

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

KARIN LEUTHY and KELLI
WHITLOCK BURTON,

Plaintiffs,

v.

PAUL R. LEPAGE,
Governor of Maine, in his individual
and official capacity,

Defendant.

Civil Action No. 1:17-cv-00296-JAW

May 23, 2018

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

This case involves a constitutional challenge to Defendant Governor LePage's decision to block certain constituents from his official Facebook page based on the content and viewpoint of their comments. A similar case was filed against President Donald J. Trump, for blocking constituents from his official Twitter account based upon viewpoint. Today, the United States District Court for the Southern District of New York reached a decision in that case. As supplemental authority in opposition to Defendant's Motion to Dismiss, Plaintiffs respectfully submit the attached Memorandum and Order issued on May 23, 2018, in *Knight First Amendment Institute At Columbia University, et al. v. Donald J. Trump, et al.*, No. 1:17-cv-05205-NRB (S.D.N.Y.) ("Opinion").

In *Knight First Amendment Institute*, individuals who had been blocked by President Trump on Twitter in response to the views that the individuals expressed, filed suit against the President and his staff seeking declaratory and injunctive relief to allow them access to the

interactive space where Twitter users may directly engage with the content of the President's tweets. In its Memorandum and Order, the District Court denied in part the defendants' motion for summary judgment¹ and granted in part the plaintiffs' motion for summary judgment.

The court made several holdings that support the Plaintiffs' opposition to the motion to dismiss in this case. First, the court applied a forum analysis to conclude that the interactive space associated with President Trump's Twitter account is a designated public forum. Opinion at 39-62. In doing so, it rejected defendants' contention that the @realDonaldTrump account as a whole is the would-be forum to be analyzed; rather, the applicable forum is the interactive aspects of the account that are generally accessible to all Twitter users regardless of political views. *Id.* That reasoning contradicts Governor LePage's argument that the forum analysis does not apply to similar interactive aspects of the Governor's official Facebook page, *see* Gov. Mot. at 20-21, ECF No. 9 (Oct. 13, 2017), and supports the Plaintiffs' opposition. *See* Pls. Opp. at 21-24, ECF No. 11 (Nov. 3, 2017).

Consistent with its conclusion about forum, the court further held that blocking the plaintiffs because of the views expressed constituted impermissible viewpoint discrimination. Opinion at 62-63. And, the court held that a prohibition on viewpoint discrimination did not infringe upon the President's own First Amendment rights. Opinion at 63-64. As the court explained, "[t]he viewpoint-based exclusion of the individual plaintiffs from the designated public forum is proscribed by the First Amendment and cannot be justified by the President's personal First Amendment interests." Opinion at 75. Likewise here, Governor LePage has

¹ The district court granted defendant Hope Hicks's motion for summary judgment on the grounds that she no longer works for President Trump, and it granted defendant Sarah Huckabee Sanders's motion for summary judgment on the grounds that she exercises no control over President Trump's twitter account. Opinion at n. 6, 24.

discriminated against Plaintiffs based upon their viewpoint. Pls. Opp. at 8-9, ECF No. 11 (Nov. 3, 2017). Contrary to Governor LePage's arguments, forbidding such viewpoint discrimination would not impinge upon the Governor's ability to speak freely. Gov. Mot. at 8, ECF No. 9 (Oct. 13, 2017). Rather, it would ensure an open and free dialogue in the interactive space associated with the Governor's Facebook page.

Dated: May 23, 2018

Respectfully submitted,

/s/ Zachary Heiden

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2018, a copy of the foregoing was electronically filed. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Emma E. Bond
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Counsel for Plaintiffs