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From the Selected Works of Alan E Garfield

Summer July 16, 2019

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Your Turn
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Guest columnist

Can a politician block you on social media?

Public or private? It makes all the difference in the world.

The Constitution, except for the Thirteenth Amendment barring slavery, restrains government actors, not private. Government may not suppress speech, deny equal protection, or engage in unreasonable searches. Not so private actors.

Thus, a restaurant that refuses to serve Hispanic Americans has not violated the Equal Protection Clause. A private employer who fires an employee because of her speech has not transgressed the First Amendment.

This doesn't mean private actors have no restraints. Often, legislators have enacted laws that impose Constitution-like restraints on private actors.

For example, federal civil rights laws forbid restaurants from discriminating against customers based on their race or national origin. Therefore, Hispanic Americans can sue a restaurant that refuses to serve them, even though this is not a constitutional violation.

By contrast, legislation places fewer restraints on private regulation of speech. Private employers usually can fire employees because of their speech; restaurants can refuse to serve customers wearing MAGA hats; and Facebook may remove hate speech from its platform.

There are exceptions to this rule, such as whistleblower laws that protect employees who disclose their employer's wrongdoing. But these exceptions tend to be narrow rather than broad.

Which takes us to @realDonaldTrump, which is President Trump's Twitter account.

President Trump was not happy with comments posted by some of his followers, so he blocked their access. Consequently, the followers could no longer directly reply to the President's tweets or participate in the comment threads associated with his tweets.

The users sued, saying that the President had violated their First Amendment rights.

Were they right?

The answer, as the Federal Court of Appeals explained, depends upon whether the president had "acted in a governmental capacity or as a private citizen."

So, how should we characterize Trump's decision to block users from his Twitter account?

It's a bit of headscratcher. The speech was occurring on a Twitter account, and Twitter is a private company. Does this mean the speech occurred on private property?

The Court said no. In effect, it said that Trump was leasing the Twitter account and had the ability to control it.

But was Trump acting in a private or public capacity when he exercised this control?

The Court found overwhelming evidence that Trump was acting in his official capacity.

The account is registered to the "45th President of the United States." Trump uses the account "to announce, describe, and defend his policies." The President's Press Secretary described the tweets as the President's "official statements."

Even the National Archives believes the President's tweets are government public records.

Having found that Trump was using the account for official purposes and had deliberately opened it for public discussion, the Court inevitably concluded that Trump could not exclude users merely because he disliked their messages.

Within hours of the decision, Congressional Representative Alexandria Ocasio-Cortez (D-NY) was sued by critics for blocking them from her Twitter account.

Could this spell the end of using Twitter accounts for official business? Would you mind if it did?

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