

**KNIGHT  
FIRST AMENDMENT  
INSTITUTE**

at Columbia University

June 6, 2017

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear President Trump,

Your vigorous use of Twitter to comment about matters mundane as well as momentous has afforded Americans valuable insight into your policies, actions, and beliefs. It has also supplied the public with a means of engaging you directly. Your Twitter accounts are forums in which you share your thoughts and decisions as President, and in which millions of people respond, ask questions, and sometimes have those questions answered.

We write on behalf of individuals who have been blocked from your most-followed Twitter account, @realDonaldTrump, because they disagreed with, criticized, or mocked you or your actions as President. This Twitter account operates as a “designated public forum” for First Amendment purposes, and accordingly the viewpoint-based blocking of our clients is unconstitutional. We ask that you unblock them and any others who have been blocked for similar reasons.<sup>1</sup>

The individuals we represent include:

- Holly O’Reilly, @AynRandPaulRyan, who was blocked on May 28, 2017 after she posted a GIF, captioned “This is pretty much how the whole world sees you,” in which Pope Francis appears incredulous and uncomfortable during a meeting with you.<sup>2</sup>

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<sup>1</sup> We focus in this letter on @realDonaldTrump, but the arguments we make here apply with equal force to your other account, @POTUS, to the extent that you or your aides have blocked users from that account because of their views.

<sup>2</sup> Holly O’Reilly (@AynRandPaulRyan), Twitter (May 28, 2017, 7:53 AM), <https://twitter.com/AynRandPaulRyan/status/868842669069422592>.

- Joseph M. Papp, @joepabike, who discovered he was blocked on June 4, 2017 after he posted “Greetings from Pittsburgh, Sir” and “Why didn’t you attend your #PittsburghNotParis rally in DC, Sir? #fakeleader” in response to a June 3, 2017 tweet of your weekly address.<sup>3</sup>

The blocking of users from your Twitter account suppresses speech in a number of ways. Users who have been blocked cannot follow you on Twitter, and they are limited in their ability to view your tweets, find your tweets using Twitter’s search function, and learn which accounts follow you.<sup>4</sup> They are also limited in their ability to participate in comment threads associated with your tweets.<sup>5</sup>

Blocking users from your Twitter account violates the First Amendment. When the government makes a space available to the public at large for the purpose of expressive activity, it creates a public forum from which it may not constitutionally exclude individuals on the basis of viewpoint.<sup>6</sup> This is true even if the space in question is “metaphysical” rather than physical; even if the space is privately rather than publicly owned; and “even when the limited public forum is one of [the government’s] own creation.”<sup>7</sup> The government may impose reasonable time, place, and manner restrictions in a designated public forum, but it may not exclude people simply because it disagrees with them.

Your @realDonaldTrump account constitutes a designated public forum. It is a forum for expression in which you share information and opinions relating to government policy with the public at large, and in which members of the public can engage you, engage one another, and sometimes elicit responses from you. Your Twitter account is a designated public forum for essentially the same reasons that open city council meetings and school board meetings are.<sup>8</sup>

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<sup>3</sup> Joseph M. Papp (@joepabike), Twitter (June 3, 2017, 12:36 PM), <https://twitter.com/joepabike/status/871088288202928128>.

<sup>4</sup> Twitter, *Blocking accounts on Twitter*, <https://support.twitter.com/articles/117063> (last visited June 6, 2017).

<sup>5</sup> One of our clients has used a third-party application to mitigate the implications of the block, but using the application is burdensome, and the application may rely on a temporary glitch in Twitter’s interface.

<sup>6</sup> See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995).

<sup>7</sup> *Id.* at 829–30; see also *Se. Promotions Ltd. v. Conrad*, 420 U.S. 546, 547 (1975).

<sup>8</sup> See, e.g., *City of Madison Joint Sch. Dist. No. 8 v. Wis. Emp’t Rel. Comm’n*, 429 U.S. 167, 176 (1976) (school board meetings); *Surita v. Hyde*, 665 F.3d 860, 869 (7th Cir. 2011) (city council meetings); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir.1990) (same); *Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989)

Further, it is plain that our clients were blocked from your account on the basis of their viewpoints. Each of them was blocked soon after having disagreed with or ridiculed you. Other users appear to have been blocked for similar reasons.<sup>9</sup>

Of course, it is easy to understand why you and your advisers might have found our clients' posts to be disagreeable. Even if the posts were scornful and acerbic, however, they were protected by the First Amendment. As the Supreme Court has observed, "[t]he sort of robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office," and public officials will on occasion be subject to "vehement, caustic, and sometimes unpleasantly sharp attacks."<sup>10</sup> The protection of speech critical of government officials is perhaps the core concern of the First Amendment, because the freedom of individuals to engage in this kind of speech is crucial to self-government.

We ask that you or your aides immediately unblock our clients' accounts and the accounts of others who have been blocked because of their views. We appreciate your attention to this matter.

Sincerely,

Jameel Jaffer  
Katie Fallow  
Alex Abdo

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(same); *see also Davison v. Loudoun Cty.*, 2017 WL 58294, at \*5 (E.D. Va. Jan. 4, 2017) (government Facebook page).

<sup>9</sup> *See, e.g.*, Brandon Carter, *Comedy Writer Claims Trump Blocked Her on Twitter*, The Hill: In the Know (April 29, 2017, 3:11 PM), <http://thehill.com/blogs/in-the-know/in-the-know/335548-comedy-writer-claims-trump-blocked-her-on-twitter>; Juju Chang et al., *Commander in Tweet. Trump Has Used Twitter as a Bully Pulpit and to Block Users*, ABC News (Jan. 18, 2017, 5:21 PM), <http://abcn.ws/2iCMKU1>; David Pierson, *Trump Talks to the Public Through Twitter. Here's What Happens When Your Next President Blocks You*, L.A. Times (Dec. 2, 2016, 3:00 AM), <http://lat.ms/2gOpu3Z>.

<sup>10</sup> *Hustler v. Falwell*, 485 U.S. 46, 51 (1988) (quoting *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964)); *see also Monitor Patriot Co. v. Roy*, 401 U.S. 265, 274 (1971) ("[T]he candidate who vaunts his spotless record and sterling integrity cannot convincingly cry 'Foul!' when an opponent or an industrious reporter attempts to demonstrate the contrary."); *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944) ("[o]ne of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation").

cc: Donald F. McGahn  
White House Counsel

Sean Spicer  
White House Press Secretary

Dan Scavino  
White House Director of Social Media