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

Today, the Supreme Court held in a 5-4 decision that a private entity appointed by a municipality to operate public-access television channels under a city-issued cable license is not a government actor subject to the First Amendment.

Background: Pursuant to New York law, New York City granted a cable company a franchise to operate a cable-television system within the City. As required by state statute, the franchise agreement required the cable company to set aside a certain number of public-access channels that would be available on a non-discriminatory, first-come-first-served basis. The City designated Manhattan Community Access Corporation, known as “MNN,” to administer the public-access program. MNN subsequently refused two producers further access to the public-access channels after they produced a program critical of MNN. Seeing viewpoint discrimination, the producers—who were the respondents in the Supreme Court—sued, alleging a violation of their First Amendment rights.

Issue: Whether a private entity designated by a municipal government to operate public-access channels pursuant to a city-issued cable license is a state actor for constitutional purposes.

Court’s Holding: In an opinion written by Justice Kavanaugh and joined by the Court’s four other conservative justices, the Court held that MNN is not a state actor and thus is not subject to First Amendment limitations on government action. The decision, which the Court expressly limited to the particular facts before it, found that MNN remained a private actor for constitutional purposes because, according to the Court, creating fora for diverse speech is not traditionally an exclusively governmental function, the City had no property interests in the cable company’s public access channels, and the City’s designation of MNN as the administrator to operate the channels pursuant to the state’s first-come-first-served regulatory scheme did not make MNN a municipal agent.

Justice Sotomayor dissented on behalf of herself and the Court’s three other liberal justices. According to Justice Sotomayor, the majority opinion rests on a fundamental mischaracterization of the facts, erroneously treating MNN as if it were a private entity that happened to enter a regulated market rather than as an agent of the City, which, according to the dissent, had a property interest in the public-access channels under the franchise agreement it entered with the cable company. On these facts, the dissent says, the Court should have held MNN to be a public actor constrained by the First Amendment.

Note: Mayer Brown represented the respondents in the Supreme Court.