

CLIENT NEWS BRIEF

Court Rules that Trump's Viewpoint-Based Twitter Blocking Violates the First Amendment

In *Knight First Amendment Institute at Columbia University, et al. v. Donald J. Trump, et al.*, the United States District Court for the Southern District of New York ruled that President Donald J. Trump's act of blocking Twitter users who criticized his policies from the @realDonaldTrump Twitter account violated the users' right to free speech. The court recognized Twitter's "interactive space" as a "designated public forum" based on the President's use of the forum as a means to communicate official business with the public.

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Background

Twitter users blocked by Trump sued Trump and other members of his cabinet, alleging the Administration violated their right to free speech by blocking them for criticizing Trump. The Twitter users sought, and the court issued, a declaration affirming the users' view that blocking users based on their viewpoints is unconstitutional. The plaintiffs also sought an injunction prohibiting Trump from blocking followers from his @realDonaldTrump account, but the court declined to provide this relief.

In reaching its decision, the court came to several important conclusions regarding the President's use of Twitter. First, the court noted the government "owned or controlled" the public forum because the government controls the content of the tweets sent from the account. The government also holds the ability to block users, preventing them from accessing the account timeline and participating in the interactive space associated with the account.

The court also found the tweets from the @realDonaldTrump Twitter account constituted "government speech," noting that the President uses the account "to announce, describe, and defend his policies; to promote his Administration's legislative agenda; to announce official decisions; to engage with foreign political leaders; to publicize state visits; [and] to challenge media organizations whose coverage of his Administration he believes to be unfair."

Additionally, the court found the "interactive space" where Twitter users can reply to Trump's tweets or reply to other Twitter users' replies to Trump's tweets is a "designated public forum." Generally speaking, a "designated public forum" is a forum set aside by the government for expressive activities. In determining that the "interactive space" associated with the @realDonaldTrump Twitter account is a "designated public forum," the court noted the government's intent is the determinative factor. In this case, the court was influenced by the fact that the account is generally available to the public, is held out as a place where the President can communicate directly with the public, and that Twitter is a platform intended for expressive activity.

Finally, the court held that the individual Twitter users who brought the lawsuit were discriminated against based on their viewpoints, noting that the plaintiffs were blocked because they posted comments that were critical of the President—an assertion that was not contested by the Trump administration. In this context, "[v]iewpoint discrimination . . . is presumed impermissible when



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directed against speech otherwise within the forum's limitations."

Takeaways

This decision is a significant development for public agencies because it acknowledges that Twitter, when used by a government official to discuss government business, can be a "designated public forum." Once a forum is determined to be a "designated public forum," any viewpoint-based restrictions must be narrowly drawn to achieve a compelling state interest. Restrictions must not be over- or under-inclusive, must not prohibit more speech than necessary, and must be the least restrictive means possible for satisfying a crucial governmental need. It is very difficult for viewpoint-based restrictions on speech to satisfy this test.

While this case was decided by the United States District Court for the Southern District of New York and is therefore not binding law in California, California courts often look to other jurisdictions for guidance when deciding novel issues of law such as this. In addition, a notice of appeal was recently filed with the United States Court of Appeals for the Second Circuit. Subsequent review by the Second Circuit could render a different decision.

It is important for local governments and public agencies that utilize Twitter and other social media platforms to communicate official government business to keep in mind that citizens have a right to express their points of view with regard to governmental action. According to this ruling, blocking social media users or otherwise preventing the public from commenting based on their viewpoints could be considered a violation of their Constitutional rights. This does not mean public comment must be allowed. It does mean, however, that when public comment is allowed and is consistent with the intent of the forum, restrictions on speech must not be made on the basis of the speaker's viewpoint. This decision will likely require local governments and public agencies to address their policies on the official use of social media, as well as whether the restriction of particular viewpoints is ever appropriate.

If you have any questions about this decision or about recommended policies or practices regarding the use of social media platforms, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).