. Department of Justice] next week for adult info.”

23. Hecker replied: “You understand the difference between ‘a spike in crime’ & ‘crime is occurring,’ right? Could you point to ANY research indicating that a focus on punishment leads to less crime? Any at all? I work with teens across the district and would be happy to discuss better strategies.”

24. On December 29, 2020, Krepp tweeted: “New record. Filed 5 FOIAs in past 2 weeks. FOIAed @TheJusticeDept [the United States Department of Justice’s twitter handle] & @AGKarlRacine for prosecution data, @DCPoliceDept for arrest info, @DDOTDC [the D.C. Department of Transportation’s twitter handle] for info re traffic calming study of 17th St SE, & @DMPEDDC [the Office of the Deputy Mayor for Planning and Economic Development’s twitter handle] for info re Reservation 13 [a planned real-estate development in Krepp’s district]. MPD already shared info. Waiting on the others.”

25. Hecker replied: “Who have you met with to create violence prevention strategies? What community members are you engaging in discussions? What have you discovered our most at-risk residents need? How might you build community?”

26. On January 9, 2021, three days after rioters stormed the U.S. Capitol, Krepp tweeted: “Sharing ltr I’ve circulated with DC ANCs. We write similar ltrs for individuals who commit rape & murder so we should definitely send one for insurrection.”

27. Krepp attached a copy of a letter that she wrote asking for lengthy prison sentences for the people involved in the storming of the Capitol.

28. Later in the day on January 9, she replied in the comment thread created by her tweet: “As ANC, I’m writing community impact statement for DOJ prosecutors recommending jail time for all those that participated in the insurrection at the US Capitol. If you’re an ANC and would like to sign the letter, please DM [send a private message to] me. Goal is to send ltr to DOJ on Monday.”

29. On January 10, 2020, a twitter user replied: “Hi, one of your constituents in 6B10 that is blocked by you thinks ‘this letter is terrible and embarrassing [*sic*] and should be thrown in the garbage.” Hecker was not that constituent.

30. On January 10, 2020, Krepp retweeted her own January 9 tweet, adding: “It’s been quite the weekend. I asked 250 plus DC ANC Commissioners to join me in asking federal judges to give long term prison sentences to those who committed the insurrection at the US Capitol last week. Almost all declined to do so.”

31. Another ANC representative replied: “Commissioner this is disingenuous. First, you reached out yesterday. I haven’t even read the full thread yet & assuming most haven’t. I see that maybe 30 of 250 responded to the thread in

either support, opposition, or asking questions. That is not ‘almost all (of 250) declined.’”

32. On January 11, Hecker replied to Krepp’s January 10 retweet: “Quite amazing to write a letter, ask 250 to sign it, have 249 not agree to sign, and then to announce publicly that the other 249 are the problem.”

33. That day, Krepp blocked Hecker.

34. Krepp blocked Hecker because she disagreed with the viewpoint expressed in his replies.

35. As of March 24, 2021, the comment thread created by the January 10 tweet contained five visible (unblocked) replies posted between January 10, 2021, and January 12, 2021, plus two additional responses by Krepp. To an un-blocked user, the entire thread appears as follows:



36. As of March 24, 2021, Hecker's January 11 reply is not visible to anyone on the comment thread created by Krepp's January 10 retweet. Krepp's blocking Hecker deleted the tweet, without Hecker's consent, from the forum created by Krepp's tweets.

37. As of March 24, Hecker, using his account, cannot gain access to view or comment on that thread or any of Krepp's other tweets or threads.

**Krepp's Twitter Account is Marked With the Trappings of Her Office**

38. Krepp's twitter handle is @kdrkrepp.

39. Krepp created this account in January 2013, and is listed as residing in Washington, D.C.

40. As of March 24, 2021, 2,746 users follow Krepp's account and Krepp follows the accounts of 2,250 users.

41. The timeline for Krepp's account begins with a short description: "Action, not words. @timkrepp's wife. Mom. Former Maritime Administration Chief Counsel & Coast Guard officer. ANC6B10 Commissioner."

42. From September 2009 to February 2012, Krepp was Chief Counsel of the United States Maritime Commission.

43. Krepp's page on LinkedIn, a social-media service for professional connection, identified her (as of March 24, 2021) as "a DC based consultant and lobbyist," working for "KDRKrepp Consulting."

44. Krepp does not mention her consulting or lobbying work in her description of her twitter account.

45. The only current professional activity identified on Krepp's description of her twitter account is her public service as an ANC representative.

**Krepp Uses Her Twitter Account for Public Business**

46. In 2020 and 2021, Krepp posted hundreds of tweets.

47. A significant portion of these tweets are communications with constituents about public business.

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

49. A true and correct text-only copy of the last 3,200 tweets sent by Krepp as of March 22, 2021, is attached to this Complaint as Exhibit A.

50. Krepp tweets often about crime in her district; her attempts to get more accurate data regarding criminal charges, prosecutions, arrests, and incarceration; and her general view that lengthier prison sentences are appropriate for people convicted of sexual assault, rape, and other crimes.

51. Krepp tweets frequently about Reservation 13, a major real-estate development in her district, and other planned uses of property in her district.

52. Krepp tweets frequently about issues of traffic safety, traffic congestion, and other transportation issues in her district.

53. Krepp tweets frequently about the goings on at the D.C National Guard Armory, which is in her district and near where she lives. Although some of these tweets mention her prior service in the Coast Guard and her family's history of military service, the vast majority of these tweets concern day-to-day happenings of interest to people who live in the neighborhood, such as lights, masks for National Guard members, use of public parks for training, stored ammunition, the number and size of vehicles, and the conduct of Guard members in public.

54. On September 19, 2020, Krepp tweeted an image of a letter she sent to the D.C. National Guard in her capacity as an ANC representative, explaining that she was concerned on behalf of her constituents that Guard members were occupying a public park, not wearing masks, and engaging in disrespectful behavior.

55. Krepp sent many tweets discussing her views on the Second Look Amendment Act, a D.C. law that decreased sentences for children. Krepp generally opposes the law and has advocated against it in her role as an ANC representative.

56. In September 2020, Krepp announced that one of her goals as an ANC representative was “to get the D.C. Council to pass [a] bill requiring ALL DC agencies to release info on sexual harassment and sexual assault settlements and judgments.” She identified this goal with the hashtag ANC6B10, which identifies the single-member district that she represents.

57. On September 7, 2020, Krepp tweeted: “I don’t normally share how I’ll vote at ANC6B mtgs. Making an exception for #sportsbetting. I will be voting no on #sportsgambling proposal tomorrow night.”

58. Krepp has used her twitter account to explain actions that she takes while wearing her (one assumes metaphorical) “ANC hat.” On September 5, 2020, Krepp tweeted: “Good morning. DC high school students may be studying virtually but they still have community service hour requirements. Friend asked if I (ANC hat) would sign off on daughter’s community clean up efforts. Said yes. Happy to do the same for other #Hilleast students.”



59. On August 26, 2020, Krepp tweeted: “Earlier this month, I voted to use ANC6B dollars to feed homeless individuals in the neighborhood.”

60. Krepp tweets often about the problem of people in her community refusing to wear masks. For example, on July 14, 2020, she tweeted: “Morning @TedsBULLETIN [the twitter handle of a restaurant in D.C.]. Just read [a *Washington Post*] article [mentioning the restaurant]. You’re a valuable member of the Capitol Hill community. What can ANC6B Commissioners do to help you re patrons who refuse to wear masks?”

61. On July 11, 2020, Krepp tweeted: “ANC6B is voting Tuesday on a resolution to support changing the names of Tyler and Brent Elementary Schools. Sharing copy of the resolution. Seeking input.”

62. That same day, she explained the capacity in which she was sending messages on twitter: “6 years ago, I joined an amazing team - #ANC6B. Every month [fellow government officials] and I meet. We ask DC agency qs and demand answers. Sharing latest oversight effort re #Reservation13.”

63. In June 2020, Krepp identified herself in tweets directed at the D.C. National Guard (complaining about Guard members from D.C. and elsewhere behaving rudely) as an “elected rep,” and “your elected rep in DC.” For example, on June 6, 2020, she tweeted: “During my morning walk @NationalGuard [the Army National Guard’s twitter handle] told me to stop taking pictures of military vehicles in my neighborhood. Last time govt official gave me that order I was in China. Beijing.

3 wks after #TiananmenSquareMassacre. I'm not in China & I'm still DC elected rep. #dcprotestors.”

64. In March 2020, Krepp began tweeting about issues concerning the coronavirus pandemic in her district. For example, on March 16, 2020, she tweeted: “DC National Guard Armory located in Hilleast. I support activation of DC unit. As the locally elected rep for area, I ask that @MayorBowser [D.C. Mayor Muriel Bowser’s twitter handle] share as much info as possible. For example, will the Armory be turned into a temp hospital? #coronavirus.”

65. On January 3, 2020, Krepp tweeted: “Day 2 of new decade. Shots fired from car in Hilleast. Thank you @DCPoliceDept for recovering illegal firearm. @USAO\_DC [the D.C. United States Attorney’s Office’s twitter account]—as in other gun related cases, I’ll be writing a community impact statement asking for full prosecution.”

66. Krepp has explained that she writes community-impact statements for criminal prosecutions in her official capacity as an ANC representative. On July 11, 2020, she tweeted: “Numerous gun crimes in my SMD [single-member district]. Every time someone is arrested for a gun related crime I write a community impact statement. I put pen to paper b/c I want guns off the streets. I agree w/ #MPD @ChiefNewsham [the twitter handle of the Chief of the Metropolitan Police Department]. Repeat gun related offenses should result in harsher sentences.”

67. Krepp also uses the account @kdrkrepp for communicating about her family, pets, (non-ANC-related) political views, and occasionally about issues of

maritime administration and surface transportation. Nonetheless, the above examples are generally representative of Krepp's twitter activity regarding official business.

**Claim for Relief**

***Count One:***

**Viewpoint Discrimination in Violation of the First Amendment  
(42 U.S.C. § 1983)**

68. Hecker incorporates all prior paragraphs here.

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

70. Krepp has never created rules or guidance about what sorts of content will be allowed to remain in the public forum she has created on twitter and what sorts of content will cause a user to be blocked.

71. Krepp has, therefore, created a designated public forum (as opposed to a limited public forum) on her timeline and the comment threads created by her tweets.

72. In response to a tweet about official government business, Krepp barred Hecker from posting messages on her timeline and the comment threads created by her tweets.

73. Krepp barred Hecker because of the viewpoint expressed in his messages.

74. A fortiori, Krepp blocked Hecker because of the content of his messages.

75. Krepp violated the First Amendment by blocking Hecker from a public forum because of the viewpoint and content of his speech.

**Prayer for Relief**

Plaintiff Mark Hecker respectfully requests:

- An injunction requiring Defendant Kathryn Denise Rucker Krepp to un-block Hecker from the twitter account @kdrkrepp and forbidding her from blocking him on the basis of his speech so long as he does not post content that is categorically unprotected by the First Amendment;
- A declaratory judgment that Krepp's decision to block Hecker from the twitter account @kdrkrepp violated the First Amendment;
- An award of \$1 in nominal damages;
- An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- All other relief that this Court may consider just and proper.

Respectfully submitted,

/s/ Charles Gerstein

Charles Gerstein  
(D.C. Bar No. 1033346)  
GERSTEIN HARROW LLP  
611 Pennsylvania Ave SE, No. 317  
Washington, DC 20003  
charlie@gerstein-harrow.com  
(202) 670-4809

/s/ Jason Harrow

Jason Harrow  
GERSTEIN HARROW LLP  
3243B S. La Cienega Blvd.,  
Los Angeles, CA 90016  
jason@gerstein-harrow.com  
(323) 744-5293