KNIGHT
FIRST AMENDMENT
INSTITUTE
at Columbia University

July 2, 2019

Via ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
New York, New York 10007

Re: ***Knight First Amendment Institute at Columbia University, et al. v. Trump, et al.*****, No. 18-1691**

Dear Ms. Wolfe,

Pursuant to Fed. R. App. P. 28(j), Plaintiffs submit this response to Defendants' letter addressing the U.S. Supreme Court's recent decision in *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921 (2019). For two reasons, *Halleck* does not support Defendants' arguments.

First, Defendants' suggestion that the Supreme Court's decision in *Halleck* requires reversal here because the district court did not conduct a separate state action analysis is wrong. Although the district court looked to this Court's earlier decision in *Halleck* in concluding that Defendants' operation of the @realDonaldTrump Twitter account is "governmental" in nature, the factual findings undergirding that conclusion also establish state action. *See* Appellees' Br. 16–26, ECF No. 75. Indeed, Defendants have effectively stipulated to state action by acknowledging that the President uses government resources to operate the account for official purposes. Joint Stipulation ¶¶ 32–45 (A54–A59), ECF No. 52. Accordingly, even if the Court uses a different analysis than the district court, ample record evidence exists to support its judgment. *See, e.g.*, *Bertin v. United States*, 478 F.3d 489, 491 (2d Cir. 2007) (citation omitted) (agreeing with the district court's conclusion even where "our analysis is somewhat different").

Second, none of the concerns that animated the Supreme Court's decision in *Halleck* are present here. *Halleck* concerned whether a private entity could be considered a state actor because it operated New York City's public access channels. The fact that the City did not possess a property interest in the public access channels was relevant only because the private entity, rather than the government, operated the channels. As the Court made clear, were the government to "itself operate the public access channels . . . the First Amendment might then constrain the local government's operation of the public access channels." *Halleck*, 139 S. Ct. at 1934.

By contrast, the question in this case is whether the President of the United States, a quintessential state actor, acts in his official capacity when he and his staff operate the @realDonaldTrump account for official purposes and using government resources. The answer, as Plaintiffs have shown, is undoubtedly yes.

Respectfully,

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cc: All Counsel of Record