



SOCIAL MEDIA AND FREE SPEECH

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2021 – The U.S. Supreme Court finally addresses social media and the First Amendment

Mahanoy Area Sch. Dist. v. B. L.,
141 S. Ct. 2038 (2021)

(“the potty-mouthed Snapchat cheerleader case”)





- Brandi Levi, high school freshman in Pennsylvania, gets passed over for the varsity cheerleading team. Reacts with Snapchat post of her and a friend “flipping the bird,” with caption “f*** school, f*** softball, f*** cheer, f*** everything.”
- After being disciplined by school, she sues over First Amendment rights being violated.

Holding

While public schools may have a special interest in regulating some off-campus student speech, the special interests offered by the school are not sufficient to overcome B.L.'s interest in free expression.



Blocked in the Digital Age: Elected Officials Silencing Critics on Social Media

A both sides of the aisle issue – Politicians from Donald Trump to Alexandria Ocasio-Cortez have been sued for blocking critics on social media.



Multiple courts around the country have dealt with this issue, including at least 3 federal circuits.

Davison v. Randall, 912 F.3d 666
(4th Cir. 2019)

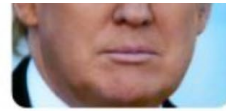
Court noted that social media may be “the most important” modern forum “for the exchange of news.”



Viewpoint discrimination not allowed under the First Amendment

Knight First Amend. Inst. at
Columbia U. v. Trump, 928 F.3d 226
(2d Cir. 2019)

Official not allowed to
“selectively exclude those
whose views he disagrees with.”



Donald J. Trump ✓

@realDonaldTrump

@realDonaldTrump blocked
you

You are blocked from following
@realDonaldTrump and viewing

Robinson v. Hunt County, Texas, 921 F.3d 440 (5th Cir. 2019)

“Official censorship based on a state actor’s subjective judgment that the content of protected speech is offensive or inappropriate is viewpoint discrimination.”



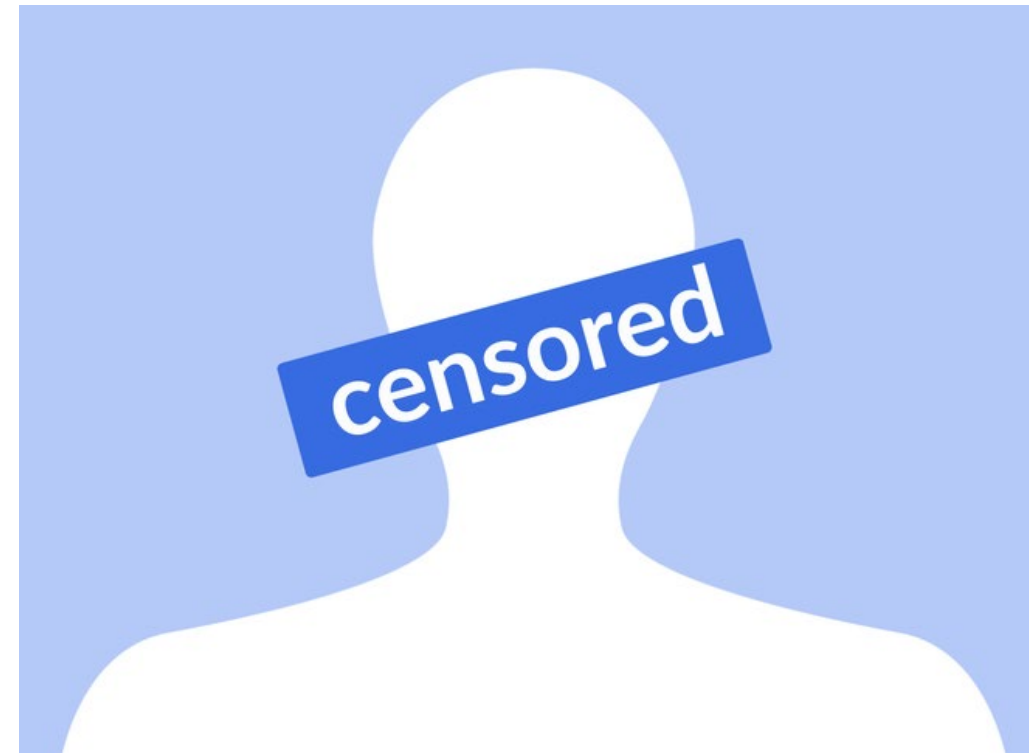
Throughout the country, elected officials – from the local school board to the White House – have recognized the power and reach of social media. But these digital spaces need not be echo chambers where officials are insulated from accountability or criticism.



Legislating Free Speech on Social Media

NetChoice, LLC v. Moody,
4:21CV220-RH-MAF (N.D. Fla.
June 30, 2021)

- Florida's SB 7072, enjoined district court, and on appeal to 11th Circuit.
- Gives government sweeping authority over the digital sphere.



NetChoice, LLC v. Paxton, 1:21-CV-840-RP, (W.D. Tex. Dec. 1, 2021)

- Texas' HB20, which prohibits “censorship” by social media platforms.
- Has been enjoined by trial court and is on appeal to the Fifth Circuit.

