

## Second Circuit Will Not Rehear First Amendment Twitter Suit against President Trump

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On March 23, 2020, the Court of Appeals for the Second Circuit denied *en banc* review of a panel's prior decision in the Knight First Amendment Institute's ongoing lawsuit challenging, on First Amendment grounds, President Donald J. Trump's practice of blocking certain users from accessing his @realDonaldTrump Twitter account in response to those users' criticism of his administration and policies. In May 2018, the United States District Court for the Southern District of New York sided with the Knight Institute, holding that President Trump's Twitter account constituted a "public forum," and as a result, that the President's practice of denying some users access to it based on their expressed viewpoints violated the First Amendment. In July 2019, a unanimous Second Circuit panel affirmed the lower court's decision.

President Trump moved for rehearing *en banc*, but the Court's vote fell short of the majority needed to rehear the case. Circuit Judge Barrington Parker filed a statement with respect to the denial of rehearing *en banc* in which he characterized the Second Circuit's 2019 decision as "a straightforward application of state action and public forum doctrines, congruent with Supreme Court precedent." Noting that the President's tweets "cover subjects as diverse as military actions, immigration policies, and senior staffing changes, among other major official announcements," Judge Parker observed that "Twitter is not just an official channel of communication for the President; it is his most important channel of communication." Accordingly, President Trump's practice of selectively blocking users' access to his Twitter account was unconstitutional.

Judge Michael Park, joined by Judge Richard Sullivan, wrote a separate statement dissenting from the denial of rehearing *en banc*, arguing that @realDonaldTrump is the President's personal Twitter account and does not constitute a public forum simply because it is operated by a public official. The dissent argued further that because Twitter is privately owned and controlled, a public official's decision to block users "involves no exercise of state authority" for purposes of the First Amendment analysis.

Many observers expect President Trump to seek review in the United States Supreme Court. A Petition for Writ of Certiorari, if the deadline is not extended, will be due on June 22, 2020.

The case is *Knight First Amendment Inst. at Columbia Univ. v. Trump*, No. 1:17-cv-5205 (S.D.N.Y.), No. 18-1691 (2d Cir.).