



# Trump's Tweets: a Warning that Public Officials' Personal Social Media Posts Might Actually be the Government's

07.24.2019 | By [Amber R. Maltbie](#), [William A. Powers](#)

A recent federal appeals court decision, *Knight First Amendment Institute v. Trump*, concluded that action taken by the President through the use of his personal, not just official White House, Twitter account was considered governmental action and could therefore violate the First Amendment. The court then concluded that the act of blocking Twitter users from following the @realDonaldTrump handle was viewpoint discrimination in violation of the First Amendment.

The case is sure to be appealed to the Supreme Court, but in the meantime it serves as a warning, and reminder, that public officials, including elected officeholders, may not be able to shed their official government personas on their personal social media accounts. The decision will have far-reaching impact, as the use of social media to connect with constituents regarding official business has become exceedingly common among elected officials.

The case turned in part on finding that the President's Twitter account had become a public forum, giving it Constitutional protections. It is clear from the case, however, that the court considered the specific facts of the President's use of Twitter, and that isolated or even occasional use of a personal account will not transform a personal account into a public forum. According to the court, the key factors in this case were:

- The social media account was utilized for all manner of official purposes;
- The account bear all the trappings of an official, state-run account;
- The account is one of the White House's main vehicles for conducting official business; and
- The President's Tweets are even considered an official government record by the National Archives.

Although not every public official will use Twitter or other social media to the same extent as President Trump, the issue is not unique to the highest office in the land. In fact, similar cases have included social media posts by county school board officials and employees of a county sheriff office, to name a few.

Not every public official who blocks a person on Twitter will face a lawsuit under the First Amendment, however, look for these cases to become more common, such as this new lawsuit targeting Congresswoman Alexandria Ocasio Cortez.

And even if you aren't subject to a suit, more and more jurisdictions, such as Chicago, are adopting similar anti-blocking rules into their ethics standards. Consequently, a violation of these rules could even lead to potential administrative fines.

If you are an elected official, government appointee, or even a public agency employee, the Trump Twitter case is an important reminder to have a clear understanding of whether your social media accounts are truly personal and to keep your offices' policies and trainings current.

If you have any questions about the impact of this case, or your social media or political compliance programs generally, please reach out to [wpowers@nossaman.com](mailto:wpowers@nossaman.com) or [amaltbie@nossaman.com](mailto:amaltbie@nossaman.com) to see how we can help.

*Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019) (School Board Official's blocking violates First Amendment)

*Robinson v. Hunt Cty., Texas*, 921 F.3d 440 (5th Cir. 2019) (Employees in County Sheriff's office who blocked critics on social media violated First Amendment)