

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRANDON KLOER,)	
)	
Plaintiff,)	
)	
v.)	No. 1:21-cv-807
)	
REPRESENTATIVE J.D. PRESCOTT,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introductory Statement

1. Like many public officials, Representative J.D. Prescott of the Indiana House of Representatives maintains and operates a Facebook account. Although Representative Prescott’s Facebook page is nominally a so-called “political candidate page,” in reality he uses the account to regularly post information about his activities as a legislator, about his formal position on various bills and other policy initiatives, and about other matters of relevance to his constituents. In other words, Representative Prescott’s Facebook page doubles as his official legislative account. While Representative Prescott generally allows other Facebook users to comment on his Facebook posts, when Brandon Kloer took the opportunity to use the comment function to raise questions about Representative Prescott’s position on school funding he was swiftly “blocked” from the Facebook page. This action not only removes all of Mr. Kloer’s previous comments from the page but also serves to prohibit him from commenting on Representative Prescott’s posts in the future. Representative Prescott’s action in blocking Mr. Kloer from his Facebook page represents viewpoint discrimination that runs afoul of the First Amendment to the United States

Constitution. Appropriate declaratory and injunctive relief must issue.

Jurisdiction, Venue, and Cause of Action

2. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

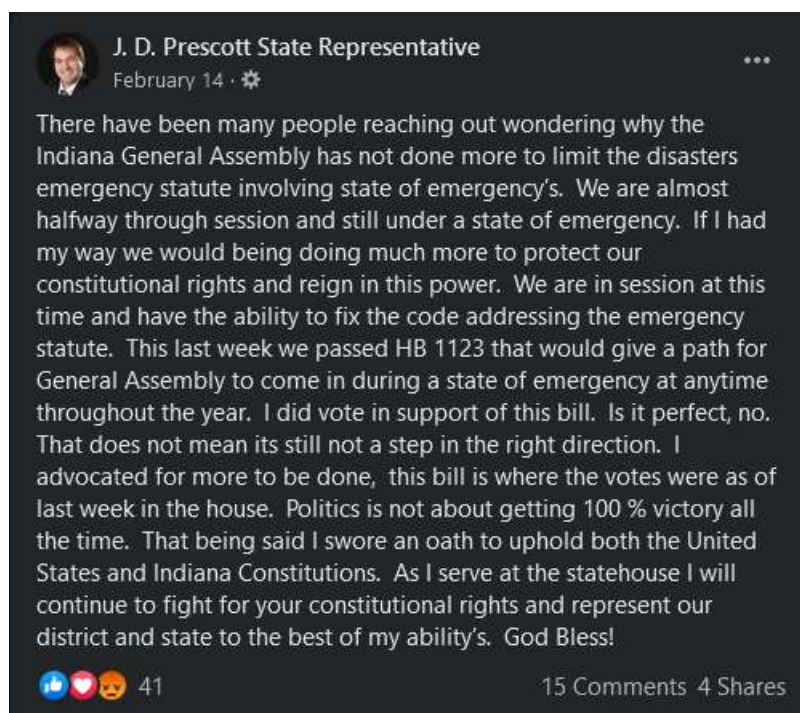
6. Brandon Kloer is an adult resident of Jay County, Indiana.
7. Representative J.D. Prescott is the elected member of the Indiana House of Representatives serving District No. 33, which is comprised of the entirety of Jay and Randolph Counties and a portion of Delaware County. Representative Prescott is a resident of Randolph County.

Factual Allegations

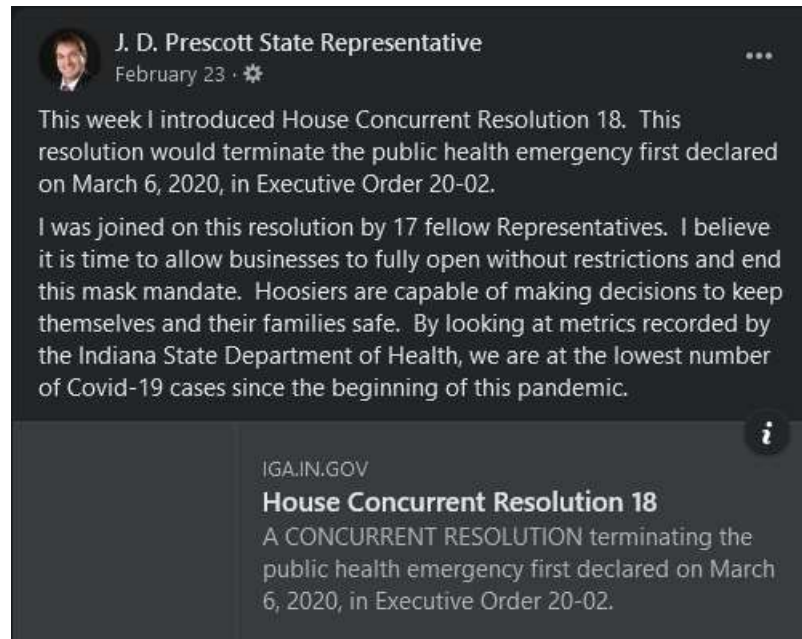
8. Representative J.D. Prescott is the elected member of the Indiana House of Representatives serving District No. 33. He was first elected to the Indiana House of Representatives in 2018 and was re-elected in 2020. His current term runs until late 2022 or early 2023.
9. Like many public officials, Representative Prescott maintains and operates a Facebook account. Representative Prescott's Facebook page is available at <https://www.facebook.com/PrescottforStateRep>.
10. Representative Prescott's Facebook page can be viewed by the public and anyone with a Facebook account can post a "comment" in response to his "posts" or in response to other

user comments that have been made on those posts.

11. Representative Prescott's Facebook page was originally created in early 2018 as a so-called "political candidate page" in order to support his candidacy for the Indiana House of Representatives. However, since his election in November 2018, he has used the page regularly to post information on legislation, policy initiatives, and other matters of importance to his constituents.
12. For instance, on February 14, 2021 he posted the following in apparent response to concerns voiced by several of his constituents:

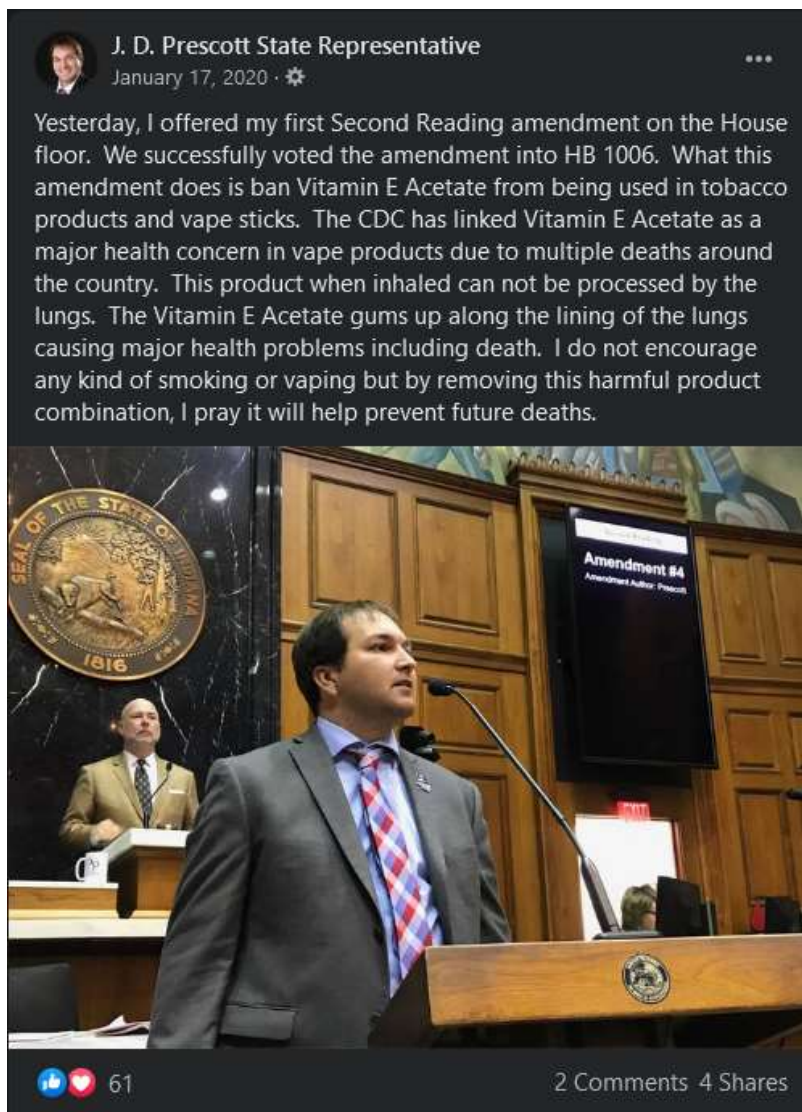


13. On February 23, 2021 he posted the following about a concurrent resolution that he had introduced in the Indiana House of Representatives:

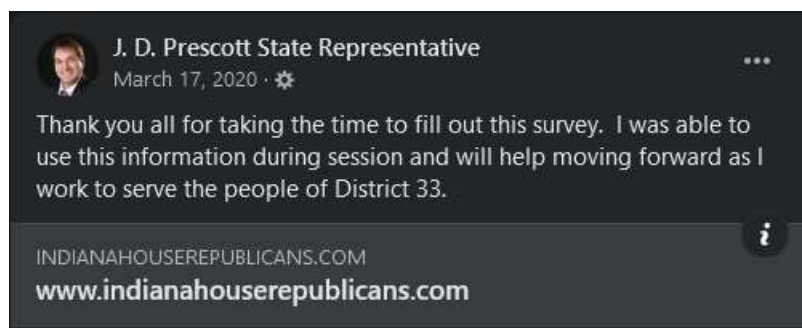


The post included a link to the text of the proposed concurrent resolution, as maintained on the webpage of the Indiana General Assembly.

14. In recent months, he also posted a statement concerning the passing of Rush Limbaugh as well as a statement concerning the retirement of Indiana Secretary of State Connie Lawson.
15. On January 17, 2020, not long after the 2020 session of the Indiana General Assembly began, Representative Prescott posted about an amendment that he had offered to a bill pending before the Indiana House of Representatives:

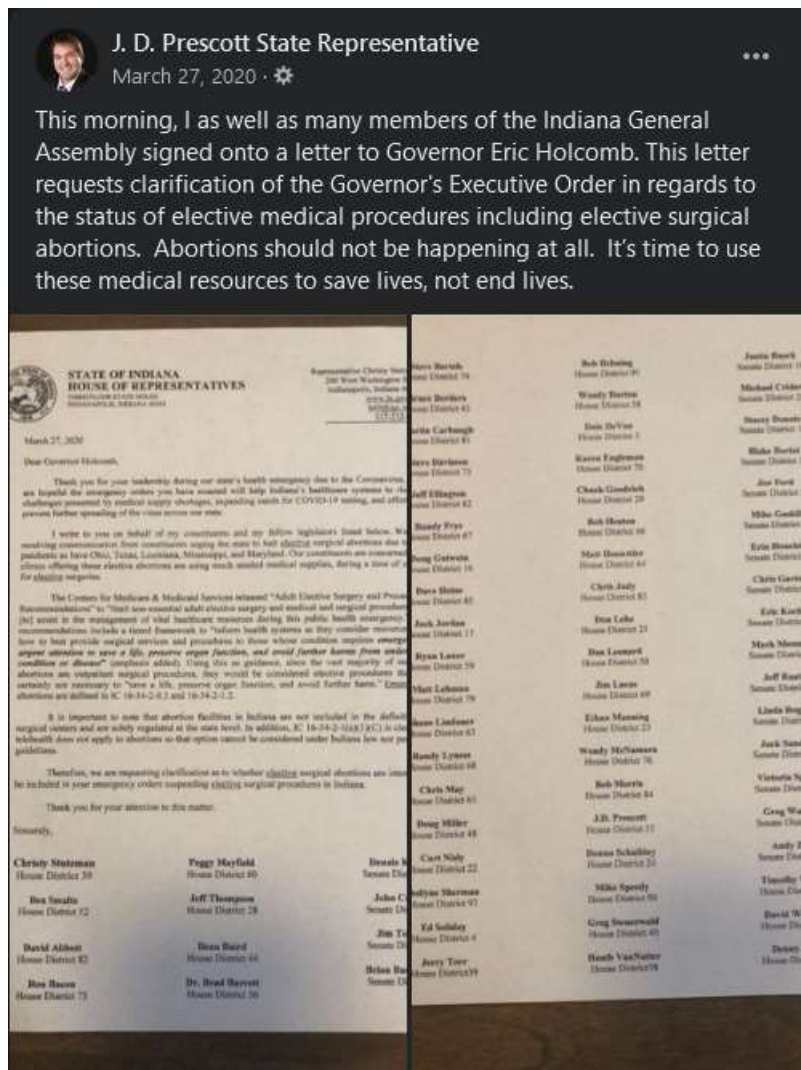


16. On March 17, 2020 he posted to thank his constituents for completing a survey concerning several issues that were pending, or were likely to pend, before the Indiana General Assembly:



This post included a link to the survey results, which also contained his official e-mail address and telephone number for his legislative office as well as the internet address for the Republican Conference of the Indiana House of Representatives.

17. Also in early 2020, Representative Prescott made several posts concerning Indiana's response to the COVID-19 pandemic. For instance, on March 18th he posted a link to the Indiana State Department of Health's webpage containing information about the pandemic and directed his constituents to visit the page if they had questions "about Coronavirus." On March 19th he posted information about loans offered to small businesses and non-profit organizations hurt by the pandemic. On March 20th he posted detailed information—ranging from the closure of schools to the extension of the tax-filing deadline to a temporary moratorium on eviction and foreclosure proceedings—about Indiana's response to the pandemic. Also on March 20th he posted information concerning the availability of COVID-19 tests and about his efforts to obtain additional information from Governor Holcomb's office. And on March 23rd he posted information about a call-center hotline (and e-mail address) that had been created to field "business and industry questions" arising out of Indiana's response to the COVID-19 pandemic.
18. On March 27, 2020, Representative Prescott posted information about a letter that he and numerous other members of the Indiana General Assembly sent to Governor Holcomb requesting clarification of an executive order concerning the performance of elective medical procedures during the pandemic:



The posted included an image of the letter itself, which was sent on the letterhead of the Indiana House of Representatives.

19. And on April 22, 2020, Representative Prescott posted about his belief that it was “time to reopen our state economy”:

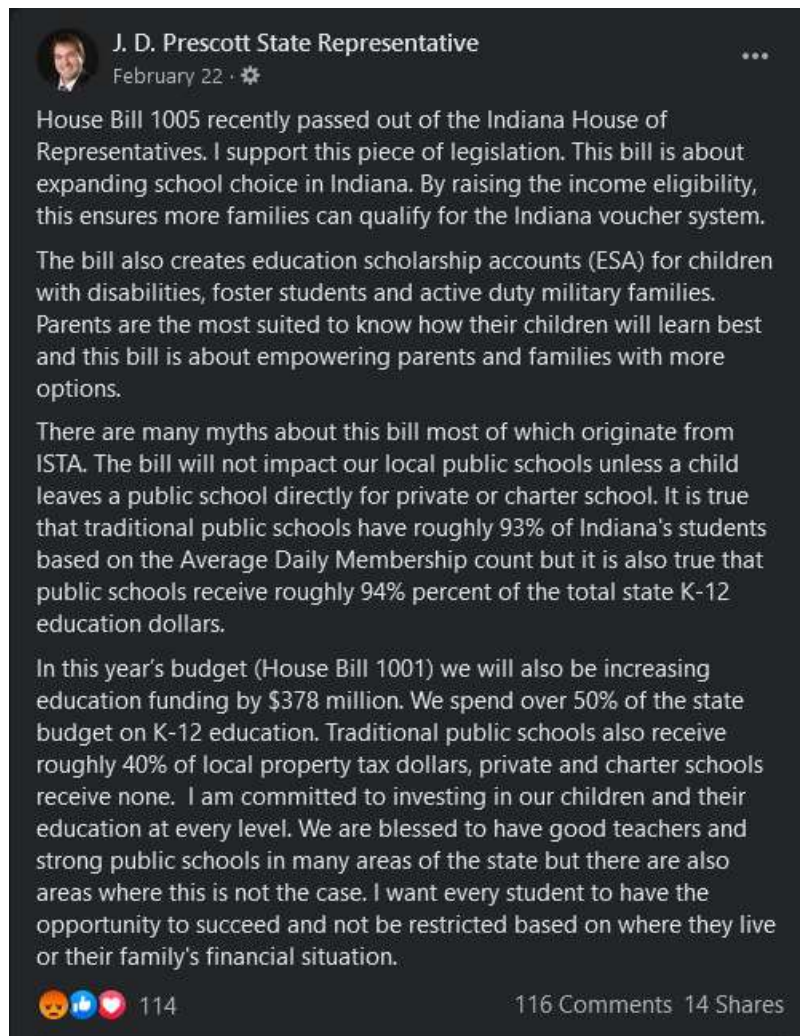
It is time to reopen our state economy, that is why I signed on as a co-author to this letter below to Governor Eric Holcomb. Our small businesses are struggling, we have many on unemployment, and our commodity markets are crashing. I have faith that Hoosiers across our state can use common sense to protect themselves and others while going back to work and reopening our economy. We can not let fear take away our freedoms. Thank you Representative Jim Lucas for putting this together and to my fell co-authors Representatives Christy Stutzman and Chris Judy.

This post included an image of a letter to Governor Holcomb that he and other legislators had signed and sent on the letterhead of the Indiana House of Representatives, which voiced his concern about several executive orders signed by Governor Holcomb and which expressed his belief “that the threat of COVID-19 is not as serious as was initially anticipated.”

20. In other words, even though Representative Prescott’s Facebook page was initially created as a “political candidate page” in order to support his campaign for the Indiana House of Representatives, he utilizes the page also as his official page as a member of the Indiana General Assembly. He does not maintain or operate a separate Facebook page that serves as his official page as a member of the Indiana General Assembly.
21. In fact, in July 2019 Representative Prescott formally changed the name of his Facebook page from “J.D. Prescott for State Representative” to simply “J.D. Prescott State Representative.” Since July 2019 the name of his Facebook page has remained “J.D. Prescott State Representative.”
22. On information and belief, Representative Prescott often makes posts to his Facebook page during times when he is engaged in formal legislative activities or otherwise working in his capacity as a member of the Indiana House of Representatives.
23. Brandon Kloer is an adult resident of Jay County and one of Representative Prescott’s constituents.
24. Mr. Kloer often disagrees with Representative Prescott’s policy positions and has, in the past, utilized the “comment” section on Representative Prescott’s Facebook page to express his disagreement with Representative Prescott’s positions or to raise questions about statements made by Representative Prescott. While these comments have been

critical of Representative Prescott or his positions, they have not been threatening, obscene, profane, or otherwise improper.

25. On February 22, 2021, Representative Prescott made a post to his Facebook page to express his support for House Bill 1005, a so-called “school-choice bill” that had recently been passed by the Indiana House of Representatives:



The post also appeared to criticize the Indiana State Teachers Association (ISTA) and shared additional information concerning education funding.

26. Mr. Kloer used the comment function to respond directly to Representative Prescott's post and to raise questions of Representative Prescott and his policy positions. While Mr. Kloer

no longer has access to his comment and does not recall the precise verbiage, in substance his comment was as follows:

If you support our public schools then why did you vote against HB 1265, which would test our schools' water for lead? Also, why did you vote against SB 280, which would provide tax breaks for disabled veterans?

27. Another Facebook user responded to Representative Prescott's post by commenting as follows: "Keep up the great work JD! I knew you had our backs here Randolph County [*sic*]." In addition to responding directly to Representative Prescott's Facebook post, Mr. Kloer replied to this individual by inquiring as to how House Bill 1005 would benefit Randolph County insofar as there are no private or charter schools in Randolph County.
28. Shortly after Mr. Kloer made these two inquiries in the comment thread of Representative Prescott's Facebook post, and as a direct result of these inquiries, Representative Prescott "blocked" Mr. Kloer from his Facebook page.
29. A Facebook user who is blocked from a Facebook page is able to visit the Facebook page and to view any posts or comments on the page but is not able to post his own comments in response to Facebook posts or in response to any comments made in response to the posts. Therefore, by blocking Mr. Kloer, Representative Prescott prohibited him from engaging in any expressive activity on Representative Prescott's Facebook page.
30. When a user is blocked from a Facebook page, not only is he prohibited from making any new comments on that Facebook page, but any previous comments that he made on the Facebook page, regardless of their content, are also automatically removed and are no longer visible to persons visiting the Facebook page. Therefore, not only is Mr. Kloer unable to post additional comments to Representative Prescott's Facebook page, but all of his past comments have been removed from that page.

31. Although Mr. Kloer's comments raised questions of Representative Prescott and an individual who expressed support for Representative Prescott—and they may certainly have been interpreted as critical of Representative Prescott—they were not threatening, obscene, profane, or otherwise improper.
32. Mr. Kloer was blocked from Representative Prescott's Facebook page because of the viewpoint expressed by his comments—that is, because his comments were deemed critical of Representative Prescott.
33. Mr. Kloer considers himself to be involved in his community and is concerned about issues of importance to his community and his state as well as about the actions and positions of his elected officials. He would like to be able to once again comment on posts made to Representative Prescott's Facebook page, and would also like his previous comments to be restored so that Facebook users may view these comments.
34. Additionally, while Mr. Kloer is able to view Representative Prescott's Facebook page and any comments made on that page from Facebook users who have not been blocked, he believes strongly in full and open debate on public issues and would like to be able to view any comments previously made that have been removed from the Facebook page. Mr. Kloer's inability to view these comments impinges on his right, cognizable under the First Amendment, to receive information.
35. At all times the defendant has acted under color of state law.
36. As a result of the actions or inactions of the defendant, the plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

Legal Claim

37. Representative Prescott's action in blocking Mr. Kloer from commenting on his Facebook

page due to the viewpoints that Mr. Kloer has expressed, and his action in censoring other users' comments, violates the First Amendment to the United States Constitution.

Request for Relief

WHEREFORE, the plaintiff requests that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing at the earliest opportunity.
2. Declare that the defendant has violated the rights of the plaintiff for the reason(s) described above.
3. Issue a preliminary injunction, later to be made permanent, enjoining the defendant (a) to “unblock” the plaintiff from the Facebook page of Representative Prescott, (b) from blocking Facebook users in the future based on the viewpoints that they express, and (c) to restore any and all comments that have been censored from Representative Prescott’s Facebook page due to the viewpoints that they express.
4. Award the plaintiff his costs and attorneys’ fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

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