



4-24-2019

You're BLOCKED!

Anthony Schaefer

Cardozo Arts & Entertainment Law Journal

Follow this and additional works at: <https://larc.cardozo.yu.edu/aelj-blog>



Part of the [Law Commons](#)

Recommended Citation

Schaefer, Anthony, "You're BLOCKED!" (2019). *AEJ Blog*. 202.

<https://larc.cardozo.yu.edu/aelj-blog/202>

This Article is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in AELJ Blog by an authorized administrator of LARC @ Cardozo Law. For more information, please contact larc@yu.edu.

You're BLOKED!

BY [MANAGING EDITOR](#) / ON APRIL 24, 2019



It goes without saying that President Trump is an extremely active member of the social media platform Twitter. Even though Twitter existed during the presidency of Barack Obama, I suspect that history will remember President Trump as the first U.S. President to effectively use his twitter account to exercise and expand the influence of the bully pulpit. President Trump has almost 60 million twitter followers and has tweeted over 38,000 times. The President uses his social media platform to promote his policy agenda, address its critiques, respond to his political opponents, and rebut the routine attacks that are launched against his administration by members of the mainstream media.

Consequently, President Trump's tweets routinely make news (often several times in a single day), and each tweet is carefully scrutinized by the cable news pundits.^[1] President Trump's famous late-night tweet, which read, "[d]espite the constant negative press covfefe", launched a myriad of theories and speculation as to its meaning while also becoming the butt of thousands of jokes.^[2]

Despite being the leader of the free world, President Trump is a human being with emotions and feelings like the millions of other twitter users. Therefore, it is not implausible to believe that the President may sometimes feel as if he is being harassed or threatened by other twitter users, especially amid the current climate of hatred, unhinged vitriol, violent fantasies, and mob attacks aimed at the President and his administration by the many on the American left.[\[3\]](#) Twitter claims to offer its users a variety of tools to control their experience and safeguard against this type of unwanted contact and interaction. One of Twitter's most useful and significant tool is the blocking feature.[\[4\]](#) Blocking allows users to restrict specific accounts from contacting them, seeing their tweets and following them.[\[5\]](#)

Notwithstanding the noble purpose behind Twitter's blocking feature, in May 2018, a Federal District Court Judge for the Southern District of New York effectively stripped the President of his ability to take advantage of Twitter's blocking feature.[\[6\]](#) The court ruled that President Trump may not block a person from his twitter account in response to the political views that person has expressed.[\[7\]](#) Judge Naomi Reice Buchwald held that Trump violated the U.S Constitution by preventing certain Americans from viewing and/or responding to his tweets from his personal twitter account @realDonaldTrump.[\[8\]](#) The court held that the speech the individual plaintiffs (who were blocked by the President on Twitter) sought to engage in through interacting with the President's twitter account was "political speech ... on matters of public concern" which "fell within the core of First Amendment protection."[\[9\]](#) Additionally, the court concluded that access to the President's personal twitter account was a public forum "which sufficed to render the challenged action taken there to be state action subject to First Amendment limitations."[\[10\]](#)

The court conceded that a public official could block a constituent from his/her purely personal twitter account without implicating a public forum analysis and possibly triggering First Amendment protection.[\[11\]](#) Nevertheless, the court held that the President and the White House Director of Social Media, Dan Scavino, use the @realDonaldTrump account for governmental functions and "the control they exercise over [the account] is governmental in nature."[\[12\]](#)

In June 2018, the Justice Department appealed the district court's decision, calling it a "fundamentally misconceived" ruling.[\[13\]](#) The Justice Department argued that since Trump's account belongs to him, in his personal capacity, and not the control of the government, he is afforded immunity from obligations to engage with the public.[\[14\]](#) The DOJ also pointed out that ever since creating his twitter account in 2009, Trump has used it to convey his thoughts and opinions on a wide variety of subjects ranging from popular culture to world affairs.[\[15\]](#) Since assuming the office, President Trump has done nothing more than continue to use his account in the same way that he has been using it for nearly a decade. The President uses Twitter to attack his critics in the same capacity as he had used his Twitter to attack his critics (such as Rosie O' Donnell) as a private citizen in the past.

Furthermore, a wholly separate Twitter account with the handle @POTUS also exists. The name attached to this alternative account is “President Trump” rather than “Donald J. Trump”(the name which appears on the @realDonaldTrump twitter handle).[16] Therefore, if the @realDonaldTrump twitter account, an account which was created in 2009 while the President was still a private citizen, is really being used for “governmental functions,” then there would be no reason for the existence of this alternative @POTUS account dedicated to the office of the Presidency.

Ultimately, I believe that, under First Amendment law, the blocking restriction should be limited to the more formal @POTUS account, an account created to be specifically linked to the White House and the Presidential Office. I am sure that many people on both sides of the political isle are eagerly awaiting the decision from the U.S. Court of Appeals for the Second Circuit.

Anthony Schaefer is a second-year law student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts and Entertainment Law Journal. He is also the President of the Cardozo Federalist Society.

[1] Kevin Breuninger & Dan Mangan, *Trump can't block twitter followers, federal judge says*, CNBC (May 23, 2018, 1:04 PM), <https://www.cnbc.com/2018/05/23/trump-cant-block-twitter-followers-federal-judge-says.html>.

[2] Issie Lapowsky, *We Asked Lawyers to Vet Trump's Most Controversial Tweets*, WIRED (June 1, 2017, 10:13 AM), <https://www.wired.com/2017/06/asked-lawyers-vet-trumps-controversial-tweets/>.

[3] *LEFT WING HATE 'RAP SHEET' REACHES 600 INCIDENTS OF VIOLENCE, HARRASMENT*, BRIETBART NEWS (Oct. 17, 2018), <https://www.breitbart.com/politics/2018/10/17/left-wing-hate-rap-sheet-reaches-600-incidents-of-violence-harrasment/> (“A Utah man allegedly mailed letters containing ricin to President Trump and Secretary of Defense James Mattis. Antifa activists vandalized and attacked New York City’s Metropolitan Republican Club.”).

[4] *About being blocked*, TWITTER, <https://help.twitter.com/en/using-twitter/someone-blocked-me-on-twitter> (last visited Apr. 11, 2019).

[5] *Id.*

[6] *See Knight First Amendment Institute at Colum. Univ. v. Trump*, 302 F.Supp.3d 541 (S.D.N.Y 2018).

[7] *Id.*

[8] Breuninger & Mangan, *Supra* note 1.

[9] *Knight First Amendment Institute*, 302 F.Supp.3d at 565.

[10] *Id.* at 568.

[11] *Id.* at 569.

[12] *Id.*

[13] David Choi, *Justice Department argues Trump could block anyone he wants on twitter, not obliged to let people 'piggyback' on his tweets*, BUSINESS INSIDER (Aug. 7, 2018, 11:49 PM), <https://www.businessinsider.com/can-donald-trump-block-people-on-twitter-argument-2018-8>.

[14] *Id.*

[15] *Id.*

[16] President Trump (@POTUS), TWITTER, https://twitter.com/potus?ref_src=twsrc%5Eappleosx%7Ctwcamp%5Esafari%7Ctwgr%5Esearch (last visited Apr. 11, 2019).