



## Supreme Court Holds That The First Amendment Does Not Apply To Private Operators Of Public Access Television Channels

***Manhattan Community Access Corp. v. Halleck, No. 17-1702***

Decided June 17, 2019

**Today, the Supreme Court held 5-4 that private operators of public access television channels are not state actors subject to the First Amendment.**

### **Background:**

The First Amendment generally restricts only state action. Private entities, however, may be treated as state actors in some circumstances, such as where they perform functions traditionally performed by the government alone. Here, New York City designated Manhattan Neighborhood Network (“MNN”—a private, independent non-profit corporation—to operate public access television channels in Manhattan. After Respondents produced a video criticizing MNN, MNN banned the video, and prohibited Respondents from submitting content to MNN. Respondents sued MNN and others under the First Amendment. The Second Circuit held that public access channels are public speech forums protected by the First Amendment, and that MNN—as the entity selected by the City to administer those channels—is a state actor, even though it is not controlled or funded by the government.

### **Issue:**

Does a private entity that operates public access channels qualify as a state actor subject to the First Amendment?

### **Court’s Holding:**

No. Private operators of public access channels are not state actors subject to the First Amendment because the operation of

*“[M]erely hosting speech by others is not a traditional, exclusive public function and does not alone transform private entities into state actors subject to First Amendment constraints.”*

Justice Kavanaugh,  
writing for the majority

**Gibson Dunn submitted an amicus brief on behalf of the Cato Institute in support of Petitioners:**

*Manhattan Community Access Corporation, Daniel Coughlin, Jeanette Santiago, and Cory Bryce*

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public access channels on a cable system is not a function traditionally reserved exclusively to the government.

## What It Means:

- While the First Amendment constrains state actors when they operate public speech forums, the decision confirms that those constraints do not apply to private entities. Merely operating a public forum does not make a private entity into a state actor under the traditional test for state action because operating a public speech forum is not a traditional, exclusive public function. Instead, private entities that operate forums for speech retain their “editorial discretion” over the speech and speakers on those forums.
- The Court rejected the argument that MNN qualifies as a state actor simply because the City designated it to operate the channels. Instead, the Court compared the City’s designation to a government license, government contract, or government-granted monopoly, which “d[o] not convert the private entity into a state actor—unless the private entity is performing a traditional, exclusive public function.” Similarly, the Court explained that a private entity does not become a state actor simply because the government regulates its activities.
- Justice Sotomayor’s dissent would have held that the City retained a property interest in the channels pursuant to an agreement with the cable system that hosted them. She would have concluded, therefore, that MNN qualified as a state actor in administering the City’s property interest. The majority disagreed, holding that the agreement did not give the City a formal property interest. The majority emphasized that the analysis may have been different if the City administered the channels itself or retained a property interest in them.
- The opinion is the sixth this Term from Justice Kavanaugh, and offers insight into his approach to First Amendment issues. The decision expressly applies to private operators of public access cable channels, but has implications for Internet companies and property owners that also provide forums for public speech.

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As always, Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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