



## Sebastian Gorka is violating everyone's First Amendment rights on Twitter

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For all the fuss over the president's mastery of Twitter, it's amusing that this administration is the one over which the most significant legal debates about governmental social media usage will be waged. The Knight First Amendment Institute at Columbia University kicked things off July 7 with a complaint filed in a New York district court, demanding relief for seven blocked Twitter users who claim POTUS is violating their right to participate in a government-convened public forum. This is uncharted territory; Knight simply wants the court to establish that the president can't do that shit because it's viewpoint discrimination and to order Trump to unblock people who criticized him. The West Wing has until the first week of September to respond.

Two cases from this summer provide basically the only template for how the First Amendment should be applied here. The Supreme Court opinion in "Packingham v. North Carolina" ruled that a state law barring registered sex offenders from accessing social media networks open to minors violates the universal right to access "what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge." It was SCOTUS' first definitive ruling that traditional free speech protections apply to Facebook and Twitter. The Virginia District court used this opinion in "Davison v. Loudoun County Board of Supervisors" to argue that a county board member violated a constituent's rights by blocking her on Facebook.

Which brings us to the esteemed Dr. Sebastian Gorka, deputy assistant to the president. Due to his utter lack of qualifications, the Nazi cosplaying coffee buttchugger doesn't have much formal responsibility, and he seems to be using all his free time to indiscriminately block every Twitterer who dares make fun of him. This includes a broad chunk of the free press, including three members of our own staff. Gorka, operating under the verified @SebGorka account, blocked Maggie at some point without her knowledge, perhaps in response to the time she called him a "Kelsey Grammer character," or when she expressed admiration for his "fake it till you make it" approach to foreign policy. He blocked Brian and me

for emailing him questions about his favorite movie and whether he adds cream to his coffee, respectively.

Other journalists shared similar experiences with me. Gorka blocked Esquire contributor Jeb Lund for calling him a “DeVry-dissertation nazi ass bitch” on the day Forward published evidence of the adviser’s connection to Hungarian nationalist group Vitezi Rend. He blocked Vice columnist Eve Peyser for commenting on his resemblance to baby-murdering sheriff David Clarke. He blocked Tufts University professor and Washington Post blogger Daniel Drezner for writing a post suggesting Gorka “develop a thicker skin.”

Many more reporters don’t know what they did to upset Gorka but nonetheless find themselves unable to read his tweets. MSNBC anchor Chris Hayes and Politico reporter Hadas Gold both said they have “no idea.” Talking Points Memo editor Josh Marshall suspects he got the ax for tweeting “generic criticism” in the spring, maybe his speculation that Gorka “had a nightmare last night in which a chorus of a thousand pajama boys were laughing at his low energy.” Kara Brown has never made mention of him on Twitter; after realizing she was blocked on Wednesday, her first thought was, “Who the hell is this?”

Gorka is so proficient at blocking people that someone started the bot @SebGorkaTweets to fill the void. But the question remains: Is he violating our constitutional rights? Should we all sue the good doctor?

According to the Knight Institute’s complaint, there are three problems with Trump’s behavior. By blocking his critics, #45 is infringing on people’s First Amendment protections to view government news and information, participate in a designated public forum, and petition the government for redress. The claim boils down to the debate in the Loudoun County case of whether Trump is operating @realDonaldTrump in his capacity as a government actor, rather than as a private individual.

By the White House’s own admission, it seems pretty obvious Trump is. The president, on Twitter, called his social media use “MODERN DAY PRESIDENTIAL.” Asked whether Trump’s tweets should be considered official White House statements in June, Spicer said: “The president is the president of the United States, so they’re considered official statements by the president of the United States.” (Although the chairman of the Joint Chiefs of Staff seems to disagree.) Just last week, Fox News’ Bill Hemmer asked Gorka what card the White House has left to push China to stop North Korea’s nuclear program. “We have the president’s Twitter feed,” Gorka said.

I asked Cato Institute vice president John Samples about the debate. In June, Samples wrote critically about the Knight Institute’s arguments, questioning whether Trump’s personal Twitter actually constitutes a government account and public forum. On Thursday, he spoke with a weary resignation over how much Trump and company have destroyed his own argument with their relentless disregard for legal advice.

“The Knight case is stronger now that it was a month ago. It’s because he announced the transsexual policy on Twitter,” Samples said. “That looks a lot like it’s a high government

official... making policy.” Samples expects these types of complaints to eventually reach the Supreme Court for definitive rules about how public officials may use social media, giving Trump more time to start listening to his attorneys and stop playing 12-dimensional president chess with @realDonaldTrump, but right now, Sample said, “They’re undermining their own case.”

But what about Gorka? He’s unelected, doesn’t do much, and has a much smaller Twitter audience, but his @SebGorka bio announces him as “Deputy Assistant to the 45th President of America” and he constantly tweets about foreign policy. Plus, his name has been floated internally as the next White House communications director. Knight First Amendment Institute lawyer Katherine Fallow told me that he appears to be in the same boat as Trump.

“If a White House chief of staff, or whatever, some government employee, sets up a web page, website, saying we want to tell you what the agency is doing and we want to hear from you, and allowed everyone to comment and, you know, pose questions and express opinions, and then blocked people,” Fallow said, “I think it would be the same analysis to [an IRL] public forum run by a public official.”

Amusingly, most blocked journalists don’t seem to give a shit about reading Gorka’s tweets in the first place. Asked whether Gorka’s block impacted his ability to follow the news, Hayes said, “I mean, in some minor way, sure. But people screenshot stuff.” Lund told me, “‘News’ is something that happens in spite of whatever parallel reality Gorka wishes were true. If he tweeted tomorrow that he took a dump that morning, I’d assume there was a 50% chance that some hairless B-grade Nazi scientists had actually sealed his ass shut with a hot glue gun.” Gizmodo Media Group Special Projects Desk senior reporter Anna Merlan, who has broken critical stories about Gorka, can still read his tweets but said, “He hasn’t blocked me. I’m deeply offended. Please quote me on that.”

Mr. Doctor’s trivialness aside, though, he does seem to be infringing on our constitutional rights. Gorka did not respond to requests for comment on how he views Twitter’s role in his work, how he decides to block people, or how he takes his coffee.