



Social Media and the First Amendment: the Implications of the Court's Decision in *Knight First Amendment Institute v. Trump*

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The Southern District of New York has issued a judicial declaration stating that blocking Twitter account holders from the *@realDonaldTrump* account because of their expressed political views violates the First Amendment. The court's decision in *Knight First Amendment Institute at Columbia University v. Trump* marks a fundamental shift in how courts may analyze the constitutional rights implicated by use of social media. In a detailed, seventy-five page decision, Judge Naomi Reice Buchwald held that the interactive space for replies and retweets created by tweets sent from President Trump's Twitter account is a designated public forum. As a result, use of those functions, even on a privately owned online platform, are the equivalent of use of public property opened by the state for the public's use as a mechanism for expressive activity. The court held that the Constitution therefore prohibited the President (or by extension, any other federal or state government actor) from blocking Twitter users' access to those functions in response to their critical tweets. Blocking such users constituted impermissible viewpoint discrimination by President Trump, violating the blocked users' First Amendment rights to use the interactive portions of President

Trump's Twitter account as a designated public forum. This holding thus applies to all public officials, who can no longer block a person from Twitter based on his or her criticisms of the government, and whose use of the settings of other social media platforms is now subject to scrutiny on that basis. Depending on the precise functions in question, governmental use of private internet companies' settings may be illegal if used in response to political views expressed by that person.

Although this is the first decision of its kind, other courts have suggested this line of reasoning in previous cases. Banned users of Twitter had previously claimed that Twitter constitutes a public forum and filed litigations against that platform challenging their banned status under the First Amendment. Rulings similar to this decision against Trump may follow, or even build on this court's holdings. Publishers, news media providers, technology platforms or others that arguably provide a designated public forum for users should reevaluate their internal procedures and consider whether to amend their Terms of Service accordingly.

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