

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

November 3, 2017

Via ECF and Fax

Honorable Naomi Reice Buchwald
United States District Court for the
Southern District of New York
500 Pearl Street, Room 2270
New York, NY 10007-1312

**Re: *Knight First Amendment Institute, et al. v. Trump,
et al., Case No. 17-CV-5205 (NRB)***

Dear Judge Buchwald,

We represent Plaintiffs Knight First Amendment Institute at Columbia University (“Knight Institute”), Rebecca Buckwalter, Philip Cohen, Holly Figueroa, Eugene Gu, Brandon Neely, Joseph Papp, and Nicholas Pappas (“Individual Plaintiffs”) in the above-referenced matter. In accordance with Section 2.E of the Court’s Individual Practices, Plaintiffs respectfully submit this letter outlining the substantive arguments in their cross-motion for summary judgment and opposition to Defendants’ motion for summary judgment, as set forth in the memorandum of law filed today.

The President’s Twitter account, @realDonaldTrump, has become an important source of news and information about the government, and an important forum for speech by, to, and about the President. The account is akin to a digital town hall, with the President speaking from the podium at the front of the room and assembled citizens responding to him and engaging with one another about the President’s statements. In an effort to suppress dissent, the President and his aides are ejecting from this forum—“blocking”—the Individual Plaintiffs and other Twitter users who have criticized the President or his policies. This practice is unconstitutional.

Plaintiffs are entitled to summary judgment. There is no genuine issue of material fact. To the contrary, the parties’ joint stipulation filed on September 28, 2017 includes the undisputed facts necessary to establish the Court’s jurisdiction as well as the appropriateness of declaratory and injunctive relief against President Trump and his aides.

The First Amendment applies here because Defendants use @realDonaldTrump for official purposes. As the joint stipulation makes

clear, White House staff members assist the President in drafting and posting tweets to the account. The President and his aides use the account to make official announcements, defend the President's official decisions and actions, report on the President's meetings with foreign leaders, and promote the administration's positions on health care, immigration, foreign affairs, and other matters. The President's aides have stated that tweets from @realDonaldTrump are "official statements," and they have cited the tweets in response to official congressional inquiries. The tweets have been treated as official statements by national public officials, public agencies, world leaders, and federal courts. The record thus establishes that Defendants use @realDonaldTrump as a "tool of governance." See *Davison v. Loudoun Cty. Bd. of Supervisors*, No. 1:16-cv-932, 2017 WL 3158389 (E.D. Va. July 25, 2017) (holding that county official used her Facebook page as a tool of governance and that accordingly the account was subject to the First Amendment).

Defendants' blocking of the Individual Plaintiffs from the @realDonaldTrump account violates the First Amendment for several reasons.

First, the blocking violates the prohibition against viewpoint-based exclusion of speakers from a designated public forum. The government creates a designated public forum when it opens a space for speech by the public at large without restriction as to subject matter or speaker. This is what Defendants have done here. The @realDonaldTrump account is a digital space in which anyone with a Twitter account can respond to and debate the President's statements ("tweets") in "comment threads" associated with those tweets. Given the nature of the forum, Defendants' concession that they have excluded the Individual Plaintiffs based on viewpoint amounts to a concession that Defendants have violated the Individual Plaintiffs' right to speak as well as the Knight Institute's right to hear.

Defendants' argument that the @realDonaldTrump account is "government speech" mistakes the part for the whole: While the President's tweets are government speech, the millions of comments on his tweets by ordinary citizens are not, and no one would mistake them for it. Again, town halls and open city council meetings supply useful analogies. The mere fact that a forum includes government speech does not convert it to something other than a public forum.

Second, and independent of the public forum analysis, Defendants' blocking of the Individual Plaintiffs violates the First Amendment because it restricts their access to generally available government information in retaliation for their criticism of the President. Through his Twitter account, the President makes information about his presidency generally available

to anyone who follows him on Twitter. The First Amendment forecloses Defendants from burdening the Individual Plaintiffs' access to this otherwise generally available information solely because the Individual Plaintiffs have criticized the President or his policies.

Third, and independent of the two claims described above, Defendants' conduct violates the Individual Plaintiffs' First Amendment right to petition the government for redress of grievances. The @realDonaldTrump account is, among other things, a channel through which ordinary citizens can complain about government policy directly to the President and his closest aides. *See Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (noting importance of social media platforms, and Twitter in particular, as channels through which citizens exercise rights protected by Petition Clause). Plaintiffs do not contend that Defendants are required to make this channel available to the public at large, but having done so, Defendants cannot close it to the Individual Plaintiffs solely because they have criticized the President or his policies.

Defendants' contention that the Court lacks power to remedy the unconstitutional conduct complained of here is meritless. The President is not above the law, and the notion that the separation of powers requires this Court to turn a blind eye to the President's violations of First Amendment rights turns the separation of powers on its head. Moreover, even if there were merit to Defendants' argument that the Court cannot enjoin the President—and there is not—the Court would still have the authority to grant declaratory relief against the President as well as injunctive and declaratory relief against the President's aides. Those aides include Dan Scavino, White House Social Media Director and Assistant to the President, who by Defendants' admission is actively involved in administering the @realDonaldTrump account and has the access necessary to unblock the Individual Plaintiffs.

For these reasons, Plaintiffs respectfully request that the Court enter judgment in favor of Plaintiffs and order appropriate relief. Plaintiffs request oral argument on the parties' cross-motions for summary judgment.

Respectfully submitted,

/s/ Jameel Jaffer

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