

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) - Students do not shed their "constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*, 393 U.S. at 506 (1969). "[O]ur independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students." *Id.* at 509.

Mahoney Area School District v. B.L., ___ U.S. ___ (2021)(argued April 28, 2021) – Student suspended from cheerleading squad after posting profanity laced criticism of cheerleading team in social media. Issue: Whether *Tinker v. Des Moines Independent Community School District*, which holds that public school officials may regulate speech that would materially and substantially disrupt the work and discipline of the school, applies to student speech that occurs off campus.

Joseph Biden v. Knight First Amendment Institute at Columbia University, 593 U.S. ___ (2021) – Issue: Whether then-President Donald Trump violated the First Amendment by blocking another Twitter user from interacting with his Twitter account. Second Circuit held Trump violated the First Amendment by blocking access to the comment threads. *Knight First Amendment Institute at Columbia University v. Trump*, 928 F.3d 226 (2019). Supreme Court granted writ of certiorari, vacated the judgement below because of the change in Presidential administration, and remanded the case back to the Second Circuit with instructions to dismiss as moot.

Justice Thomas, concurring

I write separately to note that this petition highlights the principle legal difficulty that surrounds digital platforms – namely, that applying old doctrines to new digital platforms is rarely straightforward. Respondents have a point, for example, that some aspects of Mr. Trump’s account resemble a constitutionally protected public forum. But it seems rather odd to say that something is a government forum when a private company has unrestricted authority to do away with it. . . We will soon have no choice but to address how our legal doctrines apply to highly concentrated privately owned information infrastructure such as digital platforms. . . As Twitter made clear, the right to cut off speech lies most powerfully in the hands of private digital platforms. The extent to which that power matters for purposes of the First Amendment and the extent to which that power could lawfully be modified raises interesting and important questions. This petition unfortunately, affords us no opportunity to confront them.

Joseph Biden, et al v. Knight First Amendment Institute at Columbia University, et al, 593 U.S. ___ (2021) (Thomas, J., concurring).

Facebook Oversight Board, Case decision 2021-001-FB-FBR (found at <https://www.oversightboard.com/sr/decision/2021/001/pdf-english>) – On or about January 7, 2021, Facebook restricted then-President Trump’s access to posting content on his Facebook page and Instagram account. On January 21, 2021, Facebook referred the case to the Facebook Oversight Board to determine whether “Considering Facebook’s values, specifically its commitment to voice and safety, did it correctly decide on January 7, 2021, to prohibit Donald J. Trump’s access to posting content on Facebook and Instagram for an indefinite amount of time?”

The Facebook Oversight Board is designed to protect freedom of expression by making principled independent decisions about important pieces of content and by issuing policy advisory opinions on Facebook’s content policies.

The Oversight Board upheld the decision to restrict Trump’s access to posting content on his Facebook and Instagram accounts, but found it was not appropriate for Facebook to impose the indeterminate and “standardless” penalty of indefinite suspension. The Oversight Board found that Facebook’s normal penalties included: removing the violating content, imposing a time-bound period of suspension, or permanently disabling the page and account. The Oversight Board advised Facebook to review the matter to determine a proportionate response that is consistent with the rules applied to other users of its platform.

Algorithmic Journalism and Defamation Law - Tilley, Cristina, *(Re)Categorizing Defamation* (May 21, 2020). *Tulane Law Review*, Vol. 94, No. 3, 2020, U Iowa Legal Studies Research Paper# 2020-14.

State v. Andrea May Sahouri, SMAC388817 (Polk County, Iowa) – Des Moines Register reporter arrested while covering a protest against racial justice acquitted of charges of Failure to Disperse and Interference with Official Acts.