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Politicians, Social Media, and Digital Publics: Old Rights, New Terrain

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Abstract:	<p>In this interdisciplinary roundtable discussion, five scholars interested in political communication work through the democratic dilemmas created when privately owned social media platforms are used as digital public squares by elected officials in the United States. This conversation unfolds in the context of ongoing legal cases that challenge politicians' efforts to block select interlocutors and bar them from participation. We grapple with the tension between politicians' use of social media to broadcast their own messages as a form of publicity with the desire by some members of the public that politicians be transparent online by allowing the electorate to question or even criticize them. Through this discussion, we weigh the importance of the right to criticize the government and its leaders alongside the realities of contentious content on social media platforms that are rife with abusive content, in a cultural context marked by social inequalities.</p>

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Politicians, Social Media, and Digital Publics: Old Rights, New Terrain

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In this interdisciplinary roundtable discussion, five scholars interested in political communication work through the democratic dilemmas created when privately owned social media platforms are used as digital public squares by elected officials in the United States. This conversation unfolds in the context of ongoing legal cases that challenge politicians’ efforts to block select interlocutors and bar them from participation. We grapple with the tension between politicians’ use of social media to broadcast their own messages as a form of publicity with the desire by some members of the public that politicians be transparent online by allowing the electorate to question or even criticize them. Through this discussion, we weigh the importance of the right to criticize the government and its leaders alongside the realities of contentious content on social media platforms that are rife with abusive content, in a cultural context marked by social inequalities.

Should U.S. politicians be allowed to block Americans on social media? This question is not as simple as it sounds. It relates to broader issues of what role, if any, social media do – or should – play in Americans’ political lives. It juxtaposes the reality of today’s mundane and often destructive online discourse with the hoped-for but never achieved digital public sphere, a halcyon dream of deliberative discussions across difference that harken to the salons of old (e.g., Habermas, 1994, 1996; Jacobs et al., 2009; Papacharissi, 2013). This roundtable discussion evaluates the role of social media as a tool of publicity, as politicians use it to disseminate their political beliefs and policy stances (Kreis, 2017; Kreiss, 2016). Our essay

also delves into the obligation that is implicitly linked with this publicity – that some members of the public want politicians to be transparent by being available to respond truthfully to citizens’ questions even if they are far from polite in making that request (Masullo, in press).

We ask where the shifting line exists between public and private online or whether we can even draw that line (Chen & Mandell, 2016; Papacharissi, 2013). We seek to make sense of whether privately owned, profit-making digital platforms can further democracy or if that is even a fruitful goal for such a space.

We situate our discussion in the United States because the American concept of free speech – that truth will emerge when ideas compete in a marketplace – is distinct from that of many other western democracies (Downing, 1999; Krotosynski, 2015; Niewenhuis, 2000). The court case that centers our discussion was filed after U.S. President Donald J. Trump blocked Americans on Twitter. However, we believe our arguments hold merit for politicians who block their constituents in other countries, and, of course, online abuse is hardly unique to America.

Social media platforms may have started with conversational elements reminiscent of interpersonal communication. Early Twitter users, for example, tweeted that they were “eating pizza” or “drinking coffee.” These observations seem oddly personal and tame compared to today’s dizzying Twittiverse – a cacophony of news and information, political talk, and sincere connections between people, interspersed with vitriol, hate speech, abuse, and disinformation. They have since evolved into something more *masspersonal* – a way to communicate to many in an interpersonal way (O’Sullivan & Carr, 2018). Twitter and

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Facebook exhibit their masspersonal roles when news organizations and the public use them to circulate news to nearly two thirds of Americans (Shearer & Matsu, 2018) or when propagandists use these platforms to spread disinformation (Jamieson, 2019). These exchanges are mass-mediated because they have the potential to reach a wide audience with a single click, but they are interpersonal because the audience can respond to them much as they would to a message from a friend.

For more than a decade, politicians and their campaigns have exploited the masspersonal aspects of social media by crafting personalized messages to foster intimacy with the electorate (McGregor, 2017; McGregor et al., 2017). These messages may aim to communicate interpersonally, but they do so at a potentially enormous scale by capitalizing on the wide public audience on social platforms to provide an amplified form of publicity.

Implicit in politicians’ publicity on social platforms is their obligation to be transparent with the public by being truthfully responsive online. Members of the public seek out interpersonal conversations on these platforms with elected officials in public view, so they, too, can take advantage of the mass audience by *performing* their interactions with politicians where others can see in their own form of publicity (Masullo, in press). The public does this even though politicians are unlikely to answer their questions (Tromble, 2018). Thus, for both politicians and the public, social media have become a venue to act out celebrity as a form of “performed intimacy, authenticity and access, and construction of a consumable persona” (Marwick & boyd, 2011, p. 140; see also Baym, 2018; Marwick, 2013).

Thus, politicians' and their campaigns' use of social media is a deliberate and strategic form of publicity (Kreis, 2017; Kreiss, 2016). They try to reach a wide audience, often beyond their own constituents, to maximize the spread of their messages (Gross & Johnson, 2016). Their goal is to appeal to their supporters and to "influence the agendas and frames of professional journalists" (Kreiss, 2016, p. 1473) by amplifying their messages. Today, it is increasingly assumed that prominent politicians will maintain a social media presence, and the skill with which they do so can be a significant part of their campaign efforts and public persona. Most notably, Donald Trump turned Twitter into his personal megaphone even before he was elected president in 2016, in part to draw attention to his campaign (Wells et al., 2016). He continues to use it as his bully pulpit (Kenski, Filer, & Conway-Silva, 2018; Pain & Chen, 2019), although other politicians employ social media in similar strategic ways on a smaller scale (Gross & Johnson, 2016).

It is against this backdrop that we unpack the specific question at hand: Is it normatively acceptable for politicians to block Americans who follow them on social media? In our analysis, we tangle with related questions: Are social media public spaces? How do we, as a society, deal with the tension between the public's right to criticize elected officials and politicians' right to operate online without risk? How can we as a society balance the complementary, and sometimes contrary, goals of publicity and transparency? And, if blocking is not the answer, what is?

The Right to Criticize Public Officials on Social Media

Public officials’ treatment of social media as a public space raises complicated and untested First Amendment issues. Some of these issues came to a head in a lawsuit against President Trump along with his press secretary and his social media director in *Knight First Amendment Institute v. Trump*. In *Knight v. Trump*, seven individuals (including Philip Cohen, contributor to this essay), brought suit against the President and his staff for blocking them on his @realDonaldTrump Twitter account (the Knight First Amendment Institute, which represented the group, joined the suit). With the Department of Justice representing the defense, the case was litigated without trial in the U.S. District Court for the Southern District of New York (SDNY) after both sides agreed to a joint stipulation of the facts, most importantly that “the Individual Plaintiffs were blocked from the President’s Twitter account because the Individual Plaintiffs posted tweets that criticized the President or his policies.” Philip Cohen was blocked on June 6, 2017, after posting “a tweet showing a photograph of the President with these words superimposed on the photograph: ‘Corrupt Incompetent Authoritarian. And then there are the policies. Resist’” (Joint Stipulation, pp. 1; 18-19).

It seemed to the plaintiffs that President Trump blocked these users so that their comments would not appear in response to his and risk undermining his message and image. First Amendment law prohibits such “viewpoint discrimination,” a term the Supreme Court has used for government action that unlawfully privileges the expression of some opinions over others (Loeb, 2017). An amicus brief in the case, on behalf of a group of First Amendment scholars, including Erwin Chemerinsky and Lawrence Tribe, agreed:

Such practices are a familiar playbook for authoritarian regimes. For them, cultivating a false impression that political leaders are adored by the public is critical to warping the

public's understanding of how those leaders are really viewed by the public and, in turn, to quashing democratic impulses. (Brief of Amici Curiae, p. 19)

Because the action took place on the Twitter platform, in an account the President controls personally, there was no public record of the blocking, except testimony and screenshots taken from the Twitter website. To this day there is no public record of why, who, or how many people the President or his staff have blocked from the account and no policy specifying under what conditions such action may be taken.

SDNY Judge Naomi Reice Buchwald found in favor of the plaintiffs in May 2018, and the accounts in question were unblocked (Savage, 2018). Her main finding was that the President created a "public forum" when he engaged with the public on Twitter – where he made official proclamations and also invited public response. In a public forum, excluding people based on their political views is unconstitutional regardless of Trump's individual right of association as a citizen. She wrote:

We hold that portions of the @realDonaldTrump account – the "interactive space" where Twitter users may directly engage with the content of the President's tweets – are properly analyzed under the "public forum" doctrines set forth by the Supreme Court, that such space is a designated public forum, and that the blocking of the plaintiffs based on their political speech constitutes viewpoint discrimination that violates the First Amendment. In so holding, we reject the defendants' contentions that the First Amendment does not apply in this case and that the President's personal First

Amendment interests supersede those of plaintiffs. (*Knight First Amendment Institute v. Trump* [2018], p. 2)

On appeal, the decision was unanimously upheld by a three-judge panel of the U.S. Court of Appeals for the 2nd Circuit in July 2019 (Savage, 2019). They elaborated on Judge Buchwald’s decision, focusing specifically on public officials who conduct official business on social media platforms:

The salient issues in this case arise from the decision of the President to use a relatively new type of social media platform to conduct official business and to interact with the public. We do not consider or decide whether an elected official violates the Constitution by excluding persons from a wholly private social media account. Nor do we consider or decide whether private social media companies are bound by the First Amendment when policing their platforms. We do conclude, however, that the First Amendment does not permit a public official who utilizes a social media account for all manner of official purposes to exclude persons from an otherwise-open online dialogue because they expressed views with which the official disagrees. (*Knight First Amendment Institute v. Trump* [2019], p. 4)

The Department of Justice appealed for a rehearing by the full Court of Appeals, and the 2nd Circuit denied that appeal in March, 2020 (Marimow, 2020). The President may yet appeal to the Supreme Court.

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3 In defending the President's actions, his lawyers argued that he has the right to choose with
4 whom he associates -- that despite taking some official actions on the Twitter account, his
5 decisions about blocking people are nevertheless personal. His defenders have argued that
6 finding against him might result in draconian government regulation of social media
7 platforms, impinging on the First Amendment rights of the platform companies and on the
8 rights of individual office holders.
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19 Trump is not the only elected official entangled in these disputes. Congressional
20 Representative Alexandria Ocasio-Cortez was sued for blocking constituents on Twitter for
21 what she called "harassment and abuse" and "classist, racist, false, misogynistic, bigoted
22 comments." In light of the decision in *Knight v. Trump*, she apologized and rescinded the
23 blocks (Gold, 2019). In addition to the Ocasio-Cortez case, Phyllis J. Randall, chair of the
24 Loudoun County Board of Supervisors, was sued for blocking people on her official Facebook
25 page. In 2019, the U.S. Court of Appeals for the 4th Circuit found Randall had violated the
26 First Amendment in doing so (Marimow, 2019). In another case, the now-former governor of
27 Kentucky, Matt Bevin, was sued by the ACLU after blocking thousands of users from his
28 Facebook and Twitter accounts. That case has not yet been resolved, but a preliminary
29 decision went in the governor's favor (Watkins & Bailey, 2019).
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47 The plaintiffs in these cases, and those who have written amicus briefs on their behalf, are
48 arguing for clearer principles to be established over a shifting technological and social
49 ecosystem. These decisions will remain precedential even if Twitter or Facebook goes out of
50 business or amends their policies. They may lead to the establishment of durable principles
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protecting the rights of citizens to criticize their leaders – and communicate with one another – in the public spaces created by politicians on social media.

Old Rights, New Terrain

It is essential that the public share input and feedback, including critical feedback, with elected officials. While valuable, this is not always cordial; candidates and office holders often face antagonistic town meetings, uncomfortable encounters on the campaign trail, and more than the occasional angry phone call or email. These kinds of communiqués are important to democracy, in that representatives need to be aware of the challenges, frustrations, and concerns of those they represent (or hope to represent). At times, criticism is rancorous. Politicians often find themselves targeted by protests, hecklers, death threats, and even flying objects (e.g., tomatoes, shoes) (Bennett, 1979; Ibrahim, 2009; Munro et al., 1988). Some of these contentious forms of critique – such as protest and heckling – are nevertheless acceptable, even vital, modes of political expression (particularly for those whose views are marginalized), while others, such as credible threats and physical assault, are deemed unacceptable.

Clearly, platforms such as Twitter and Facebook are not necessary for citizens to give politicians a hard time. Still, these accessible pathways for masspersonal communication between leaders and the public provide new opportunities for abuse and harassment. It is not particularly easy to lash out at elected officials in physical public spaces, especially those in high office who are flanked by security to deter such “feedback.” Digital publics change the terrain, reducing the necessary investment of time, skill, and expense, as well as the risk of

repercussion. A death threat made via microphone at a town meeting and one made under the veil of anonymity online are handled very differently.

It is of little surprise, then, that politicians face tremendous hostility and harassment on social media (James et al., 2016; McLoughlin & Ward 2017; Nadim & Fladmoe, 2019; Sobieraj & Merchant, forthcoming; Southern & Harmer 2019a, 2019b). Given the global increase of violence against politically active women (Krook 2017, 2018), the continued racism and xenophobia directed at politicians of color (Joseph, 2011; Parks & Heard, 2009; Rogers & Fandos, 2019), and sexual harassment of women in politics (Dalton 2017; Collier & Raney 2018), political leaders from underrepresented groups are burdened with a disproportionate amount of this vitriol. This fits the well-documented patterns of gendered and racialized harassment and hostility in other arenas such as journalism, academia, gaming, and sports (Chen et al., 2018; Citron, 2014; Daniels, 2009; Ferber, 2018; Fox & Tang, 2017; Gardiner, 2018; Gray, 2012; Herring, 1999; Nakamura, 2002; Sian, 2018; Veletsianos et al., 2018).

More research has examined politicians' use of social media than the way politicians are treated in these venues, and much of the existing work fails to examine how these experiences vary based on elected officials' social location. What's more, there is very little existing research that provides insight into the experiences of politicians in the United States. The most extensive academic work on harassment of political figures (on- and offline) comes from the threat assessment literature, which focuses on the perpetrators and evaluates risk in psychological terms without attending to broader patterns of victimization (Adams et al., 2006; Dietz et al., 1991; Hoffman & Sheridan, 2008; Meloy, 2014). Beyond that work,

James, Farnham, Sukhwai, Jones, Carlisle, and Henley (2016) conducted a promising four-site, cross national survey of MP experiences with digital harassment in the UK, Australia, New Zealand and Norway, and found a tremendous amount of abuse, but did not examine gender, racial, or ethnic patterns in their data. McLoughlin and Ward (2017) conducted an analysis of tweets to MPs in the UK that did not assess variation among whites and those from racial and ethnic minorities. The authors tested for gender effects, however, and found little difference in the amount of abuse received by male and female MPs.

This finding stands alone –possibly an artifact of measurement choices—as it runs counter to both anecdotal and scholarly evidence. Anecdotally, the headline-making abuse faced by British MP Jess Philips, comes to mind. She received 600 rape threats on Twitter over the course of one day in 2016 after she speaking out against sexism from the left (Elliot & Turner, 2017). And in late 2019, eighteen female members of Britain’s Parliament decided not to run for re-election, citing rape threats, abuse, and “sexually charged rhetoric” on- and offline as the reason for their departure (Scott, 2019; Specia, 2019). Other studies suggest gender and race both play a role, at least in the UK. A 2017 study found that women, Black, Asian, and minority ethnic MPs received 41% of the abusive tweets, even though white female MPs outnumber them nearly 8 to 1 (Stambolieva, 2017). Southern and Harmer’s (2019) study of tweets directed at British MPs found that overall, female MPs were more likely than male MPs to receive uncivil tweets (defined as those incorporating stereotyping, name-calling, calling the recipient a liar, calling them unintelligent, or profanity), more likely to be stereotyped, and more likely to have their appropriateness for office challenged. They did not, in contrast to Stambolieva, find statistically significant racial or ethnic differences. Beyond the UK, studies

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3 have found that female politicians in Italy are targeted by more hostile language on Facebook
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5 (Pacilli & Mannarini, 2019), that female politicians in Japan are targeted with hate speech and
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7 verbal abuse (Fuchs & Schäfer, 2019), and that in the US, female legislators are more often the
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9 targets of hostility on Twitter than their male counterparts, with particularly egregious hostility
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11 directed at female legislators of color, much of it explicitly identity-based, drawing on racist
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13 and sexist stereotypes and epithets (Sobieraj & Merchant, forthcoming)
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20 Setting aside the volume of abuse, among these studies there seems to be a general consensus
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22 that the vitriol directed at officeholders from underrepresented groups is qualitatively different
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24 from that faced by those from dominant groups in ways that amount to sexual, racial, and
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26 religious harassment. In the US, this is visible in recent high-profile attacks against
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28 representatives Ilhan Omar (D-MN) and Alexandria Ocasio-Cortez (D-NY), both of whom
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30 have endured venomous, identity-based abuse online. It is not for the faint-hearted. The
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32 “criticism” faced by Omar, an observant Muslim and Somali-American, includes references to
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34 her as a “rag head cunt,” a “gorilla looking bitch,” a “cock holster...racist terrorist,” and a
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36 “sand nigger,” as well as outlandish accusations of cannibalism, incest, and terrorist plots
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38 (Sobieraj, 2019).
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46 Returning to the question of elected officials’ use of digital publics such as Twitter and
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48 Facebook, this suggests that preserving the right of the public to speak to and criticize
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50 elected officials on these platforms will have considerably different implications for officials
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52 from underrepresented groups. How do we balance the demand for transparency and access
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54 when politicians participate with their public on social media, with the pervasive abuse
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white women and people of color encounter there, especially those with public visibility? This is one of the challenges we explore as we discuss politicians' use of social media as public spaces.

The Roundtable

The discussants gathered here come from varied disciplines, institutions, and areas of expertise, but share an interest in these emerging issues.¹ This roundtable grew out of an informal post-presentation discussion between Gina Masullo and Sarah Sobieraj that proved so complex and fruitful they felt it should be expanded. Inspired to hear others' thoughts, they invited Philip Cohen, Tarleton Gillespie, and Sarah Jackson to participate. The scholars shared their thoughts on the questions that follow via email.

What do you see as the greatest opportunities and concerns presented by politicians' use of digital publics such as Facebook and Twitter?

Philip Cohen: The capacity to interact directly and at mass scale has great benefits, especially being able to communicate directly to the public, for free, without mediation from the news media. This has the potential to provide democratic opportunities for outsider and grassroots candidates to bypass traditional screening and weeding from powerful established actors. In addition to allowing politicians to broadcast for free, social media platforms also serve to identify, gather, and maintain groups of people with common interests. The efficiency in terms of time and money spent on these efforts is mind-boggling.

Although a true statement of the potential contribution to democratic processes, this, of course,

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3 is also a completely naïve view. These benefits, which have been demonstrated, must be
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5 weighed against the vast concentration of power in private, profit-making hands, as platforms
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7 craft their services not in the interest of the public good but in the accumulation of assets that
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9 feed their bottom line – especially engagement and information. That means the platforms
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11 thrive most when billions of people waste their time (or worse) while serving up streams of
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13 data about themselves. In the end, we see that the social media platforms have made possible a
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15 set of technological affordances that will be useful to the extent they can be separated from the
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17 rapacious business models that are parasitic on the public sphere. We have only begun to see
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19 the democratic downsides of this system, as opportunistic political actors figure out how to
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21 manipulate these contradictions to their advantage.
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28 *Sarah Sobieraj*: I share as much worry about politicians being able to circumvent the media
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30 as Philip shares enthusiasm! He is, of course, absolutely correct that direct access to a mass
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32 audience has the ability to help those who may not otherwise be granted traditional media
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34 coverage because they lack standing – a boon to outsider candidates and activists alike.
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36 However, one of my concerns is that social media platforms allow those already in positions
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38 of power to evade difficult questions from the press. With direct access to the public, there is
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40 less incentive for elected officials to hold press conferences, particularly during moments
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42 when they feel under fire. We have already seen this transpire during the Trump
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44 administration –there were remarkably few pre-COVID press conferences-- as well as during
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46 the Obama years, albeit to a far lesser extent.
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54 Having said that, my primary concern is that the ability to use social media platforms fruitfully
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will be uneven and will disadvantage political leaders from groups that are already underrepresented. I know from my own research how abusive the digital climate can be for people from marginalized groups who are openly political. The disinformation, demeaning racist, xenophobic, and misogynistic stereotypes, and attacks bent on shaming and discrediting those under fire are bound to impact how candidates and elected officials are perceived by voters. What's more, based on the patterns we've seen in other fields, including journalism –as Gina's work can attest— threats of violence will disproportionately target women, particularly women of color. In the worst-case scenarios, the climate could prompt differential attrition from political life and create a chilling effect among future leaders who have little interest in joining the fray.

Gina Masullo: I'm not as leery as Sarah. Social media have great potential – mostly unrealized – for politicians to talk directly to their constituents and for those constituents to talk back. Of course, we know these conversations seldom – if ever – rise to the Habermasian ideal of public deliberation. Most of the time, politicians are just broadcasting their messages in a form of publicity, much like a news release. They often are not enacting the related obligation of one form of transparency – to truthfully respond to constituents' questions. Thus, politicians' visibility online can actually belie true transparency. But the public may still gain by having access to politicians online because they feel as if they have spoken truth to power, even if this access may be illusory and somewhat imagined. They enjoy the cathartic release of public ranting, even if nothing actually changes. More importantly, they can *talk* to politicians online as others watch, which can rally supporters or expose the politicians' hypocrisy or foibles to a wider audience. To me, this kind of political talk clearly

has potential to serve democracy.

The problems with politicians' use of social media are also ample. All too often, these discussions end up as virtual shouting matches where it is hard to cut through the noise. The discussions between politicians and Americans can polarize onlookers, spread disinformation, or become so vitriolic that politicians or others in the conversation face outright threats or harassment. Of course, this challenges democratic norms.

Sarah Jackson: Because of the less formal, two-way nature of such platforms, and the absence of formal moderators of messages, ordinary people have more access than ever before to elites of all kinds, including politicians. I do believe there are many cases where this access has been used for good. Campaigns for social justice issues have used the ability to directly tag politicians and reply to their content as one method to have important demands seen and heard. For example, #SayHerName, a campaign that draws attention to state violence against Black cis and trans women, and #FamiliesBelongTogether, a hashtag popularized following outrage about family separation policies at the border, have been responded to and in some cases even adopted as rallying cries by politicians. Twitter can and has offered ordinary people making important change a direct line to politicians *and* (you'll note I don't say, "but" here, rather "and" - this nuance is important in my opinion) failed to design policies and methods that adequately reprimand identity-based abuse. This failure has led to the targeting of politicians (and all people) with marginal identities. To build on Sarah's point, Amnesty International found that women of color, and Black women in particular, are most subjected to this online abuse and have argued this is a human rights issue.² It stands to reason this issue is

consistent across professional and political roles.

Tarleton Gillespie: It worries me that we’re celebrating both the possibility of potent citizen activism, and the relative impotence of speaking truth to power when politicians are often not listening. This seems to be one of the fundamental paradoxes of social media as “masspersonal” systems - we’re hoping to have conversation at the scale of broadcast. We may very well be getting the worst of both.

We shouldn’t be surprised that public officials embraced social media as they would any other new medium – especially one that offers intimacy and reach in equal measure. Public officials had already turned to the web, online communities, and digital advertising as new ways to reach their constituencies. But social media platforms weren’t built with these uses in mind, not exactly. They were largely unprepared to manage the tensions of a demos, to nurture healthy debate, or to thwart concerted efforts to deceive. Though U.S. social media platforms regularly invoked the First Amendment, their understanding of it was a narrow one: more focused on getting out of the way of speech, less on cultivating a healthy speech environment.

These dilemmas around how public officials participate online, including the implications of blocking users, merely highlight the unresolved tensions of contemporary social media for all of us. Is a large-scale conversation a conversation at all? Can it be made healthier? (And what does “healthy” even mean here?) What right do individuals have to curate or censor the contributions of others? What responsibility do platforms have to assert and enforce the rules of the game? Can they both ensure an open public dialogue and protect users from harm?

Should elected officials be allowed to block people on social media platforms?

Gina Masullo: My short answer is no. To me, the default should be that politicians should not block people on social media for political disagreement or criticism – even if it is heated or uncivil – because social platforms are clearly a public forum for political debate. Democratic aims are served if the public can have unfettered access to what politicians say online and be able to communicate directly to them, as well as witness the conversations other people are having with politicians. To me, no new laws are necessary to stop politicians from blocking Americans. I argue that the First Amendment, and decades of court decisions interpreting this right, already allow Americans to debate and criticize their elected officials. Political speech need not be perfect to have value, and I would rather err on the side of protecting this speech.

However, as a scholar who studies online harassment, I do not think politicians should have to put up with threats or harassment. Certainly, in these cases, politicians can report the attacks to the platforms because this type of speech clearly violates their terms of service. But we know the platforms' enforcement is inconsistent at best. So, in this narrow area, I believe it is permissible for politicians to block people. But the bar for blocking should be high. Passionate disagreement, even if laced with profanity or barbs, may be discourse politicians need to deal with if they want to take advantage of the amplifying power of social media. Politicians should not be able to silence divergent voices, even if those voices make them angry or hurt their feelings. What type of speech might rise to the level of blocking? I would include threats of death or rape or memes that depict politicians as being killed or raped, as well as doxing.

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5 nationality also threaten democracy and should not be protected.
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10 *Sarah Jackson:* In an ideal world, the platforms themselves would be managing this problem,
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12 which is one of the most frustrating things about this question. I agree with the *Knight First*
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14 *Amendment Institute v. Trump* finding that politicians using their accounts professionally
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16 should not block public criticism of their policies; yet what are we to do with the virulent hate
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18 that is levied disproportionately at women and politicians of color and is largely unrelated to
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20 substantive political disagreement or policy debate? In theory, Twitter, Facebook, and other
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22 platforms should be holding users accountable for the latter, suspending accounts engaged in
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24 this type of abuse, yet their milquetoast efforts to this end have left individual users (politician
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26 and non-politician alike) to make personal calls about blocking. Security and privacy features
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28 like blocking and muting available to users can only go so far for politicians who, at their best,
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30 should be committed online to diverse and constructive debate, but who also have the right to
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32 live free of targeted abuse. And here then we have what I think is the real conundrum – given
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34 the profit-driven nature of social media platforms, can we ever expect them to thoroughly and
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36 carefully enforce measures against abuse and harassment? Given the publicness of politicians’
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38 Twitter use, can we expect that the features currently available on the platform, which were
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40 designed for private citizens – with much left to be desired – will address their needs? The
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42 pessimist in me says no, but we can certainly demand more of the platforms. As the editors of
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44 this special issue point out, calls for transparency, and how corporate platforms perform it, can
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46 become just another form of marketing. Thus, while transparency is a good first step (and
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48 something we still lack from many platforms), it is only useful insofar as it opens the door for
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actionable shifts both in how the technological infrastructures are being imagined, designed and implemented, and in the role corporate platforms are willing to acknowledge (and rethink) playing in the public sphere. For the latter to happen, I tend to agree with those who argue that reimagining online outlets' responsibilities to the public may come only through a shift away from privatization and toward non-profit, publicly funded platforms.

Philip Cohen: Blocking is a very harsh remedy, equivalent not just to removing someone from a town hall meeting, but to prohibiting them from ever attending again. It is much more harmful than, for example, deleting a single social media reply that violates rules of decorum. And it prevents people from interacting with other citizens in the comment threads. In

Packingham v. North Carolina, the Supreme Court ruled that a state law prohibiting registered sex offenders from using Facebook was an impermissible exclusion from "the modern public square" under the First Amendment. In this public square, public officials are not governed by the same rules as the general public. In the U.S. Court of Appeals for the Second Circuit, a unanimous panel, affirming our lower court victory in *Knight First Amendment Institute v. Trump*, wrote that "the First Amendment does not permit a public official who utilizes a social media account for all manner of official purposes to exclude persons from an otherwise open online dialogue because they expressed views with which the official disagrees." The court rejected the President's claim that he could block users as a private citizen while posting to users as a public official. When he opened his account threads for public discussion, he created a "public forum" under First Amendment doctrine, regardless of the fact that this forum is on a privately owned platform.

Public officials can exclude members of the public from these forums only if they do so based on viewpoint-neutral criteria. According to a guide written by the Knight First Amendment Institute (although the questions have not yet been litigated), they may, for example, prohibit threats or obscenity, restrict the number of posts from a particular user, or delete comments that are off-topic. The key in any such policy is transparency: its clear, public articulation and compliance with the law – not hiding behind the personal prerogatives granted private users on platforms such as Facebook and Twitter. The public must be able to see the policy and monitor its implementation. Regulating such policies in this environment, clearly, will be a legal as well as political challenge.

Tarleton Gillespie: We can (and should) call out the failings of Twitter and other platforms to reliably remove abusive and hateful attacks in an impartial way. But it is worth remembering that giving users the ability to block individuals *is* part of their moderation strategy. The alternative, that the platform police all speech and remove it to suit each of our own sensibilities, would be even more unattainable and problematic. Moderation at the platform level cannot prevent harassment entirely; and to try might produce the kind of paternalistic and oppressive oversight that would be its own problem. Handing each user the power to block people they don't want to hear lets the platform focus its moderation efforts on violations that are so disagreeable that they should be prohibited across the platform. And flagging and blocking by users provides data on which platform-wide moderation depends. For those of us without the special public obligations of transparency and accountability imposed on political figures, this is a vital part of the moderation apparatus we need to navigate our own information spaces.

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5 The court in *Knight v. Trump* certainly did offer an elegant solution to whether public
6 officials can block users on social media, by asserting that each of Trump's tweets produces a
7 tiny public forum beneath it, which shouldn't be closed based on political viewpoint. On the
8 other hand, every form of public engagement with politicians includes ground rules that
9 demand exclusion: from the town hall, to the whistle-stop speech, to the televised debate, to
10 talk radio. These ground rules are imposed by the speaker, by the audience, and by the
11 intermediary; they can be policies and norms, and they can be etched into the very design of
12 the medium. Trump was not blocking users from an otherwise unfettered space; it was a space
13 already deeply shaped by restrictions and suppositions that unavoidably structure what
14 happens there. The important question is, How are such constraints configured and imposed,
15 by whom, to what ends, and with what consequences?
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33 *Sarah Sobieraj*: It sounds as though we have some agreement here. When it comes to the
34 most abusive content, this is a no-brainer. The identity-based insults lobbed at Representative
35 Omar Ilhan that were described in the introduction to this roundtable are in violation of the
36 policies already on the books at each of the major social media platforms. Not to mention
37 that when digital abuse singles people out on the basis of protected attributes such as race,
38 gender, or religion, it becomes a civil rights violation. This is not the kind of speech the First
39 Amendment protects.
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51 But being able to block is insufficient. Unless something changes, Alexandria Ocasio-Cortez
52 and Omar Ilhan (or their staffers) are still going to need to see, flag, and report each
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individual piece of unsettling content they encounter that meets the threshold for removal. Having spent the last five years studying identity-based attacks online, I know all too well that the direct messages, tweets, comments, gifs, and still images flung at visible women, particularly women of color, can be very hard to unsee. So, we need to protect the rights of the public to participate in conversations of political and social import, but also protect civil servants from underrepresented groups from an unreasonably hostile work environment.

To what extent do you see hostile treatment of politicians in underrepresented groups as a significant factor in setting precedents about public access via social media?

Tarleton Gillespie: I’m convinced the *Knight v. Trump* ruling would have been different if President Trump were a woman or a person of color. Some of the criticism in question would undoubtedly have been misogynistic, hateful, and threatening. Women and people of color have endured harassment online from the very start, especially those who are publicly prominent. It is hard to overemphasize how profoundly different the experience can be for them than for white men. Because of this, users must have the right to block harassers.

Because Trump’s critics, while harsh and off-color, weren’t harassing in the conventional sense, the court ruling offers no guidance for the politics of blocking users when social media is weaponized. But what happens if we insist that Ilhan Omar should have the right to block harassers, but (in line with *Knight v. Trump*) we prohibit her blocking users based on their viewpoint? Harassers could claim their posts were merely criticism, and at least some of that harassment would be hard to adjudicate. And who decides?

On the other hand, what makes Twitter even more complicated, and blocking more problematic, is that contributions are often addressed to one audience, but performed for another. If I reply to a tweet from President Trump, I'm speaking to him, but I'm also speaking to, or in front of, everyone else participating in or reading that thread, as well as everyone who follows me on the platform. Trump may tweet to express himself, but he also tweets in order to call into being the thread of commentary that follows, ideally one that supports his political ambitions. Blocking a user prevents them from responding, but it also excises their comments from the discussion. Harassing a speaker may silence them, but it may also drive other participants out of the discussion, as Sarah Sobieraj alluded. These doubled purposes complicate the question.

Philip Cohen: In my opinion, posting hostile comments about politicians on social media is sometimes the equivalent of putting a hostile bumper sticker on one's car, or an obnoxious sign in one's yard. It goes with the territory. But social media sites make it more complicated in several ways. First, they make it much more efficient to organize mobs, protected by anonymity and fueled by bots, trolls, and foreign powers, among other bad actors. Second, they bring the hostile treatment directly to the politician's face, making it less like a bumper sticker and more like standing on the lawn of their private residence and shouting with a bullhorn (or burning a cross). Third, they involve and target other users, poisoning the discourse and driving them from the public square with threats and harassment. Naturally, the impact of this abuse falls disproportionately on gender and racial/ethnic minorities, and the result is not only personal hardship for them, but the degradation of our discourse by their

exclusion.

As this behavior takes place on private platforms rather than in state-controlled environments, it falls to these companies to devise and enact policies to mitigate these harms – a responsibility at which they have failed spectacularly. The interests of social media companies in accumulating users and generating their engagement attract them irresistibly toward controversy and inflammatory content. (Of course, there are also possible remedies from police and civil courts, but the obstacles and inefficiencies there appear to be too great to reasonably overcome.)

Gina Masullo: Decades of research show that people from underrepresented groups, such as women and people of color, are more likely to get marginalized both offline and online. We know online attacks on women and people of color are plentiful. But what we do not know is if *most* cases of politicians blocking Americans involve threats and harassment, or just disagreement. It is possible, and I would argue likely, that in many cases politicians block to shut off voices they do not want to hear. Thus, they are not merely protecting themselves – they are ceasing to live up to an obligation to be transparent with the public. I argue that the very act of politicians blocking Americans for disagreeing with them violates their obligation to be transparent representatives of the public. It is an additional breach of this normative transparency that members of the public are not informed when they are blocked or told what tweet or post led to the action. The public is quite literally in a virtual darkness, the very antithesis of transparency. And politicians, as a result, get to utilize the publicity aspect of social media without the tradeoff of truthful transparency.

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5 Of course, my argument does not negate the personal and societal harm if politicians from
6 underrepresented groups are threatened or harassed online. I worry that if we try to protect
7 threatened and harassed politicians by letting politicians block *everyone* on social media at
8 will, politicians will use that power to silence speech that challenges them or paints them in
9 an unfavorable light. I think we can protect under-represented politicians and others without
10 taking this extreme step.
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21 *Sarah Sobieraj:* Based on my last five years of work, I think extreme examples *are*
22 commonplace for highly visible women in the political arena, especially for women of color.
23 That is part of why hostility toward political figures from underrepresented groups is at the
24 heart of the matter for me. My concern is that neutral precedents will create disconcertingly
25 non-neutral outcomes. Even if we bracket off the extreme examples (e.g., rape threats) and
26 consider slightly more metered pushback, people from underrepresented groups will still be
27 wading into a different pool than their counterparts. They will still need to navigate the
28 constant invocation of worn-out identity-based stereotypes, questions about their intelligence,
29 commentary about their physical appearance, and attempts to discredit their academic
30 credentials, morality, work ethic, experience, and authority, just to name a few. And in an
31 evaluative landscape that confers acceptability on a tweet-by-tweet and account-by-account
32 basis, we have no way to acknowledge or ameliorate the cumulative impact of the disparate
33 barbs that fall below the bar. The focus on the rights of the speaker obscures the rights of the
34 (reluctant) listener. I fully understand there is no (legitimate) legal mechanism to address this
35 gap. This is exactly my point; reasonable legal outcomes are quite likely to yield unreasonable
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personal and democratic costs.

What role do the attributes of social media platforms, such as Facebook and Twitter, play in shaping your views on this issue? Would your answer be different if the platform were different?

Sarah Jackson: As I’ve noted above, the platforms can and should do a better job monitoring abuse and harassment – outright racist and sexist name-calling and threats, for example, have no place in the public sphere and a corporation enforcing values against them online should be as logical as a corporation enforcing values against them offline. A hotel, for example, reserves the right to refuse service to a patron who calls other patrons racial slurs or threatens them with rape – this is a no-brainer. The challenge is that social media companies need to familiarize themselves with sociological understandings of power and inequality in order to develop an effective method for this. The methods I’ve seen, which rely on algorithms (that we do not have transparency about the programming of) to suspend those whose content is reported as offensive can be exploited as an organized form of abuse called brigading to have members of marginalized groups suspended. The danger, which we have already seen arise on both Twitter and Facebook, is that those with social power will begin to report their critics for abuse, using a definition that does not reflect historical or contemporary realities of inequality. Some have called for increased algorithmic transparency and development in response to this problem. I tend to think human beings with an in depth understanding of social contexts doing the work of reviewing content would be much better and avoid the risk of those exploiting the algorithm doing so more effectively with a deeper knowledge of its construction.

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6 *Tarleton Gillespie*: Agreed. This dilemma should be understood as a profound indictment of
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8 social media platforms. They failed to curtail harassment and cruelty. They failed to instill
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10 norms of propriety, an ethic of care, or an ethos of public obligation. They failed to design
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12 solutions to the problems of context collapse. They failed to apprehend what is required to
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14 foster a healthy public forum.
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20 But it may be more than just the need to moderate better. Part of the problem is that platforms
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22 like Twitter have conflated the tools of content moderation with the tools of community
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24 management. In its commitment to robust free speech, Twitter foisted much of the
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26 responsibility for mitigating harm to the victims of such harassment campaigns. Blocking and
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28 muting were intended to protect users from harassment and other unwanted attention, so
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30 Twitter wouldn't have to. But Twitter offers few tools for the management of community or
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32 collective participation. Sometimes we need tools not just for prohibition or exclusion, but for
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34 cultivation. Large-scale collaborative discussion sites like Wikipedia and Reddit depend on
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36 volunteer moderators not only to remove pornography and ban harassers, but to set the terms
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38 for good faith participation, mediate disputes, and build up a sense of community. Twitter
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40 offers no such mechanisms, which means users must adapt tools like blocking as clumsy
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42 substitutes.
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50 *Sarah Sobieraj*: If the platforms enforced their policies it would be a game changer, though
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52 there is little sign that this is in the cards. Pre-emptive moderation, whether via artificial
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54 intelligence or human judgement, appears to be the only way to create distance between the
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3 vitriol and the target. The problem of scale is well-documented—and many invoke it to argue
4 that pre-emptive review is impossible—but hybrid models are conceivable. For example,
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6 some systems already allow for users to earn their way out of pre-moderation by establishing
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8 a track record of posting content in keeping with the community standards. Other platforms
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10 might pre-moderate at random, reducing the workload dramatically. Effectively, pre-
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12 moderating disincentivizes posting content that violates community standards because, if no
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14 one will see it, why bother? With a hybrid system, flagging and reporting remain in place as
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16 back-ups, not first-line defenses. And none of this is to minimize the outsized effort and
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18 investment that even a hybrid system would require, or the daunting implications for those
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20 who would ultimately do the work.
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28 *Philip Cohen:* Social media are a vital innovation for contemporary society, in terms of
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30 politics and also for other forms of social interaction, from registering complaints about
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32 public infrastructure, to keeping tabs on sick relatives, to emergency notifications and
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34 Amber Alerts. It is untenable, and unsustainable, that such vital services remain in largely
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36 unregulated, profit-making private hands. I don't see a way out of this mess without either
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38 creating state-owned social media platforms or imposing strict state regulation on public
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40 media companies – including antitrust action, privacy controls, advertising restrictions, and
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42 also policies for use by public officials that comport with First Amendment law.
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49 For example, Twitter policies regarding suspending and removing accounts are opaque and
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51 capriciously enforced (as anyone knows who has attempted to call on them), and there is no
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53 public record created when users block each other – even if those users are public officials. In
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our case, we have only our testimony and the President's stipulation that he personally blocked our accounts, and there is no publicly accessible policy or list of others he or his staff may have blocked. Further, we have no guarantee that court decisions in our favor will be readily applicable to Twitter or other platforms if they decide, as is their right, to alter their user agreements however they want. There are democratic elements in this system, but it's no way to run a democracy.

Gina Masullo: This is a thorny problem with no easy answer. I agree with my colleagues that a hands-off approach where we just hope platforms will consistently enforce their own terms of service is naïve and won't work, but I'm also not comfortable with a shift to state-owned social media. I like Sarah Sobieraj's idea of pre-emptive moderation – either randomly or until a person “earns” the right not to be pre-moderated. This could deter people from posting abusive or harassing content. I also see merit in Philip's suggestion of regulating social media as a public utility. Regulation, for example, could require that social media must be transparent and consistent about suspending and removing accounts and that blocked users receive an explanation of what content got them blocked. That could clarify whether most politicians who block Americans are doing so in response to abuse and harassment or to silence divergent voices.

Most of the debate has been about officials blocking select people from interacting with them. If you were able to wave a magic wand, and set an additional precedent about politicians' use of social media, what would it be?

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Gina Masullo: If I had a magic wand, I would wish politicians and candidates took more time to actually engage with the electorate on social media, rather than use platforms mainly to disseminate information. Social media have the potential to give Americans a chance to talk directly to politicians and get answers from them, and I wish more of this took place. Social platforms could be where Americans actually learn about policies, what their elected officials believe and why, and how these policies influence their lives. What I imagine is much more than politicians spouting their views in a form of publicity. I wish social media were a place where a true exchange of ideas takes place – a conversation, if you will, between the electorate and the elected. It may be quixotic to expect politicians to abandon using social media as a bullhorn. But I crave more transparency amid the publicity. Sadly, social media are nowhere near that today.

Sarah Jackson: It should go without saying that politicians should not use their outsized platforms to bully and abuse others. If one is a public servant, name-calling and encouraging others to gang up on those with whom you disagree does an immense disservice to public debate in a liberal democracy. This seems to me much more a question of common values and decorum – that I admit does not appear to be shared among politicians – than an enforceable rule.

Philip Cohen: I would like to see federal antitrust action, and threat of action, used to compel the big social media companies to comply with comprehensive public regulation, as generated through democratic processes with transparency and accountability. If we can't make the companies do justice to democratic discourse, I would like to see them either seized by the

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3 state or else regulated in the way public utilities are (or should be). What happens on social
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5 media is too important to leave to social media companies to govern.
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10 *Tarleton Gillespie:* We're going to need a bigger wand! I want one that compels everyone to
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12 participate in good faith, that erases harassment and misinformation campaigns, that compels
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14 public officials to humbly serve the flourishing of their constituents, that compels social
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16 media platforms to forgo data-driven advertising and become non-profit stewards of twenty-
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18 first century public life. The risk of homing in on solutions is that it tempts us to ignore the
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20 true scope of the problem.
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26 Any changes to contemporary social media should better align the opportunity to access
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28 officials with higher standards of participation. If there's a forum from which you cannot be
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30 excluded, the standards of participation in that forum should be high enough to match that
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32 privilege. Those might be standards of propriety and lawfulness; expectations of good faith
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34 commitment to the issue at hand, to the polity, and the truth; and conditions of fair play
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36 designed to make dialogue possible. Platforms may not be good at setting high standards for
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38 public participation; but they could design the technical environment to better structure and
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40 incentivize it.
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47 In the end, I think we're collectively capable of distinguishing criticism from harassment if we
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49 commit to looking, if we acknowledge that harassment can be a political tactic for silencing
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51 and excluding as much as blocking can be, if we admit that rampant abuse could discourage
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53 from public service precisely the kind of people we need more of, and if we're willing to hold
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up good faith participation as a shared goal, deeply vital to the democratic project.

Conclusions

Should politicians be allowed to block Americans on social media? Our answer to this core question is: Sometimes, but not in every situation. We approached this project expecting we would have starkly differing viewpoints, and in some ways we have. But we have views in common as well. While blocking clearly poses normative and legal questions, so does the expectation that politicians be accessible and transparent even if it subjects them to abuse. Implicit in our arguments is the need to balance publicity and transparency online. We expect, and even encourage, politicians to be public online, using the digital space to advertise their views and articulate policy positions. And we also want politicians to have some level of transparency by being open to and truthfully responsive to the electorate online.

We differ on our interpretation of the point where transparency turns normatively bad. We all seem to support blocking for abuse or harassment, but some of us are more comfortable than others with blocking for lesser crimes. This reveals the palpable tension between transparency as a celebratory goal that serves the public sphere, and transparency as a potentially oppressive burden that can subject politicians, particularly women and people of color, to undue hostility and harm.

We all agree that there must be some remedy for protecting politicians against the viciousness disproportionately targeted at women and people of color online, even if blocking is not the

cure-all. The fact that social media are privately owned, profit-making venues that inconsistently enforce their own rules about offensive speech muddies the issue and makes it more difficult to solve.

We also offer some clear suggestions for how to wrestle with this problem, even if there is no easy solution. Some of us advocate government takeover of social platforms, while others are more comfortable with regulating social media like a public utility. One option is pre-emptive moderation of social media posts where people essentially *earn* the right, through good behavior, not to be moderated in advance. Another idea is random moderation where people are encouraged to behave because they do not know when their comments might be reviewed, akin to a virtual Panopticon (Foucault, 1995). A third is to build tiers of participation, with different obligations and different standards for removal. Regardless of the method used to handle abuse and harassment of politicians on social media, it is essential that platforms be compelled to act quickly and consistently about enforcing their own rules prohibiting offensive speech.

Where our views diverge is around political blocking. Should the public be expected to conform to a high bar of discourse before being allowed to engage with politicians? Or should the onus be on politicians to be transparent by being open to what Americans have to say, with a high bar for limiting public speech? Is there more normative value in ensuring politicians do not have to worry about being attacked online, or in assuring that public disagreement with elected leaders will not be unfairly labeled an attack in an effort to silence voices? We reach no consensus on these questions. Rather, our debate opens new lines of communication about

this topic. We hope it leads to more thought, more discussion, and ultimately, greater clarity about what type of digital space we want and how we may achieve that.

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Note

¹ Sarah Sobieraj’s background is in the use of extreme incivility in US political discourse. She is Professor of Sociology at Tufts University and author of the forthcoming book, *Credible Threat: Attacks Against Women Online and the Future of Democratic Discourse*. Gina M. Masullo’s research focuses on how the digital space both connects and divides people, and her forthcoming book *The New Town Hall: Why We Engage Personally with Politicians*, deals directly with the questions raised in this paper. She is Assistant Professor of Journalism and Associate Director of the Center for Media Engagement, both in the Moody College of Communication at The University of Texas at Austin. Philip N. Cohen, Professor of Sociology at the University of Maryland, brings the unique vantage point of having been blocked by Donald Trump on Twitter. He is one of the plaintiffs in the landmark case, *Knight First Amendment Institute v. Trump* (2017). Tarleton Gillespie, Senior Principal Researcher at Microsoft Research New England and Associate Professor of Communication at Cornell University, examines how social media platforms and other algorithmic information systems shape the character of public discourse. He is the author of *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions that Shape Social Media* (2018). Sarah J. Jackson, Presidential Associate Professor at the Annenberg School for Communication, University of Pennsylvania brings expertise in the way technology is used by marginalized groups. She is co-author of *#Hashtag Activism: Networks of Race and Gender Justice* (2020).

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