

# BLOCKED BY THE @REALDONALDTRUMP TWITTER ACCOUNT? IMPLICATIONS FOR SPEECH AND PRESS FREEDOMS AFTER A PRESIDENTIAL BLOCK

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## I. INTRODUCTION

The @realDonaldTrump Twitter account has become a staple in nightly news broadcasts across the country. As of this writing, the account has 68 million followers and has produced 47,600 tweets, along with millions of retweets.<sup>1</sup> A retweet is the reposting or forwarding of a message another user posted.<sup>2</sup> The most retweeted tweet from this

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1. See Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 16, 2018), <https://twitter.com/realdonaldtrump> [<http://web.archive.org/web/20191229204253/https://twitter.com/realDonaldTrump>].

2. *Retweet*, ENGLISH OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/retweet> [<http://web.archive.org/web/20191229152338/https://www.lexico.com/definition/retweet>]

account was shared by 334,274 Twitter users; clearly, this account has acquired worldwide attention and a massive following.<sup>3</sup>

Twitter was designed as a social media platform “to give everyone the power to create and share ideas and information instantly without barriers.”<sup>4</sup> Each Twitter user has their own timeline that displays their tweets; their profile may also include a short biographical description, a profile picture, and a header image.<sup>5</sup> Each tweet allows an individual to express his or her thoughts in 280 characters or less, a recent increase from the previous limit of 140 characters.<sup>6</sup>

Twitter users can interact with one another in a variety of ways. The most basic way is to “follow” someone, which means that an individual can subscribe to another person’s account and the tweets will then appear on the follower’s newsfeed.<sup>7</sup> If an individual sees something they support or are interested in, they can retweet the message.<sup>8</sup> This method allows another person’s tweet to appear on a user’s page so that their own followers can see it.<sup>9</sup> Twitter makes it simple to retweet by creating a

3. Mathew Ingram, *The 140-Character President*, COLUM. JOURNALISM REV. (2017),

[https://www.cjr.org/special\\_report/trump-twitter-tweets-president.php/](https://www.cjr.org/special_report/trump-twitter-tweets-president.php/)

[[http://web.archive.org/web/20191119033300/https://www.cjr.org/special\\_report/trump-twitter-tweets-president.php/](http://web.archive.org/web/20191119033300/https://www.cjr.org/special_report/trump-twitter-tweets-president.php/)]; see Donald J. Trump

(@realDonaldTrump), TWITTER (July 2, 2017, 9:21 AM), [https://twitter.com/realDonaldTrump/status/881503147168071680?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E881503147168071680&ref\\_url=https%3A%2F%2Fwww.cjr.org%2Fspecial\\_report%2Ftrump-twitter-tweets-president.php%2F](https://twitter.com/realDonaldTrump/status/881503147168071680?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E881503147168071680&ref_url=https%3A%2F%2Fwww.cjr.org%2Fspecial_report%2Ftrump-twitter-tweets-president.php%2F)

[[http://web.archive.org/web/20191119033557/https://twitter.com/realDonaldTrump/status/881503147168071680?ref\\_src=twsrc^tfw|twcamp^tweetembed|twterm^881503147168071680&ref\\_url=https://www.cjr.org/special\\_report/trump-twitter-tweets-president.php/](http://web.archive.org/web/20191119033557/https://twitter.com/realDonaldTrump/status/881503147168071680?ref_src=twsrc^tfw|twcamp^tweetembed|twterm^881503147168071680&ref_url=https://www.cjr.org/special_report/trump-twitter-tweets-president.php/)] (depicting a video of Trump wrestling an anonymous person whose face is covered by the CNN logo and includes the statement: “#FraudNewsCNN #FNN”).

4. *Twitter Mission Statement*, TWITTER, <https://investor.twitterinc.com/contact/faq/default.aspx>

[<http://web.archive.org/web/20191119033915/https://investor.twitterinc.com/contact/faq/default.aspx>] (follow “What is Twitter’s mission statement?” hyperlink).

5. Brandon Smith, *The Beginner’s Guide to Twitter*, MASHABLE (June 5, 2012), <https://mashable.com/2012/06/05/twitter-for-beginners/#h5agdNmFmZqo>

[<http://web.archive.org/web/20191229150811/https://mashable.com/2012/06/05/twitter-for-beginners/%23h5agdNmFmZqo>].

6. Selena Larson, *Welcome to a World with 280-Character Tweets*, CNN BUS. (Nov. 7, 2017, 4:00 PM), <https://money.cnn.com/2017/11/07/technology/twitter-280-character-limit/index.html>

[<http://web.archive.org/web/20191229150845/https://money.cnn.com/2017/11/07/technology/twitter-280-character-limit/index.html>].

7. Smith, *supra* note 5.

8. *Id.*

9. *Id.*

button that allows a retweet to occur instantly.<sup>10</sup> Moreover, if an individual sees a tweet with which they disagree, the user can reply directly to the tweet they are viewing to start a conversation or debate.<sup>11</sup>

An individual can also block or mute someone from their newsfeed.<sup>12</sup> A block, which is the tactic most implicated in this Note, does not allow an individual user to “see, or reply to the blocking user’s tweets, retweet the blocking user’s tweets, . . . or use the Twitter platform to search for the blocking user’s tweets.”<sup>13</sup> Moreover, a less controversial form of removing an individual’s tweets from a person’s timeline is to “mute” them.<sup>14</sup> A muted user can still “follow [] the muting user, retweet the muting user’s tweets, and participate in comment threads created by the muting user.”<sup>15</sup> The only difference is that the muted user’s tweets do not appear on the muting user’s timeline.<sup>16</sup>

The First Amendment grants protection against “abridging the freedom of speech, or of the press . . . .”<sup>17</sup> The @realDonaldTrump Twitter account has presented some novel First Amendment issues, specifically because President Trump has blocked an array of people from his Twitter feed, including VoteVets.org (an organization that represents over 500,000 veterans), novelist Stephen King, Angelo Carusone (the president of Media Matters for America), and a collection of tech entrepreneurs, political organizers, and journalists.<sup>18</sup> By blocking

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10. *What is a Retweet?*, TWITTER, <https://help.twitter.com/en/using-twitter/how-to-retweet> [<http://web.archive.org/web/20191229151644/https://help.twitter.com/en/using-twitter/how-to-retweet>].

11. Smith, *supra* note 5.

12. *Blocking and Muting*, TWITTER, <https://help.twitter.com/en/using-twitter/blocking-and-muting> [<http://web.archive.org/web/20191229152511/https://help.twitter.com/en/using-twitter/blocking-and-muting>].

13. *One Wis. Now v. Kremer*, 354 F. Supp. 3d 940, 946 (W.D. Wis. 2019); *see also How to Block Accounts on Twitter*, TWITTER, <https://help.twitter.com/en/using-twitter/blocking-and-unblocking-accounts> [<http://web.archive.org/web/20191229153420/https://help.twitter.com/en/using-twitter/blocking-and-unblocking-accounts>].

14. *Blocking and Muting*, *supra* note 12.

15. *One Wis. Now*, 354 F. Supp. 3d at 946–47; *see also How to Mute Accounts on Twitter*, TWITTER, <https://help.twitter.com/en/using-twitter/twitter-mute> [<http://web.archive.org/web/20191229164201/https://help.twitter.com/en/using-twitter/twitter-mute>].

16. *How to Mute Accounts on Twitter*, *supra* note 15.

17. U.S. CONST. amend. I.

18. Ashley Feinberg, *A Running List of People Donald Trump Has Blocked on Twitter*, WIRED (June 14, 2017, 3:38 PM), <https://www.wired.com/story/donald-trump-twitter-blocked/> [<http://web.archive.org/web/20200108211220/https://www.wired.com/story/donald-trump-twitter-blocked/>]; *see also* Nicole Coleman, *It Doesn’t Take Much for Trump to*

users on Twitter, President Trump has previously and continues to suppress the fundamental freedoms of speech and the press guaranteed in the First Amendment.

This Note conducts a forum analysis of the @realDonaldTrump Twitter account. If this account is deemed a designated public forum—as I conclude it should be—then blocking individuals based on their viewpoint would be unconstitutional. The classification of this account has implications for how state and local officials structure their social media accounts to avoid legal inquiries. This Note also examines how a block from the president’s social media account impacts not only individual journalists but also freedom of the press in general.

## II. BACKGROUND

### *A. The Development of the Forum Doctrine*

Courts have interpreted the First Amendment to mean that the government has limited power “to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>19</sup> Content discrimination occurs when the government restricts speech based on the subject matter at issue.<sup>20</sup> Conversely, viewpoint discrimination protects against discrimination based on the opinion or ideology of the message.<sup>21</sup> The Supreme Court has held that “[v]iewpoint discrimination is thus an egregious form of content discrimination.”<sup>22</sup> The government should refrain “from regulating speech when the specific motivating ideology or the opinion of the speaker is the rationale for the restriction.”<sup>23</sup> Therefore, in certain space, a government official would not be allowed to exclude an individual from speaking simply because the speaker holds a different opinion than the public official.<sup>24</sup>

However, these restrictions do not apply to government speech; government speech is exempt from scrutiny under the First Amendment because the government can “speak for itself” in selecting the views that

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*Block You on Twitter*, CNN (June 9, 2017, 9:09 AM), <https://www.cnn.com/2017/06/09/politics/trump-twitter-block-users-trnd/index.html> [<http://web.archive.org/web/20191229165017/https://www.cnn.com/2017/06/09/politics/trump-twitter-block-users-trnd/index.html>].

19. *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 95 (1972).

20. *Rosenberger v. Rector & Visitors*, 515 U.S. 819, 828 (1995).

21. Alissa Ardito, *Social Media, Administrative Agencies, and the First Amendment*, 65 ADMIN. L. REV. 301, 365 (2013).

22. *Rosenberger*, 515 U.S. at 829.

23. *Id.* at 828.

24. *See id.* at 828–29.

it wants to express or amplify.<sup>25</sup> When a government official speaks on behalf of the government, they do not have to consider opposing viewpoints because the Free Speech Clause in the First Amendment<sup>26</sup> does not apply to government speech.<sup>27</sup> When the government speaks, it is exempt from the general rule against content or viewpoint discrimination.<sup>28</sup>

The Supreme Court subtly recognized government speech in *Rust v. Sullivan*, when it upheld regulations that mandated recipients of certain federal grants to refrain from engaging in activities that encouraged or advocated abortion as a family planning option.<sup>29</sup> The Court recognized the ability of the government to fund a program encouraging certain ideological policies without requiring similar funding to an alternative program with a different ideological stance on the issue.<sup>30</sup>

The Court later held in *Legal Services Corp. v. Valazquez* that although *Rust* did not explicitly mention government speech in its analysis, that decision led to the creation of the government speech doctrine.<sup>31</sup> *Valazquez* recognized that the viewpoint-based funding discussed in *Rust* was a situation where the government itself was the speaker, and as such, the government could speak freely without concerns of viewpoint discrimination.<sup>32</sup>

In *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, the Supreme Court analyzed whether a specialty license plate amounted to government speech.<sup>33</sup> In that case, a nonprofit organization wanted to create a license plate featuring the Confederate flag; however, the Motor Vehicles Board rejected the request.<sup>34</sup> The Sons of Confederate Veterans claimed that this rejection amounted to forbidden viewpoint discrimination under the First Amendment because (they argued) this rejection was based solely on their viewpoint, one that supported the Confederacy.<sup>35</sup> By looking at the history of license plates to convey messages for the state and the fact that license plate designs are closely identified by the public with the state, the Court concluded that these

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25. *Pleasant Grove City v. Summum*, 129 S. Ct. 1125, 1131 (2009).

26. U.S. CONST. amend. I.

27. *Pleasant Grove City*, 129 S. Ct. at 1131.

28. *Id.*

29. *Rust v. Sullivan*, 500 U.S. 173, 179–80 (1991).

30. *Id.* at 193.

31. *Legal Serv. Corp. v. Velazquez*, 531 U.S. 533, 541 (2001).

32. *Id.*

33. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2244 (2015).

34. *Id.* at 2243–44.

35. *Id.*

specialty license plates were, in fact, government speech.<sup>36</sup> The mere fact that private parties took part in the message did “not extinguish the governmental nature of the message.”<sup>37</sup> Because the license plates constituted government speech, the state could reject the Sons of Confederate Veterans’ proposed license plate design.<sup>38</sup>

However, in certain instances, like in the issue explored in this Note, a public official can create a public forum—this is a separate analysis than the government speech doctrine discussed above. The government can make an intentional choice to open government property for the purpose of public expression—even if this space had not previously been regarded as a place of public expression.<sup>39</sup> The forum analysis only applies in cases where the government tries to restrict purely private speech that occurs on government property or otherwise uses government resources.<sup>40</sup> The issue of intent arises in a narrow set of cases.<sup>41</sup> When examining a forum, if the nature of the property is at odds with the expressive activity, courts will not infer intent on the part of the government to create a forum.<sup>42</sup> Moreover, government inaction or permitting limited discourse does not demonstrate an intent to create a public forum.<sup>43</sup> In order to create a public forum, *the government must intentionally open up a space within its control for the purpose of public discourse.*<sup>44</sup>

However, this view of intent as the key factor in the forum analysis has not been consistently applied. In *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, a portion of Main Street in downtown Salt Lake City was sold to the Church of Jesus Christ of Latter-Day Saints.<sup>45</sup> The city still sought to retain a portion of the pedestrian plaza as an easement to “maintain, encourage, and invite public use.”<sup>46</sup> The conveying instrument contained the following sentence: “Nothing in the reservation or use of this easement shall be deemed to create or constitute

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36. *Id.* at 2246.

37. *Id.* at 2251.

38. *Id.* at 2253.

39. *Pleasant Grove City v. Sumnum*, 555 U.S. 460, 469 (2009).

40. *Walker*, 135 S. Ct. at 2250; *see also* *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 41 (1983) (describing how a school board permitted a labor union to access a school’s communication facilities).

41. Lyrissa B. Lidsky, *Government Sponsored Social Media and Public Forum Doctrine Under the First Amendment: Perils and Pitfalls*, 19 PUB. LAW 2, 6 (2011).

42. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 803 (1985).

43. *Id.* at 802.

44. *Id.*

45. *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1117 (10th Cir. 2002) (emphasis added).

46. *Id.* at 1118.

a public forum, limited or otherwise, on the [p]roperty.”<sup>47</sup> The plaintiffs, including the First Unitarian Church and the Utah National Organization of Women, brought suit, stating that the easement restriction violated their rights because it prohibited their expressive activity in that space.<sup>48</sup>

The Tenth Circuit rejected the idea that the city’s clear intent not to create a public forum was controlling.<sup>49</sup> The court instead relied on objective characteristics, including (1) the physical similarities between the property at issue and more traditional public forums, and (2) whether the government has allowed or at least acquiesced to extensive public access to the property; based on these factors, the court concluded that the easement was, in fact, a public forum.<sup>50</sup>

To invoke the forum doctrine, the government must own or control the space, meaning “public property or . . . private property dedicated to public use.”<sup>51</sup> Courts have previously stated that private property, even if it is intangible, might be considered a public forum when the government retains significant control over the property, either by regulation or contract.<sup>52</sup> The evolution of the doctrine to cover spaces that the government does not legally own (but that it controls) has allowed the forum doctrine to apply in spaces that are metaphysical or abstract, such as the Internet.<sup>53</sup>

In *Packingham v. North Carolina*, the Supreme Court examined the relationship between the Internet and the First Amendment.<sup>54</sup> The Court recognized that social media sites are essential spaces for communicating views in the modern era because they provide virtually unlimited opportunities for debate and the free exchange of ideas.<sup>55</sup> Social media sites “allow a person with an Internet connection to become a town crier with a voice that resonates farther than it could from any soapbox.”<sup>56</sup> The government can “rent” a social media page for the promotion of debate

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47. *Id.*

48. *Id.* at 1119.

49. *Id.* at 1124.

50. *Id.*

51. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 801 (1985).

52. *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019) (stating that the forum at issue was “more in a metaphysical than in a spatial or geographic sense, but the same principles [were] applicable”); see also *First Unitarian Church*, 308 F.3d at 1122 (“[E]ither government ownership or regulation is sufficient for a First Amendment forum of some kind to exist.”).

53. See *Rosenberger v. Rector & Visitors*, 515 U.S. 819, 830 (1995); see also *Freedom from Religion Found., Inc. v. City of Marshfield, Wis.*, 203 F.3d 487, 494 (7th Cir. 2000) (holding that private property adjacent to a public park was a public forum).

54. 137 S. Ct. 1730, 1736 (2017).

55. *Id.*

56. *Id.* at 1737.

and discussion, similar to the way the government can rent a building for the same purpose.<sup>57</sup> Under the expanded definition of “government ownership,” a social media platform, like the Twitter account of a public official, could be considered a public forum.<sup>58</sup>

It was not until 1983, when the Supreme Court decided *Perry Education Ass’n v. Perry Local Educators’ Ass’n*,<sup>59</sup> that some structure was provided for the forum analysis.<sup>60</sup> In that case, the Perry Township Board of Education and the Perry Education Association (PEA) signed an exclusive bargaining agreement.<sup>61</sup> Under this agreement, the school gave the PEA access to the interschool mail system and the teachers’ mailboxes for the purpose of teacher communication.<sup>62</sup> Because the bargaining agreement was exclusive, a competing union, Perry Local Educators’ Association (PLEA), was not granted access to the mail system; however, this union was still free to use other school facilities to communicate with teachers, including school bulletin boards and public announcements.<sup>63</sup> PLEA brought suit, claiming that PEA’s preferential treatment violated their First Amendment rights.<sup>64</sup>

The Court held that this access did not violate the First Amendment because the mailboxes and interschool delivery system were not open for general public use and, therefore, the property was not a public forum.<sup>65</sup> Moreover, the building principal had to grant permission for such use; therefore, the school could limit access to the forum, as long as those limitations were reasonable and aligned with the forum’s purpose.<sup>66</sup> The Supreme Court upheld the school’s preferential access to the PEA.<sup>67</sup> In coming to this decision, the Court analyzed three categories of forums.<sup>68</sup>

The first category—usually the easiest to determine—is a traditional public forum.<sup>69</sup> Traditional public forums have long been held as places

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57. Lyrisa Lidsky, *Public Forum 2.0*, 91 B.U. L. REV. 1975, 1996 (2011).

58. Bryan C. Siddique, Note and Comment, *Tweets that Break the Law: How the President’s @realDonaldTrump Twitter Account is a Public Forum and His Use of Twitter Violates the First Amendment and the Presidential Records Act*, 42 NOVA L. REV. 317, 332 (2018).

59. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983).

60. Marc Rohr, *The Ongoing Mystery of the Limited Public Forum*, 33 NOVA L. REV. 299, 303 (2009).

61. *Perry Educ. Ass’n*, 460 U.S. at 39.

62. *Id.* at 41.

63. *Id.*

64. *Id.*

65. *Id.* at 47–48.

66. *Id.* at 49.

67. *Id.* at 55.

68. *Id.* at 45–47.

69. *Id.* at 45.



devoted to assembly and debate.<sup>70</sup> Parks or public streets are quintessential public forums.<sup>71</sup> In these forums, the government will only be allowed to enforce an exclusion based on the content of the expressed message if the regulation is narrowly drawn and necessary to achieve a compelling state interest.<sup>72</sup> The government can implement content neutral regulations of the time, place, and manner of expression, as long as they are reasonable in scope.<sup>73</sup> The types of spaces labeled traditional public forums has remained stagnant over time.<sup>74</sup> Its definition has not yet been—and will likely never be—expanded to include modern means of communication, such as the Internet.<sup>75</sup>

The second category, a designated public forum, enjoys similar protections against content and viewpoint discrimination.<sup>76</sup> In a designated public forum, the government opens up public property for public use and declares it a place for expressive activity.<sup>77</sup> Examples of designated public forums include a university-created “free speech zone” or a public library that designates a meeting room as one available for all members of the public.<sup>78</sup> The government can place limits on the duration of the expressive activity; however, as long as the forum remains open, the same speech protections that apply in a traditional public forum apply in a designated one.<sup>79</sup> The government must demonstrate a clear intent to create a designated public forum.<sup>80</sup> As such, there is usually a presumption against public forum status.<sup>81</sup> However, this presumption can be overcome if the government announces that the space is one for expressive activity and debate.<sup>82</sup> A public official’s social media account could fall into this category of forum.

A limited public forum is a specific subset of a designated public forum.<sup>83</sup> This subcategory can be difficult to define because its definition

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70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. Lidsky, *supra* note 57, at 1983; *see also* Ark. Educ. Television Comm’n v. Forbes, 523 U.S. 666, 678 (1998) (“The Court has rejected the view that traditional public forum status extends beyond its historic confines.”).

75. Lidsky, *supra* note 57, at 1982–83.

76. *Perry Educ. Ass’n*, 460 U.S. at 46.

77. *Id.* at 45.

78. Lidsky, *supra* note 41, at 4.

79. *Perry Educ. Ass’n*, 460 U.S. at 45–46.

80. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988).

81. Lidsky, *supra* note 41, at 6.

82. *Hazelwood Sch. Dist.*, 484 U.S. at 267.

83. *See generally* Rohr, *supra* note 60.

is usually tied to the subjective determinations of the judicial branch.<sup>84</sup> However, broadly speaking, a limited public forum is a place designated for speech by “certain groups” or for “discussion of certain subjects.”<sup>85</sup> These limitations have to serve some legitimate purpose—one that aligns with the purpose of the forum’s creation.<sup>86</sup> In these forums, the government can engage in content-based discrimination by requiring that the speech comply with the limited nature of the forum.<sup>87</sup> To create such a forum, a government controlled social media site would have to target only a specific subset of people or topics.

The third category in this analysis is a nonpublic forum.<sup>88</sup> In such a forum, the government owns or controls the property but does not designate it as a space for public communication.<sup>89</sup> In these forums, the government can control access based on subject matter and to “preserve the property under its control for the use to which it is lawfully dedicated.”<sup>90</sup> Any regulation of speech must still be reasonable and cannot be an effort to suppress speech merely because a public official disagrees with the message.<sup>91</sup> Examples of nonpublic forums include the “the sidewalk in front of a post office, . . . an airport terminal, charity campaigns in federal government officers, and residential mailboxes.”<sup>92</sup>

The classification of speech has important unintended consequences. If private speech is labeled government speech solely by attaching a government identity to it, then the government could silence the expression of disfavored and unpopular viewpoints without consequence.<sup>93</sup> Due to this concern, government speech protection should be extended with caution.<sup>94</sup>

*Knight First Amendment Institute at Columbia University v. Trump* illustrates one of the first cases to examine whether a public official, consistent with the First Amendment, can “block” a person from his social media account because of the viewpoint that the individual expressed.<sup>95</sup> The court considered three aspects of the

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84. *Id.*

85. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 n.7 (1983).

86. *Rosenberger v. Rector & Visitors*, 515 U.S. 819, 829 (1995).

87. Lidsky, *supra* note 57, at 1984.

88. *Perry Educ. Ass’n*, 460 U.S. at 46.

89. *Id.*

90. *United States Postal Serv. v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 129–30 (1981).

91. *Perry Educ. Ass’n*, 460 U.S. at 46.

92. Ardito, *supra* note 21, at 339.

93. *Matal v. Tam*, 137 S. Ct. 1744, 1758 (2017).

94. *Id.*

95. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 549 (S.D.N.Y. 2018), *aff’d*, 928 F.3d 226 (2d Cir. 2019).

@realDonaldTrump account: the content of the tweets, the timeline, and the interactive space surrounding the account.<sup>96</sup>

The plaintiffs were Rebecca Buckwalter, Philip Cohen, Holly Figueroa, Eugene Gu, Brandon Neely, Joseph Papp, and Nicholas Pappas.<sup>97</sup> In response to a tweet from the @realDonaldTrump account, each individual tweeted a message that was critical of the president or his policies.<sup>98</sup> Shortly after, each plaintiff had their account blocked indefinitely from the @realDonaldTrump account.<sup>99</sup> Because of this block, these individuals could not directly view the president's tweets nor could they directly reply to his messages.<sup>100</sup> The latter portion of this Note will examine the different aspects of the @realDonaldTrump account and conclude that the interactive space surrounding it should be recognized as a designated public forum—not simply government speech.<sup>101</sup>

### *B. The Effect of the @realDonaldTrump Forum Determination on Local and State Officials*

The uncertainty surrounding the @realDonaldTrump Twitter account and its forum status created a trickle-down effect for local and state officials who are now concerned about what rights they have pertaining to their own social media platforms.<sup>102</sup> For example, the Redondo Beach City Council voted to delete its Facebook page after hearing about the abundance of potential legal problems such a forum could create.<sup>103</sup> In

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96. *Id.* at 566.

97. *Id.* at 553.

98. *Id.*

99. *Id.*

100. *Id.* at 554.

101. *See infra* Part III.A.

102. *See* Ross Rinehart, Note, "Friending" and "Following" the Government: How the Public Forum and Government Speech Doctrines Discourage the Government's Social Media Presence, 22 S. CAL. INTERDISC. L.J. 781 (2013). For an example of these concerns played out on the Congressional level, see Michael Gold, *Ocasio-Cortez Apologizes for Blocking Critic on Twitter*, N.Y. TIMES (Nov. 4, 2019), <https://www.nytimes.com/2019/11/04/nyregion/alexandria-ocasio-cortez-twitter-dov-hikind.html>

[<https://web.archive.org/web/20200105230825/https://www.nytimes.com/2019/11/04/nyregion/alexandria-ocasio-cortez-twitter-dov-hikind.html>]. Representative Ocasio-Cortez stated, "I have reconsidered my decision to block Dov Hikind from the Twitter account. . . . Mr. Hikind has a First Amendment right to express his views and should not be blocked for them." *Id.*

103. Debra C. Weiss, *California Town Abandons Facebook Page Amid Legal Concerns*, ABA (Aug. 24, 2010, 10:30 AM), [http://www.abajournal.com/news/article/california\\_town\\_abandons\\_facebook\\_page\\_ami](http://www.abajournal.com/news/article/california_town_abandons_facebook_page_ami)

Ft. Lauderdale, Florida, the city's legal counsel wrote a memorandum that discouraged city commissioners from maintaining an official Facebook page.<sup>104</sup>

Recently, courts examined the very question of whether a local official's social media account constitutes a public forum.<sup>105</sup> In *Davidson v. Loudoun County Board of Supervisors*, the Chair of the Loudoun County Board of Supervisors blocked a private citizen from her official county Facebook page for a period of roughly twelve hours.<sup>106</sup> The plaintiff had made a comment regarding the conduct of board officials—one that raised ethical questions about their behavior.<sup>107</sup> The Eastern District of Virginia held that this admittedly brief removal from the account was nevertheless viewpoint discrimination in violation of the First Amendment<sup>108</sup> because “criticism of . . . official conduct” lies at the very heart of the First Amendment.<sup>109</sup> Therefore, the Chair could not block a private citizen from her official social media page based solely on his critical view of the government.

The Fourth Circuit recently affirmed this decision, making it the first time a Federal Circuit has definitively stated that a government social media page could be a designated public forum.<sup>110</sup> The court pointed to the fact that the Chair intentionally opened the page for public discourse, stating that “ANY Loudoun citizen” can make comments “on ANY issues, request, criticism, complement or just your thoughts.”<sup>111</sup> Because the interactive space surrounding the Chair's Facebook page was considered a designated public forum, viewpoint discrimination in this space was unconstitutional; the Chair could not block a citizen from her official Facebook page based solely on the views the citizen expressed.<sup>112</sup>

Coming to a similar conclusion, the Southern District of New York recently examined the consequences for a city police department that

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d\_legal\_concerns

[[http://web.archive.org/web/20191229200328/http://www.abajournal.com/news/article/california\\_town\\_abandons\\_facebook\\_page\\_amid\\_legal\\_concerns](http://web.archive.org/web/20191229200328/http://www.abajournal.com/news/article/california_town_abandons_facebook_page_amid_legal_concerns)].

104. Rinehart, *supra* note 102, at 781.

105. See generally *Davidson v. Loudoun Cty. Bd. of Supervisors*, 267 F. Supp. 3d 702 (E.D. Va. 2017).

106. *Id.* at 706.

107. *Id.* at 716.

108. *Id.* at 718.

109. *Id.* at 716 (internal citations omitted).

110. See *Davison v. Randall*, 912 F.3d 666, 691 (4th Cir. 2019).

111. *Id.* at 673.

112. *Id.* at 688.

blocked an individual from its social media pages.<sup>113</sup> In *Price v. City of New York*, a city police department removed an individual from its Twitter pages after she criticized the department's handling of her domestic violence case.<sup>114</sup> Because she was blocked from their official feeds, she was unable to view or interact directly with the New York City Police Department through social media.<sup>115</sup>

The officers operating the Twitter accounts argued that their entire pages amounted to government speech.<sup>116</sup> The court disagreed, stating that the plaintiff's reply tweets—which contained the speech at issue—could not possibly be the government speaking on its own behalf.<sup>117</sup> Here, the city had not historically used Twitter to convey public messages, given that it was a relatively new forum.<sup>118</sup> Moreover, the messages from the plaintiff were not readily identified in the public's mind with the city because the city does not “exercise direct control over messages from Plaintiff's own Twitter account.”<sup>119</sup> The court declined to make a clear forum determination, but stated that—regardless of whether the space was a traditional, designated, or nonpublic forum—because the plaintiff was blocked from all official government Twitter accounts based on her viewpoint, the city violated her First Amendment rights.<sup>120</sup> The ensuing analysis will examine if it is possible for public officials to construct a social media account without violating the First Amendment.<sup>121</sup>

### *C. The @realDonaldTrump Account's Implications for Press Freedom*

The First Amendment states that Congress must not abridge freedom of speech nor freedom of the press.<sup>122</sup> The Court has experienced difficulty discerning the relationship between the First Amendment's speech and press clauses.<sup>123</sup> A fundamental area of confusion is whether each clause gives separate protections from the other, or whether the two

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113. See *Price v. City of New York*, 15 Civ. 5871, 2018 U.S. Dist. LEXIS 105815, at \*1 (S.D.N.Y. June 25, 2018).

114. *Id.* at \*7–8.

115. *Id.* at \*24.

116. *Id.*

117. *Id.* at \*35.

118. *Id.*

119. *Id.*

120. *Id.* at \*39.

121. See *infra* Part III.B.

122. U.S. CONST. amend. I.

123. Patrick Garry, *The First Amendment and Freedom of the Press: A Revised Approach to the Marketplace of Ideas Concept*, 72 MARQ. L. REV. 187 (1989); see also *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978).

clauses are supplementary.<sup>124</sup> Although the Supreme Court has not explicitly given the press clause independent meaning, the Court also never foreclosed this possibility; certain Justices have indicated a desire to accord the press clause independent significance.<sup>125</sup>

Another area of confusion within press clause doctrine is whether such protections are structural or individual in nature.<sup>126</sup> Protections for the press acts of individuals—meaning those that focus on the acts of individuals producing the news—include protecting the rights of individuals as they engage in publishing stories or gathering information.<sup>127</sup> A structuralist view of the press clause examines the integral role of the press as a societal structure.<sup>128</sup> By blocking journalists from the @realDonaldTrump account, President Trump is negatively impacting press freedom in both an individual and structural sense.

President Trump has blocked several journalists from his Twitter account because of previous pushback or criticism against his Administration; these journalists include but are not limited to: tech journalist Mike Elgan,<sup>129</sup> journalist Lauren Wolfe,<sup>130</sup> Bess Kalb, writer for *The New Yorker*,<sup>131</sup> and internet broadcaster, J.D. Durkin.<sup>132</sup> This may be part of President Trump's broader strategy to target the press as the "enemy of the people,"<sup>133</sup> as this strategy has encompassed numerous

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124. Garry, *supra* note 123, at 187.

125. *Id.* at 188; *see also* *Branzburg v. Hayes*, 408 U.S. 665, 711 (1972) (Douglas, J., dissenting) ("The press has a preferred position in our constitutional scheme, not to enable it to make money, not to set newsmen apart as a favored class, but to bring fulfillment to the public's right to know.").

126. Garry, *supra* note 123, at 188.

127. *Id.* at 189.

128. *Id.*

129. Feinberg, *supra* note 18.

130. *Id.*

131. *Id.*

132. Matthew Felling, *The President Will Block You Now*, U.S. NEWS (July 18, 2017, 4:00 PM), <https://www.usnews.com/opinion/thomas-jefferson-street/articles/2017-07-18/donald-trump-is-wrong-to-block-journalists-on-twitter> [<http://web.archive.org/web/20200123225953/https://www.usnews.com/opinion/thomas-jefferson-street/articles/2017-07-18/donald-trump-is-wrong-to-block-journalists-on-twitter>].

133. *See generally* RonNell Andersen Jones & Lisa Grow Sun, *Enemy Construction and The Press*, 49 ARIZ. ST. L.J. 1301 (2017); *see also* Donald J. Trump (@realDonaldTrump), TWITTER (Feb. 17, 2017, 4:48 PM), <https://twitter.com/realdonaldtrump/status/832708293516632065?lang=en> [<http://web.archive.org/web/20191229201219/https://twitter.com/realdonaldtrump/status/832708293516632065?lang=en>] ("The FAKE NEWS media (failing @nytimes, @NBCNews, @CBS, @CNN) is not my enemy, it is the enemy of the American People!").

instances of restricting or denying access to governmental forums.<sup>134</sup> Various reporters, including those from media outlets like BuzzFeed, Politico, and the Huffington Post, were banned from then-candidate Trump's campaign rallies during the 2016 election.<sup>135</sup> President Trump refused to take questions from certain journalists during his first press conference as president-elect,<sup>136</sup> and he bucked tradition by deciding not to allow the pool of reporters to travel with him on his plane during the presidential campaign.<sup>137</sup> Moreover, CNN filed a lawsuit in 2018 against the White House for revoking the press credentials of its chief White House correspondent, Jim Acosta.<sup>138</sup>

Although President Trump is certainly not the first president to push back against journalists who disagree with his views,<sup>139</sup> he is the first president to use social media in this specific manner. President Trump has used the @realDonaldTrump account to announce policy shifts and

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134. Jones & Sun, *supra* note 133, at 1317.

135. Tom Kludt & Brian Stelter, 'The Blacklist': Here Are the Media Outlets Banned by Donald Trump, CNN (June 14, 2016, 12:52 PM), <https://money.cnn.com/2016/06/14/media/donald-trump-media-blacklist/> [<http://web.archive.org/web/20191229201432/https://money.cnn.com/2016/06/14/media/donald-trump-media-blacklist/>].

136. Donald J. Trump, *Full Transcript: President Donald Trump's News Conference*, CNN (Feb. 17, 2017, 4:12 AM), <https://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript/> [<http://web.archive.org/web/20191229201554/https://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript/>].

137. Jordan Fabian, *Press Worries Over President-Elect Trump*, THE HILL (Nov. 12, 2016, 9:18 AM), <https://thehill.com/homenews/administration/305632-press-worries-over-president-elect-trump> [<http://web.archive.org/web/20191229201722/https://thehill.com/homenews/administration/305632-press-worries-over-president-elect-trump>].

138. Brian Stelter, *CNN Sues President Trump and Top White House Aids for Barring Jim Acosta*, CNN BUS. (Nov. 13, 2018, 5:47 PM), <https://www.cnn.com/2018/11/13/media/cnn-sues-trump/index.html> [<https://web.archive.org/save/https://www.cnn.com/2018/11/13/media/cnn-sues-trump/index.html>]. CNN dropped their lawsuit after Jim Acosta's press pass was fully restored. Paul Farhi & Meagan Flynn, *CNN Drops Suits Against White House After Acosta's Press Pass is Fully Restored*, WASH. POST (Nov. 19, 2018, 4:22 PM), [https://www.washingtonpost.com/lifestyle/style/cnn-drops-suit-against-white-house-after-acostas-press-pass-is-fully-restored/2018/11/19/519763fc-ec3a-11e8-8679-934a2b33be52\\_story.html?noredirect=on&utm\\_term=.44f586d3a3b5](https://www.washingtonpost.com/lifestyle/style/cnn-drops-suit-against-white-house-after-acostas-press-pass-is-fully-restored/2018/11/19/519763fc-ec3a-11e8-8679-934a2b33be52_story.html?noredirect=on&utm_term=.44f586d3a3b5) [[http://web.archive.org/web/20191229201939/https://www.washingtonpost.com/lifestyle/style/cnn-drops-suit-against-white-house-after-acostas-press-pass-is-fully-restored/2018/11/19/519763fc-ec3a-11e8-8679-934a2b33be52\\_story.html?noredirect=on&utm\\_term=.44f586d3a3b5](http://web.archive.org/web/20191229201939/https://www.washingtonpost.com/lifestyle/style/cnn-drops-suit-against-white-house-after-acostas-press-pass-is-fully-restored/2018/11/19/519763fc-ec3a-11e8-8679-934a2b33be52_story.html?noredirect=on&utm_term=.44f586d3a3b5)].

139. See Jones & Sun, *supra* note 133, at 1327 (stating that President George W. Bush viewed the media as "an unrepresented irresponsible interest group" and that President Barack Obama had a dismal record on press freedoms).

administrative changes, including the ban of transgender individuals from the United States military,<sup>140</sup> the replacement of Reince Prebus as White House Chief of Staff,<sup>141</sup> the replacement of Rex Tillerson as Secretary of State,<sup>142</sup> and the notification to the United States Congress regarding the escalating situation in Iran.<sup>143</sup> Former White House Press Secretary Sean Spicer stated that the president's tweets should be considered "official statements."<sup>144</sup> Additionally, the Ninth Circuit looked to the @realDonaldTrump account when deciding the constitutionality of immigration ban; the court specifically examined his tweets regarding the intent of the policy.<sup>145</sup> This case was the first time

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140. Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 8:55 AM), <https://twitter.com/realDonaldTrump/status/890193981585444864> [<http://web.archive.org/web/20191229202045/https://twitter.com/realDonaldTrump/status/890193981585444864>]; Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 9:04 AM), <https://twitter.com/realDonaldTrump/status/890196164313833472> [<http://web.archive.org/web/20191229202817/https://twitter.com/realDonaldTrump/status/890196164313833472>] (stating that "the United States Government will not accept or allow . . . Transgender individuals to serve in any capacity in the U.S. Military").

141. Donald J. Trump (@realDonaldTrump), TWITTER (July 28, 2017, 4:49 PM), <https://twitter.com/realDonaldTrump/status/891038014314598400> [<http://web.archive.org/web/20191229203057/https://twitter.com/realDonaldTrump/status/891038014314598400>] ("I am pleased to inform you that I have just named General/Secretary John F. Kelly as White House Chief of Staff. He is a Great American . . .").

142. Donald J. Trump (@realDonaldTrump), TWITTER (Mar. 13, 2018, 8:44 AM), <https://twitter.com/realDonaldTrump/status/973540316656623616> [<http://web.archive.org/web/20191229203349/https://twitter.com/realDonaldTrump/status/973540316656623616>] ("Mike Pompeo, Director of CIA, will become our new Secretary of State. He will do a fantastic job! Thank you to Rex Tillerson for his service!").

143. Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 5, 2020, 3:25 PM), [https://twitter.com/realDonaldTrump/status/1213919480574812160?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet](https://twitter.com/realDonaldTrump/status/1213919480574812160?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet) [[https://web.archive.org/web/20200105224345/https://twitter.com/realDonaldTrump/status/1213919480574812160?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet](https://web.archive.org/web/20200105224345/https://twitter.com/realDonaldTrump/status/1213919480574812160?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet)] ("These Media Posts will serve as notification to the United States Congress that should Iran strike any U.S. person or target, the United States will quickly & fully strike back, & perhaps in a disproportionate manner. Such legal notice is not required, but is given nevertheless!").

144. Elizabeth Landers, *White House: Trump's Tweets are 'Official Statements'*, CNN (June 6, 2017, 4:37 PM), <https://www.cnn.com/2017/06/06/politics/trump-tweets-official-statements/index.html> [<http://web.archive.org/web/20191229203444/https://www.cnn.com/2017/06/06/politics/trump-tweets-official-statements/index.html>] ("The President is the President of the United States, so they're considered official statements by the President of the United States.").

145. See *Hawaii v. Trump*, 859 F.3d 741, n.14 (9th Cir. 2017) (pointing to President Trump's tweets regarding the travel ban and stating, "We take judicial notice of President



the court was asked to consider Twitter as an “authority.”<sup>146</sup> Russian President Vladimir Putin is even briefed daily on tweets from the @realDonaldTrump account.<sup>147</sup>

Both the number of tweets written and the information shared on President Trump’s Twitter account are absolutely invaluable because this is the first time journalists have this amount of access into the subconscious of a sitting United States president.<sup>148</sup> Therefore, receiving a block on Twitter because of a story that criticizes the president or portrays him in a negative light is especially damaging—not only the individual careers of journalists, but to the fundamental idea of a free press. This raises the following questions: Should a sitting United States president be allowed to block journalists from viewing his “official statements” simply because he disagrees with their views?<sup>149</sup> And should there be a non-arbitrary standard to determine when blocking individuals from a presidential forum is warranted?

### III. ANALYSIS

#### *A. Is the Interactive Space Surrounding the @realDonaldTrump Account a Designated Public Forum?*

In *Knight First Amendment Institute*, the Southern District of New York held that the interactive space surrounding the @realDonaldTrump account was a designated public forum, where viewpoint discrimination

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Trump’s statement as the veracity of this statement ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’”).

146. Joseph P. Williams, *Courts Considered Trump’s Twitter in Ruling*, U.S. NEWS (June 12, 2017, 6:16 PM), <https://www.usnews.com/news/national-news/articles/2017-06-12/donald-trumps-statements-on-twitter-cited-in-courts-decision-to-upholds-block-on-travel-ban>

[<https://web.archive.org/web/20200123231517/https://www.usnews.com/news/national-news/articles/2017-06-12/donald-trumps-statements-on-twitter-cited-in-courts-decision-to-upholds-block-on-travel-ban>].

147. Sabra Ayres, *When Trump Tweets, Putin Is Briefed*, L.A. TIMES (Dec. 12, 2017, 9:30 PM), <https://www.latimes.com/politics/washington/la-na-pol-essential-washington-updates-when-trump-tweets-putin-is-briefed-1513094902-htmlstory.html>

[<http://web.archive.org/web/20191229203734/https://www.latimes.com/politics/washington/la-na-pol-essential-washington-updates-201711-htmlstory.html>].

148. Ingram, *supra* note 3.

149. Danielle K. Citron, *Like Everyone Else, He Should Be Able to Talk to Whom He Wants*, N.Y. TIMES (Nov. 21, 2016, 3:20 AM), <https://www.nytimes.com/roomfordebate/2016/11/21/should-the-president-be-able-to-block-you-on-twitter>

[<http://web.archive.org/web/20191229204136/https://www.nytimes.com/roomfordebate/2016/11/21/should-the-president-be-able-to-block-you-on-twitter>].

is prohibited.<sup>150</sup> The Second Circuit subsequently affirmed this holding.<sup>151</sup>

The first prong of the forum analysis requires the government to own or control the space.<sup>152</sup> Although Twitter is clearly a privately owned and operated company, the president retains a great deal of control over his account.<sup>153</sup> The president composes the tweets, initiates replies or comments, and blocks individuals from his feed.<sup>154</sup>

Moreover, the president presents this account as controlled by him as the President of the United States.<sup>155</sup> President Trump has access to other Twitter accounts, including @POTUS and @WhiteHouse,<sup>156</sup> but the @realDonaldTrump account is the most active.<sup>157</sup> In fact, both the @WhiteHouse and @POTUS accounts encourage people to follow these accounts to learn “the latest from President @realDonaldTrump and his Administration.”<sup>158</sup> This encouragement reveals that the @realDonaldTrump account is the president’s primary means of communication; the other accounts simply filter more followers to it.<sup>159</sup> In addition, despite having an actual @POTUS account, President Trump’s favoring of the @realDonaldTrump account causes the general public to believe that this is the official account of the President of the United States.<sup>160</sup> The account is registered to “Donald J. Trump, 45th President of the United States of America.”<sup>161</sup> The president controls enough of this account to satisfy the “government control” prong of the forum analysis.

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150. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 580 (S.D.N.Y. 2018), *aff’d*, 928 F.3d 226 (2d Cir. 2019).

151. *See Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226 (2d Cir. 2019).

152. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 801 (1985).

153. *Knight First Amendment Inst.*, 302 F. Supp. 3d at 566.

154. *Id.* at 567.

155. @realDonaldTrump, *supra* note 1.

156. Dawn Carla Nunziato, *From Town Square to Twittersphere: The Public Forum Doctrine Goes Digital*, 25 B.U. J. SCI. & TECH. L. 1, 10 (2019).

157. At the time of this writing, the @realDonaldTrump account has produced 47,600 tweets. In contrast, the @POTUS account has produced 8,220 tweets and the @WhiteHouse account has produced 14,400 tweets. *Compare* @realDonaldTrump, *supra* note 1, *with* President Trump (@POTUS), TWITTER, <https://twitter.com/potus> [<http://web.archive.org/web/20191229205147/https://twitter.com/potus>], and The White House (@WhiteHouse), TWITTER, <https://twitter.com/whitehouse> [<http://web.archive.org/web/20191229205306/https://twitter.com/whitehouse>].

158. @WhiteHouse, *supra* note 157; *see also* @POTUS, *supra* note 157 (linking to the @realDonaldTrump account in the introduction).

159. Nunziato, *supra* note 156, at 10.

160. *Id.* at 11.

161. @realDonaldTrump, *supra* note 1.

Some individuals, including the president himself, argue that the Twitter account at issue is not controlled by Donald Trump (President of the United States), but rather by Donald Trump (private citizen).<sup>162</sup> He created the account in 2009 before he was an elected official, which does push back against the idea that this account was created as a space for public debate and expression.<sup>163</sup> An analogous situation existed in *Southeastern Promotions, Ltd. v. Conrad*.<sup>164</sup> In that case, a promotions company applied to use a theater for a controversial musical; however, the directors of the theater rejected the performance because of nudity and obscenity.<sup>165</sup> Although the theater at issue was not government built, the government took it over through a long-term leasing agreement and opened it for public use, transforming it into a public forum.<sup>166</sup> In a similar manner, when Donald Trump was elected president and continued to use the same Twitter account he used as a private citizen, he—as a government agent—took over the forum and made it available as a public one (even though it was initially not created for this purpose).<sup>167</sup>

Granted, certain aspects of the @realDonaldTrump account are immune from the forum analysis because the government is speaking on its own behalf.<sup>168</sup> The content of the tweets are government speech.<sup>169</sup> Similar to in *Walker*, “the government is acting as a proprietor, managing its internal operations . . . .”<sup>170</sup> The government, represented by President Trump, does “maintain direct control over the messages conveyed.”<sup>171</sup> In many cases, President Trump himself drafts these tweets and utilizes this forum to express his personal thoughts and frustrations. As such, the tweets the president promulgates are protected government speech. The mere fact that private parties take part in the

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162. Jonathan Groffman, *The Modern Public Square: Digital Viewpoint Discrimination in the Age of @realDonaldTrump*, 25 CARDOZO J. EQUAL RTS. & SOC. JUST. 69 (2018).

163. *Id.* at 87.

164. *See* *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975).

165. *Id.* at 547–48.

166. *Id.*; *see also* Groffman, *supra* note 162, at 88.

167. Groffman, *supra* note 162, at 88.

168. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2250 (2015).

169. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 571 (S.D.N.Y. 2018), *aff'd*, 928 F.3d 226 (2d Cir. 2019).

170. *Walker*, 135 S. Ct. at 2246 (citing *Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672 (1992)).

171. *Id.* at 2239.

message “does not extinguish the governmental nature of the message.”<sup>172</sup>

However, other aspects of the @realDonaldTrump account, specifically the interactive space surrounding the account, are subject to the forum analysis.<sup>173</sup> This is a case where the government is restricting purely private speech occurring on government property by blocking private citizens from the @realDonaldTrump account based on their viewpoints.<sup>174</sup> The @realDonaldTrump account cannot be a traditional public forum because these types of forums are often static and do not evolve as society does.<sup>175</sup> The Supreme Court in *Arkansas Educational Television Commission v. Forbes* expanded on this idea, stating that courts have “rejected the view that traditional public forum status extends beyond its historical confines.”<sup>176</sup> As Twitter is a new means of communication, gaining popularity in the 21st century, social media platforms do not possess the longstanding history required to create a traditional public forum.<sup>177</sup>

A key aspect of creating a forum is an intent to open it up for the free exchange of ideas or debate.<sup>178</sup> Property that the government reserves for “specific official uses” remains a nonpublic forum.<sup>179</sup> In determining whether a public forum has been created, government intent represents the “touchstone” of the analysis.<sup>180</sup> Intent is more than merely a stated purpose; rather, it is an inherently factual inquiry.<sup>181</sup> And intent can be inferred from various factors including the nature of the property, the government’s policy with respect to the forum, and the compatibility between the forum and the expressive activity.<sup>182</sup> In determining intent, courts have relied on these objective factors, rather than simply examining a public official’s subjective state of mind.<sup>183</sup>

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172. *Id.* at 2251.

173. *Knight First Amendment Inst.*, 302 F. Supp. at 574.

174. *Walker*, 135 S. Ct. at 2250.

175. Lidsky, *supra* note 57, at 1983.

176. *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 678 (1998).

177. Rinehart, *supra* note 102, at 796; *see also* Int’l Soc’y for Krishna Consciousness v. Lee, 505 U.S. 672, 680 (1992) (refusing to view airport terminals as traditional public forums because air travel is a relatively recent development and thus terminals do not constitute a forum that has a history of being “held in public trust and used for purposes of expressive activity”).

178. Lidsky, *supra* note 41, at 6.

179. *Gen. Media Commc’ns, Inc. v. Cohen*, 131 F.3d 273, 279 (2d Cir. 1997).

180. *Paulsen v. Cty. of Nassau*, 925 F.2d 65, 69 (2d Cir. 1991).

181. *Gen. Media Commc’ns*, 131 F.3d at 279.

182. *Paulsen*, 925 F.2d at 69 (citing *Cornelius v. NAACP Legal Def. Educ. Fund*, 473 U.S. 788, 802–03 (1985)).

183. *Id.*

For example, even a clear statement by a public official that they did not intend to create a public forum might not be enough to avoid the forum analysis. In *First Unitarian Church of Salt Lake City*, the Tenth Circuit stated that “[t]he government cannot simply declare the First Amendment status of property regardless of its nature and public use.”<sup>184</sup> In that case, the government inferred intent that was inconsistent with the actual express intent of the forum’s creation.<sup>185</sup> In *Arkansas Educational Television Commission*, the Supreme Court reiterated that the focus is on whether a purposeful government action has opened a nontraditional public forum for public discussion.<sup>186</sup>

Moreover, the District Court for the Western District of Wisconsin held that even if public officials created their Twitter accounts only “to get their messages out to their constituents,” that fact alone is sufficient to illustrate an intent to create a designated public forum.<sup>187</sup> The court further indicated that because the individual opted to create a Twitter account—a platform where interaction is a key component—and did not take any steps to limit access to the account from the general public, they cannot ignore the First Amendment implications that accompany a public forum.<sup>188</sup>

The Southern District of New York correctly concluded that the interactive space surrounding the @realDonaldTrump account was a designated public forum by inferring intent based on the objective characteristics of the forum.<sup>189</sup> By analyzing three key factors, “[the government’s] policy and past practice, as well as the nature of the property and its compatibility with expressive activity,”<sup>190</sup> the court inferred an intent to open this space for public expression.<sup>191</sup> The Twitter platform rests on its “compatibility with expressive activity,” allowing individuals to directly communicate and engage with their elected officials.<sup>192</sup> Moreover, the explicit statement of former Press Secretary Sean Spicer regarding the president’s tweets, along with the president’s continued use of Twitter as a policy platform, add credence to the

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184. *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1124 (10th Cir. 2002).

185. *Id.* at 1124.

186. *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998).

187. *One Wis. Now v. Kremer*, 354 F. Supp. 3d 940, 954 (W.D. Wis. 2019) (internal quotation marks omitted).

188. *Id.*

189. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 574 (S.D.N.Y. 2018), *aff’d*, 928 F.3d 226 (2d Cir. 2019).

190. *Paulsen v. Cty. of Nassau*, 925 F.2d 65, 69 (2d Cir. 1991) (citing *Cornelius v. NAACP Legal Def. Educ. Fund*, 473 U.S. 788, 802–03 (1985)).

191. *Knight First Amendment Inst.*, 302 F. Supp. 3d at 574.

192. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017).

government's intent to operate this account as a public forum.<sup>193</sup> In a public forum, blocking an individual—thereby excluding them from the forum—based on their viewpoint is constitutionally impermissible.<sup>194</sup>

One cannot view the interactive space surrounding the @realDonaldTrump account as a limited public forum. The @realDonaldTrump account could only be called a limited public forum if the president labeled it as a space “designated for speech” by “certain groups” or for “discussion of certain subjects.”<sup>195</sup> His Twitter account could also limit the capability to retweet or respond to only those individuals that have a registered Twitter account.<sup>196</sup> The president could also restrain topics to only those that he raises on this platform.<sup>197</sup>

However, President Trump did not try to limit the forum to a group of Twitter users or a group of preapproved topics. His tweets range in topic from foreign affairs, to education policy, to hiring and firing decisions within his Administration.<sup>198</sup> Any individual can view his tweets, and the account is accessible to the public at large, regardless of race, gender, or political affiliation.<sup>199</sup> Moreover, these tweets are projected on a worldwide scale and analyzed by every news network in the world.<sup>200</sup> There is no indication that President Trump wanted to restrain his Twitter discussions to only cover a limited number of topics.

President Trump could have created a nonpublic forum if he desired. He has the option to make the @realDonaldTrump account a private one, only granting access to approved users.<sup>201</sup> This decision would give President Trump more control over who he allows to access the forum. However, in a nonpublic forum, viewpoint discrimination is still prohibited.<sup>202</sup> Because President Trump has not taken steps to make his

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193. Siddique, *supra* note 58, at 336.

194. *Knight First Amendment Inst.*, 302 F. Supp. 3d at 575.

195. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983); *see also* *Widmar v. Vincent*, 454 U.S. 263 (1981); *City of Madison Joint Sch. Dist. v. Wis. Emp't Rel. Comm'n*, 429 U.S. 167 (1976).

196. Siddique, *supra* note 58, at 338.

197. *Id.*

198. *See generally* @realDonaldTrump, *supra* note 1.

199. *Knight First Amendment Inst.*, 302 F. Supp. 3d at 574.

200. Chris Stevenson, *What Has Trump Tweeted Today? The Latest Twitter Posts from the US President and What They Really Mean*, INDEPENDENT (Feb. 14, 2019, 5:26 PM), <https://www.independent.co.uk/news/world/americas/us-politics/trump-twitter-today-tweets-latest-update-live-fact-check-explained-a8732821.html> [<http://web.archive.org/web/20191229211723/https://www.independent.co.uk/news/world/americas/us-politics/trump-twitter-today-tweets-latest-update-live-fact-check-explained-a8732821.html>].

201. Groffman, *supra* note 162, at 89.

202. *Id.*; *see also* *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 57 (1983).

Twitter account private, there does not seem to be a restrained approach that would allow it to be labeled a nonpublic forum.

*B. Are the Interactive Spaces of All Government Social Media Accounts Public Forums?*

If the @realDonaldTrump account is a designated public forum, the implications for all elected officials could be sweeping and would raise the question of how closely local and state official accounts must look to the @realDonaldTrump account in order to render the same public forum designation. Even if government officials are extremely careful in the manner in which they structure their social media accounts, they still may not avoid First Amendment issues.<sup>203</sup> Courts will still consider the nature and use of the property when conducting a forum analysis, despite any express statements by public officials that they do not desire to create a public forum.<sup>204</sup>

Moreover, government officials theoretically need to retain some control over their social media accounts to monitor against hateful or abusive speech.<sup>205</sup> However, government officials must be clear in this monitoring to avoid the appearance of censorship, which could create additional First Amendment problems in the form of content discrimination.<sup>206</sup> If we take content discrimination seriously and determine that the space is a designated public forum, then public officials could not remove users from their social media pages based solely on their own subjective content determinations—i.e., what constitutes hateful or abusive speech. Because limitations on speech are subject to strict scrutiny, any attempt to exclude hateful or abusive comments must serve a compelling state interest.<sup>207</sup>

However, it is worth mentioning that this answer might be different if it was determined that the forum at issue was a limited public forum. In that case, if part of the forum's purpose was to limit hateful and abusive speech, then the government could engage in limited content discrimination to preserve the forum's purpose.<sup>208</sup> In doing so, as long as government official's limitations are "reasonable in light of the purposes

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203. Lidsky, *supra* note 41, at 5.

204. *See infra* Part III.A.

205. Samantha Briggs, *The Freedom of Tweets: The Intersection of Government Use of Social Media and Public Forum Doctrine*, 52 COLUM. J.L. & SOC. PROBS. 1, 35 (2018).

206. Lidsky, *supra* note 57, at 2002.

207. Ardito, *supra* note 21, at 375.

208. *See* Lidsky, *supra* note 57, at 1984.

served by the forum,” then the official could avoid constitutional scrutiny.<sup>209</sup>

One method officials could utilize to address this issue is to create a content-neutral filtering program to regulate hate or abusive speech.<sup>210</sup> Officials could place a restriction on their page that allows anyone to view the page, but only “verified”<sup>211</sup> political leaders and journalists could interact with it—potentially arguing that the interest in regulating online abuse is too high to open the account up to the general public.<sup>212</sup> The officials would have to implement such a policy before forum is created because it would be incredibly difficult to apply retroactively.<sup>213</sup> The government official could grant access only to foreign leaders, political figures, and journalists.<sup>214</sup> However, this creates a difficult line-drawing problem. Which foreign leaders should get access? Could these restrictions be used to block political opponents from important sources of information? What will happen if an individual changes jobs? It is clear, even in this elementary stage, that this solution will not solve the problem.

Another possibility is the ability of government actors to “lock” their Twitter pages.<sup>215</sup> By doing so, any person who wants to access the page must request it; the government official would then grant or deny the request.<sup>216</sup> Although this process would allow the government official to choose their audience, it would likely also be time-consuming and expensive.<sup>217</sup> One of the benefits of a social media account for government officials is that they can communicate with the public at large—a benefit that would essentially be lost by “locking” their accounts.<sup>218</sup>

There has been discussion about creating a “government Twitter” platform.<sup>219</sup> Under this solution, the platform would be subject to its own terms of service and would only be available for use by government

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209. *Id.* at 1989.

210. *Id.* at 2002.

211. *About Verified Accounts*, TWITTER, <https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts> [<http://web.archive.org/web/20200123232630/https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts>] (“The blue verified badge on Twitter lets people know that an account of public interest is authentic.”).

212. Briggs, *supra* note 205, at 35.

213. *Id.*

214. *Id.*

215. *Id.* at 34.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* at 35.



officials.<sup>220</sup> The verification process would attach certain rules to accounts that are verified as government accounts.<sup>221</sup> However, this raises the question of who constitutes a governmental official for these purposes? Would all state, local, and municipal leaders be given access to such a space? Additionally, the creation of a “government Twitter” platform would consume an untold amount of time and resources.<sup>222</sup> It is unlikely that such a government platform would ever come to fruition, especially because the government cannot force Twitter (a private company) to create such a platform, and Twitter would likely have no incentive to do so on its own.

If courts continue to determine that public officials can create designated public forums on Twitter, the judicial system will have interfered with Twitter’s model of creating a network of contracts between the users and the company—a network which was intended to be free from government intrusion.<sup>223</sup> However, if Twitter does nothing to stop First Amendment violations from occurring, would it be aiding and abetting those public officials who are interfering with the rights of their constituents?<sup>224</sup>

The best option for public officials is to simply let the social media platforms regulate hateful or abusive speech—even if such regulations are at times ineffective. Social media companies like Facebook<sup>225</sup> and Twitter<sup>226</sup> have their own regulations for hateful conduct and abusive speech. By entrusting these platforms the power to decide what content violates their terms of use, public officials can combat hate speech

220. *Id.*

221. *Id.*

222. *Id.* at 36.

223. Brian Sutherland, *Should the President’s Tweets Create a “Public Forum”?*, REEDSMITH (June 6, 2018), <https://www.technologylawdispatch.com/2018/06/in-the-courts/should-the-presidents-tweets-create-a-public-forum/> [<http://web.archive.org/web/20191229212250/https://www.technologylawdispatch.com/2018/06/in-the-courts/should-the-presidents-tweets-create-a-public-forum/>].

224. *Id.*

225. *Objectionable Content*, FACEBOOK, [https://www.facebook.com/communitystandards/objectionable\\_content](https://www.facebook.com/communitystandards/objectionable_content) [[http://web.archive.org/web/20191229212405/https://www.facebook.com/communitystandards/objectionable\\_content](http://web.archive.org/web/20191229212405/https://www.facebook.com/communitystandards/objectionable_content)].

226. *Hateful Conduct Policy*, TWITTER, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> [<http://web.archive.org/web/20191229212534/https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>]; *Abusive Behavior*, TWITTER, <https://help.twitter.com/en/rules-and-policies/abusive-behavior> [<http://web.archive.org/web/20191229212636/https://help.twitter.com/en/rules-and-policies/abusive-behavior>].

without violating the First Amendment rights of individuals, avoiding lawsuits for viewpoint discrimination in the process.<sup>227</sup>

While courts are still evaluating the boundaries and applicability of the forum doctrine on social media pages, defendants like Phyllis Randall of Loudon County and the City of New York Police Department should be cautious in creating official social media pages. Officials may have to compromise their ability to communicate directly with constituents in order to protect themselves from First Amendment lawsuits.

*C. What Should Be the Standard When Blocking the Press from "Official Statements"?*

The First Amendment limitations on President Trump's social media account has potentially resounding effects on press freedoms. Some critics argue that "no one else's rights are infringed if the president blocks followers on social media."<sup>228</sup> Individuals may still be able to access the content of the president's tweets, although it will be much more difficult.<sup>229</sup> However, individuals will not be able to interact directly with the president's tweets.<sup>230</sup> The Court in *Knight First Amendment Institute* admitted that a block from the @realDonaldTrump account is a narrow restriction of rights; however, the First Amendment does protect against de minimis harms.<sup>231</sup> But, the effect of this block could be more than de minimis if the individual that the president blocks is a journalist.<sup>232</sup>

The broader concern for journalists is more difficult to reconcile than the harms caused to average citizens; the harms caused to the public and those to the media are two separate issues. For the average citizen, a block from the @realDonaldTrump account means that they will not be

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227. Briggs, *supra* note 205, at 35.

228. Citron, *supra* note 149.

229. Elizabeth E. Joh, *Everyone Should Be Able to Follow His Account*, N.Y. TIMES (Nov. 21, 2016, 3:20 AM), <https://www.nytimes.com/roomfordebate/2016/11/21/should-the-president-be-able-to-block-you-on-twitter> [<http://web.archive.org/web/20191229204136/https://www.nytimes.com/roomfordebate/2016/11/21/should-the-president-be-able-to-block-you-on-twitter>].

230. *Id.*

231. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 577 (S.D.N.Y. 2018), *aff'd*, 928 F.3d 226 (2d Cir. 2019); *see also* N.Y. Progress & Prot. PAC v. Walsh, 733 F.3d 483, 486 (2d Cir. 2013) ("The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.").

232. Citron, *supra* note 149.

able to view or interact with the president's Twitter account.<sup>233</sup> Because of this inability to freely express their opinions on the social media site, the citizen's viewpoint will be silenced.<sup>234</sup> This harm is not as piercing for journalists because they have the ability to write a newspaper article or a blog post to amplify their voice and to share their opinion with a greater audience.<sup>235</sup>

The harm for journalists is more subtle but far-reaching. A block from the @realDonaldTrump account affects their ability to do their jobs: to gather information and report it to the American people quickly and efficiently.<sup>236</sup> Because of these harms, not only will individual journalists be harmed, but the general idea of a free press will also be negatively affected.<sup>237</sup> Therefore, a violation of the press clause could be an alternative ground in conducting a constitutional inquiry into the @realDonaldTrump account; this violation of the press clause would be independent from President Trump's decision to block individual citizens.

In determining what constitutes an infringement on freedom of the press, especially for White House political correspondents, caselaw provides some guidance.<sup>238</sup> *Sherrill v. Knight* examined a Washington-based correspondent's First Amendment challenge who was denied a press pass for undisclosed reasons.<sup>239</sup> The D.C. Circuit determined that since the White House had made its facilities a publicly available source of news information, therefore, it could not indiscriminately deny access to journalists.<sup>240</sup> Because the public at large has an interest in journalists' accounts of the news, these journalists must "not be arbitrarily excluded from sources of information."<sup>241</sup>

The court declared that those revoking a press pass must declare a clear standard for when press passes can be revoked.<sup>242</sup> *Sherrill* provides the necessary standard for revocation of press passes, stating that the "White House press facilities having been made publicly available as a source of information for newsmen . . . requires that this access not be denied arbitrarily or for less than compelling reasons."<sup>243</sup> Moreover, the

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233. See *Knight First Amendment Inst.*, 302 F. Supp. 3d at 550.

234. See *id.* at 577.

235. Sonja West, *Presidential Attacks on the Press*, 83 MO. L. REV. 915, 937 (2018).

236. Citron, *supra* note 149.

237. See West, *supra* note 235, at 936–38.

238. See generally *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977).

239. *Id.* at 127.

240. *Id.* at 129.

241. *Id.* at 129–30.

242. *Id.* at 130.

243. *Id.* at 129.

general public has an interest in “assuring that restrictions on newsgathering be no more arduous than necessary.”<sup>244</sup>

Although the context of *Sherrill* is different from the issue presented in this Note, the same reasoning could be extended to the question of determining when a public official can block a journalist from a designated public forum without violating the First Amendment. Under the same logic, because the @realDonaldTrump account is a designated public forum, blocking a journalist from this page will require the White House to articulate an actual standard that determines when someone can be blocked from the account. This standard cannot be based solely on arbitrary reasoning, but instead, there must be articulable legitimate reasons why this block was required. As viewpoint discrimination is already prohibited in these forums,<sup>245</sup> this standard will come into play in the narrow set of circumstances where a block was not based solely on the speaker’s expressed viewpoint.

However, articulating this standard will not be easy because the president typically has wide discretion over his ability to engage with journalists.<sup>246</sup> It is undisputed that press access to the White House is not a First Amendment right.<sup>247</sup> In general, the Supreme Court has stated that its decisions “ha[ve] never intimated a First Amendment guarantee of a right of access to all sources of information within government control.”<sup>248</sup> But, the Court has also acknowledged that a free press plays an integral role as a source of public information.<sup>249</sup> In an earlier case, the Court made clear that the First Amendment prohibits the government from interfering with a free press.<sup>250</sup>

Nevertheless, the Constitution does not impose an affirmative duty to require the government to share with the press special non-public information.<sup>251</sup> However, what is at issue here is not the fact that the press is requesting special access to information, but the fact that the members of the press are being excluded from essential sources of information specifically because they are members of the press.<sup>252</sup> The practice of excluding members of the press from President Trump’s

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244. *Id.* at 129–30.

245. *Rosenberger v. Rector & Visitors*, 515 U.S. 819, 829 (1995).

246. *Sherrill*, 569 F.2d at 129–30.

247. *Zemel v. Rusk*, 381 U.S. 1, 16–17 (1965).

248. *Houchins v. KQED, Inc.*, 438 U.S. 1, 9 (1978).

249. *Id.*

250. *Pell v. Procunier*, 417 U.S. 817, 834 (1974).

251. *Id.*

252. *See Citron, supra* note 149.

official statements sets a dangerous precedent for future journalists who take to Twitter to criticize public officials.<sup>253</sup>

Because President Trump chose to open his Twitter page to all members of the public and has repeatedly used this page to announce important policy shifts,<sup>254</sup> he cannot block members of the press solely because they are members of the opposite political party or because they criticize his policies. As stated in *New York Times Co. v. United States*, “the press [is] to serve the governed, not the governors.”<sup>255</sup> At its core, freedom of the press means that the news media should not be subject to censorship or government control. It is their accountability to the people that matters.<sup>256</sup> If journalists have to worry about getting blocked from the president’s “official statements,” journalists might be more hesitant to criticize.<sup>257</sup> Amplification of one individual’s opinion over another opinion is acceptable, but exclusion is not.<sup>258</sup>

How to best reconcile these two ideas will be left for the judicial system to determine. A federal court has already held that President Trump cannot block individuals from his Twitter feed without violating the First Amendment,<sup>259</sup> but at the same time, the president typically has wide discretion over his interactions with the press.<sup>260</sup> The press clause could be an alternative ground for holding that these actions are unconstitutional because of the harm to both individual journalists and to the free press as an institution.

#### IV. CONCLUSION

In an increasingly technological era, the ability of public officials to connect directly with their constituents is invaluable. However, as lower courts have begun to recognize, a public official cannot exclude a private citizen from a public forum simply because of the viewpoint that the individual has expressed.<sup>261</sup> Because President Trump uses his Twitter

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253. *Id.*

254. *See supra* Part III.A.

255. *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971).

256. *Freedom of the Press*, ACLU, <https://www.aclu.org/issues/free-speech/freedom-press> [http://web.archive.org/web/20191229214557/https://www.aclu.org/issues/free-speech/freedom-press].

257. *See Citron, supra* note 149.

258. *See Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984) (stating that an individual’s First Amendment rights are not infringed when the government ignores their voice or amplifies others, but the government cannot restrict an individuals’ right to speak freely and advocate for their views).

259. *See supra* Part II.A.

260. *See Joh, supra* note 229.

261. *See supra* Parts II.A., II.B.

account almost daily to express his views and policies, constitutional questions have developed on the forum status of his Twitter account and of the social media accounts of all public officials.<sup>262</sup> Both local officials and members of the press should pay close attention to how courts classify the president's social media account, as this determination has the potential to dramatically affect their rights and their futures.

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262. See *supra* Parts II.A., II.B.