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U.S. District Court Rules President Trump Can't Block Critical Followers

Can the President of the United States “block” a person from following his Twitter account in response to the political views that person has expressed? According to Judge Naomi Reice Buchwald of the Southern District of New York, the answer is no.

The Facts

On Wednesday, Judge Buchwald issued her ruling in *Knight First Amendment Inst. at Columbia Univ. v. Trump*. The case arose after plaintiffs tweeted messages critical of President Trump or his policies in reply to a tweet from his Twitter account, @realDonaldTrump. The plaintiffs found their accounts were blocked shortly thereafter, and have remained blocked. As a result, while the plaintiffs could still view and interact with the President’s tweets indirectly – either by using a web browser while logged out of Twitter or responding to others’ tweets – they could not view the President’s tweets or respond directly to those tweets while logged in. After deciding that the plaintiffs did in fact have Article III standing to pursue their claims, the Court delved into a detailed analysis of the First Amendment’s application in the age of Twitter, one of the most prominent social media platforms.

Applying the First Amendment to President Trump’s Twitter Handle

President Trump stipulated that the plaintiffs sought to engage in political speech. Such speech on matters of public concern “fall[s] within the core of First Amendment protection.” *Engquist v. Ore. Dep’t of Agric.*, 553 U.S. 591, 600 (2008). And although Twitter is a private company, the Court determined that the President’s control over the account was governmental in nature for several reasons:

- The account presents as being registered to Donald J. Trump, “45th President of the United States of America, Washington, D.C.”

- The account's tweets are official records that must be preserved under the Presidential Records Act.
- The account has been used in the course of appointing and removing officers, as well as conducting foreign policy, actions that can only be taken by the President when acting as President under Article II of the Constitution.

According to the Court, these factors distinguish @realDonaldTrump as a presidential account, and not merely a personal account.

The Court found that application of forum analysis to the interactive space associated with a tweet was appropriate, as each tweet by the President regularly attracts tens of thousands, if not hundreds of thousands, of replies and retweets. "[T]he essential function of a given tweet's interactive space is to allow private speakers to engage with the content of the tweet, which supports the application of forum analysis." *Knight* at 58. Applying this analysis, the Court classified the interactive Twitter forum as a designated public forum due to several factors:

- The @realDonaldTrump account is generally accessible to the public at large without regard to political affiliation or any other limiting criteria.
- Any member of the public can view his tweets.
- Anyone with a Twitter account who wants to follow the account on Twitter can do so.
- Anyone with a Twitter account who has not been blocked may participate in the interactive space by replying or retweeting the President's tweets.

The plaintiffs were blocked by @realDonaldTrump as a result of their tweets criticizing the President and his policies – an allegation the President did not dispute. Restrictions from a designated public forum are permissible "only if they are narrowly drawn to achieve a compelling state interest." *ISKCON v. Lee*, 505 U.S. 672, 678 (1992). However, "viewpoint discrimination is presumed impermissible when directed against speech otherwise within the forum's limitations." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 830 (1995).

The Court acknowledged President Trump's argument that he retained a personal First Amendment interest in choosing the people with whom he associates and retains the right not to engage with everybody. It also acknowledged that Plaintiffs had no right to be heard by a government audience or have their views amplified by the government. "Nonetheless, when the government goes beyond merely amplifying certain speakers' voices and not engaging with others, and actively restricts the right of an individual to speak freely and to advocate ideas, it treads into territory proscribed by the First Amendment." *Knight* at 65, citing *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 288 (1984).

The Outcome

The Court found that blocking plaintiffs from being able to follow @realDonaldTrump was unconstitutional, but suggested that the account could lawfully utilize Twitter's "mute" feature. Although it found their First Amendment rights had been (and continued to be) infringed, the Court declined to award plaintiffs the injunctive relief they requested, opting instead for a declaratory judgment that "is likely to achieve the same purpose." *Knight* at 73.

What You Need to Know

Public officials should think twice about utilizing personal social media accounts for public purposes. Just because you have used a social media account for private or personal purposes in the past does not mean you will be able to maintain exclusive control over who can interact with that account once it is used for governmental purposes. In today's increasingly digital society, public discourse among citizens and their government takes place more and more in virtual "town squares" through social media platforms like Twitter and Facebook. Courts are becoming more comfortable interpreting the First Amendment and adapting traditional doctrines in ways that suit the modern world. The *Knight* decision, while perhaps the most prominent given the parties involved, is not the first of its kind and has limited precedential value. However, it joins a growing body of caselaw that distinguishes purely private or personal social media accounts from those subject to government control (and First

Amendment regulation). Last July, the U.S. District Court for the Eastern District of Virginia similarly held that the chair of a county board of supervisors had violated the First Amendment rights of a resident by blocking him from accessing the chair's Facebook page for 12 hours. That case, *Davison v. Loudoun County Board of Supervisors*, is currently being appealed to the Fourth Circuit. For public officials, maintaining separate accounts – one for public matters and one for personal matters – is a safer practice to avoid unintentionally creating public records or restricting access to a public forum.

You can read [the full Knight decision here](#). Frost Brown Todd's [Government Services Practice Group](#) has extensive experience guiding public officials and developing social media policies for governmental entities. If you have any questions about this case or issues it raises, feel free to contact one of our attorneys.

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