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How a Court's Decision that the President Can't Block Twitter Users Impacts Public Officials

First Amendment Issues and Social Media Accounts as Public Forums



If a public official creates a public forum from his or her social media account — even if the account was established before taking office — the official cannot block people from the account in response to the person expressing political views, a federal court has ruled.

While the decision late last month came in a case involving the highest-ranking public official in the U.S., it includes free-speech considerations that all public officials should heed.

In *Knight First Amendment Institute at Columbia University, et al. v. Donald J. Trump, et al.*, the U.S. District Court for the Southern District of New York addressed the First Amendment issues that can emerge when a sitting President is an avid tweeter. Several Twitter users filed a complaint after realizing they were blocked from accessing @realDonaldTrump, President Donald Trump's most-often used Twitter account. @realDonaldTrump was established in 2009 and has been used since the President's inauguration as a channel for communicating and interacting with the public about his administration. The plaintiffs claimed they were blocked because they sent critical tweets of the President and his policies — a claim never disputed. At issue was whether Trump's blocking the Twitter users implicated a forum for First Amendment purposes. To determine that issue, the court needed to answer a few fundamental questions.

First, was protected speech at issue? The court easily concluded that the speech in which the plaintiffs engaged was political speech protected by the First Amendment.

People



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Second, was @realDonaldTrump a public forum? For a space to be susceptible to forum analysis, it must be owned or controlled by the government. The court found that @realDonaldTrump was not owned, but was controlled by the government, despite that it was first established in 2009 before the President was elected. For the court, key facts were that the Twitter account was registered to “45th President,” White House staff helped operate the account and the President used the account to, among other things, hire and fire Cabinet appointees. The court relied on the long-established rule that privately owned property can become a public forum if the space is under government control. The court distinguished between a public official’s personal, as opposed to public, social media account: “No one can seriously contend that a public official’s blocking of a constituent from her purely personal Twitter account — one that she does not impress with the trappings of her office and does not use to exercise the authority of her position — would implicate forum analysis, but those are hardly the facts of this case.”

Third, what was the character of the public forum? The court determined the Twitter account was a “designated public forum” by inferring from three specific factors that the government intended to designate it as such:

- The account was generally available to the public without regard for a user’s political affiliation.
- Anyone with a Twitter account could participate in the interactive space of @realDonaldTrump by replying or retweeting the President’s tweets. This ability to communicate with others through the President’s own Twitter account seemed a crucial factor.
- The account was described by the White House Social Media Director as a way the President communicates directly with the American people.

Fourth, to what extent could the government control the content on @realDonaldTrump? The court found that restrictions in a designated public forum are only permissible if they are narrowly drawn to achieve a compelling state interest. Furthermore, viewpoint discrimination is presumed impermissible if the speech is otherwise permissible within the forum’s limitations. Since the record established that the plaintiffs were blocked soon after posting tweets critical of the President, the President’s blocking of those users was viewpoint discrimination and impermissible under the First Amendment.

Interestingly, the defendants argued that blocking was permissible because the plaintiffs had no right to an audience with the government, meaning that Trump still had a First Amendment right to ignore the plaintiffs. The court acknowledged that public officials do not lose their First Amendment rights upon taking office. In fact, “no First Amendment harm arises when a government’s ‘challenged conduct is simply to ignore the [speaker],’ ... or when the government ‘amplifies’ the voice of one speaker over those of others.” However, the problem arises when the government actively restricts the right of

an individual to speak freely. To illustrate this point, the court found it instructive to distinguish between Twitter's "blocking" and "muting" functions. When an account is blocked, the blocked user has no ability to engage in the forum. However, when an account is muted, the muted user can still post in the forum, but the owner of the muting account will not see the post. Hence, the muting account is able to ignore an account with which the user does not wish to engage. Notably, the court suggested that the defendants just mute the plaintiffs as a reasonable solution to the dispute, but the defendants refused.

On behalf of the President, the Department of Justice has filed an appeal.

Learn more about this issue at a free BB&K Webinar on July 11: "Social Media Meets the First Amendment." [Learn more and register by clicking here.](#)

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