



Legislative UPDATE

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President's Tweets May Affect Social Media Policies

Earlier this week, a federal district judge in New York concluded that the blocking of some Twitter users from President Trump's Twitter account (@realDonaldTrump) on the basis of their political views violates the users' First Amendment free speech rights. The issue in [*Knights First Amendment Institute at Columbia University v. Trump*](#) was whether the President's Twitter account, which was created by the President before he was inaugurated, is an account "owned or controlled by the government" that would implicate the protections of the First Amendment.

To determine whether the President's Twitter account is owned or controlled by the government, the court reviewed: (1) the extent to which the President and his staff controlled the content of the tweets; (2) their ability to prevent, through blocking, other Twitter users from accessing the President's Twitter account timeline and from participating in its interactive space; and (3) the extent to which the President presented his account as a "presidential account" as opposed to a "personal account." Concluding that the account was used to take actions that can be taken only "by the President as President," the court held that certain aspects of the account are controlled by the government: (1) the content of the tweets; (2) the account's timeline; and (3) the interactive spaces associated with the tweets.

Following the holding that those three components of the account are “controlled by the government,” the court next reviewed which of the three are subject to the First Amendment. The court held that the content of the tweets and the timeline are government speech, which does not implicate the First Amendment. However, the court concluded that the interactive space associated with replies and retweets created by each tweet sent by the President’s Twitter account is a “designated public forum” that is subject to the First Amendment. The court’s reasoning was that: (1) the account is generally accessible to the public at large without regard to political or other limiting criteria; (2) the public can view his tweets; (3) anyone with a Twitter account who wants to follow the account can do so, unless the person has been blocked; and (4) anyone who has not been blocked can participate in the interactive space by replying or retweeting the President’s tweets.

The government is very limited in the restrictions it can impose on the use of a designated public forum. (The legal terminology is that any limitation “must be narrowly drawn to achieve a compelling state interest.”) Because of that limitation, any restrictions that are based on a participant’s viewpoint are prohibited. The court thus concluded that the President may not block certain Twitter users from participating in the interactive space on the basis of their political views.

Although the result is not legally binding on Texas cities, it is instructive to city officials who are responsible for a city’s social media site. The decision may mean that city officials should not treat individuals who participate on the city’s social media platforms differently on the basis of their political views. For example, a city official probably shouldn’t delete only those comments that are disparaging or critical of the city or block the people who make such comments.

Additionally, city officials who maintain their own private social media accounts should consider how the decision affects them. If a court were to determine that the “private” site is “owned or controlled by government,” the same restrictions on selective deletions or blocking may apply.

This decision could have far-reaching implications related to the use of social media by government and government officials. How far those implications might go remains to be seen. It is likely that this case will be appealed to a higher court, and League staff will monitor the case, and provide more detailed analysis in upcoming materials.

Water Conservation Advisory Council: **Public Comment on BMPs**

The Water Conservation Advisory Council has opened a public comment period for eight municipal best management practices (BMPs). The BMPs include:

- Conservation Coordinators
- Custom Conservation Rebates
- Customer Characterizations: Analysis to Prioritize BMP Selection
- Enforcement of Texas Irrigation License Standards
- Outdoor Watering Schedules

- Plumbing Assistance Programs for Economically Disadvantaged Customers
- Public Outreach and Education
- System Water Audit and Water Loss

The BMPs can be reviewed on the *Save Texas Water* website (www.savetexaswater.org). The comment period ends on June 11, 2018.

Questions? Please contact Josh Sendejar, Water Conservation Specialist with the Water Conservation Advisory Council, at Josh.Sendejar@twdb.texas.gov.

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