

**POLITICS, ETHICS, & SOCIAL MEDIA**

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**BEFORE WE START**

*On your mobile device...*

- Please log into.... **SLIDO.COM**
- EVENT CODE.... **WALSH2**

Please choose all social media formats you currently use:

- Facebook
- Twitter
- Instagram
- Snapchat

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**SOCIAL MEDIA = DIGITAL RECORDS**

- Social media enables interaction between government and the public
  - Improves services, increases overall transparency
  - Valuable audio, video and interactive capabilities without substantial costs
- Social media = digital records
  - Even personal accounts may be subject to Sunshine laws, First Amendment issues, and Records Retention laws
- Before embracing social media
  - Reflect on your goals and objectives
  - Have a clear understanding of how social media can support those core functions

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## ISSUES TO CONSIDER

- Private v. Public
- State Sunshine Laws
  - Open Records
  - Open Meetings Act
- First Amendment
  - Rights & Risks
- Records Retention

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## PUBLIC V. PRIVATE



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## OPEN RECORDS EXAMPLE LAWS

- "Public record" means
  - All books, paper, maps, photographs or other documentary materials, **regardless of physical form or characteristics**, made or received by an agency in connection with the transaction of public business
- Freedom of information
  - "...whether or not the records are required by law to be created or maintained."

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**OPEN RECORDS  
MEMBER ETHICS & CODE OF CONDUCT**

- Rule: Treat each post as if it will appear on the front-page of a national newspaper
  - Alabama school board member called on to resign after social justice activist accuses her of racist tweets
  - Michigan school board member resigns after angry Facebook post: "Your smiles will soon turn to mourning. God is not mocked."
  - Maine school board member resigns after being criticized for racist social media posts
  - Virginia Board of Education member resigns over racist, sexist, vulgar tweets

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**SCHOOL BOARD MEMBER DONNA PIKE  
JEFFERSON COUNTY, AL**

- Controversy stems from Pike's posts on her Facebook account (NOT set on private)
- "I stand with Roseanne" post; another calling Valerie Jarrett a "Muslim, born in Iran;" shared a (false) photo of Michelle Obama refusing to salute the flag
- On June 12, Activist & former Jefferson County student Carlos Chaverst confronted Pike board meeting
- On June 19, Jefferson County Board called for Pike's resignation

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**SCHOOL BOARD MEMBER DONNA PIKE  
JEFFERSON COUNTY, AL**

- June 19 Resolution:
- "The postings in question are **repugnant to the Board's values** and **undermine public confidence** in the Board's willingness and ability to provide **equitable educational and employment opportunities** in an inclusive and racially unbiased environment.
- Recent social media postings by Board Member Donna Pike are **divisive if not inflammatory**, have generated **unflattering local, statewide, and national media attention** and a **negative public response**, and have **diverted time** and attention from the District's pressing educational needs and challenges."

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**SCHOOL BOARD MEMBER DONNA PIKE  
JEFFERSON COUNTY, AL**

- Sally Smith, Executive Director of Alabama Association of School Boards
  - While board members “**certainly have First Amendment rights**” those rights “must be balanced with the **consequences** of posting material that the community could view unfavorably.”
  - Board members “should always be cognizant that what they do as individuals **does carry over as a board member** and could **impact the view of the board as a whole.**”

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**OPEN MEETINGS  
POTENTIAL CONSEQUENCES**

- Generally,
  - Public must have access to all meetings
    - Unless exempt – e.g. Closed session
    - Radio, TV, and Public can broadcast or record meeting
- Social media violations
  - Quorum of members converse via social media regarding official business
  - A policy or public matter is formulated, presented, or discussed

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**CONSTITUTIONAL RIGHTS**

**The First Amendment**  
“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

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**DAVIDSON V. LOUDON COUNTY BOARD OF SUPERVISORS**

- Chair of the County Board runs a Facebook page to keep in touch with her constituents.
- Chair wrote, "I really want to hear from ANY Loudoun citizen on ANY issues, request, criticism, compliment, or just your thoughts."
- A Loudon citizen posted a comment to a post on the Chair's page alleging corruption on the part of Loudoun County's School Board.
- Chair deleted the entire post and blocked the citizen. The next morning, the Chair decided to unblock the citizen.
- Citizen sued, alleging a violation of his free speech rights.

Davidson v. Loudoun County Board of Supervisors et. al, No. 1:2016cv00932 - Document 132 (E.D. Va. 2017)

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**DAVIDSON V. LOUDON COUNTY BOARD OF SUPERVISORS (CONTINUED)**

- Chair conceded in court that she had blocked the citizen "because she was offended by his criticism of her colleagues in the County government." In other words, she "engaged in viewpoint discrimination," which is generally prohibited under the First Amendment.
- The Chair's offense at the Citizen's views was therefore an illegitimate basis for her actions.
- The suppression of critical commentary regarding elected officials is the quintessential form of viewpoint discrimination against which the First Amendment guards.
- Court granted a Declaratory Judgment.

Davidson v. Loudoun County Board of Supervisors et. al, No. 1:2016cv00932 - Document 132 (E.D. Va. 2017)

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**KNIGHT FIRST AMENDMENT INSTITUTE AT  
COLUMBIA UNIVERSITY V. TRUMP**

- Parties:
  - Petitioners: Knight First Amendment Institute at Columbia University and seven (7) individual Twitter users
  - Defendants: Donald Trump, Daniel Scavino, Hope Hicks, Sarah Huckabee Sanders
- Issues:
  - Whether a public official may “block” an individual from the official’s Twitter account in response to the political views expressed by the individual

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**KNIGHT (CONTINUED)**

- Held
  - The “interactive space” portion of @realDonaldTrump, where users may engage with the President’s tweets is a **designated public forum**
  - Blocking Twitter users from replying to @realDonaldTrump amounts to **unconstitutional viewpoint discrimination** in violation of the First Amendment

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**KNIGHT (CONTINUED)**

- Interesting language...
  - “No one can seriously contend that a public official’s blocking of a constituent from her **purely personal** Twitter account – one that she **does not impress with the trappings of her office** and **does not use to exercise the authority of her position** – would implicate forum analysis, but those are hardly the facts of this case.”
- Personal/Political

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**BOARD MEMBER OPTIONS  
PRIVACY & LEGAL RISKS**

- Avoid social media completely
  - Avoids all legal risk
  - Limits communication and openness with the public
- Have an information-only site
  - Limits potential violations of First Amendment
  - Loses interaction with public
- Fully-interactive social media
  - Maximizes benefits of social media
  - Opens door to First Amendment violations and legal disputes
- Personal/Political

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**RECORDS RETENTION & DISPOSITION**

- Review state records retention laws
  - Check with Attorney General and/or Secretary of State
  - Find the Public Agencies responsible for records retention schedules and disposition process
- Social media retention policies
  - Does your district have one?
  - If so, review and make it your practice
  - If not, develop one that includes retention schedules and disposition procedures that include checks and balances safeguards

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**GUIDELINES FOR SCHOOL BOARD MEMBERS**

- In using social media to communicate about school district business, a school board member should:
  - Clarify that you are communicating as an individual member of the board, and not an official district spokesperson.
  - Avoid deliberating school district business with a quorum of the board.
  - Direct complaints or concerns presented online to the appropriate administrator.
  - Avoid posting content that indicates that you have already formed an opinion on pending matters.

Texas Association of School Boards- Legal Services

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## GUIDELINES FOR SCHOOL BOARD MEMBERS

- Ask for community input to be provided through appropriate channels, but do not allow your social network to direct your decisions.
- Post only content that the district has already released to the public.
- When attempting to restate what happened at a previous board meeting, clarify that the posting is not an official record of the board meeting and share information only from the open portions of the meeting.
- Conduct yourself online in a manner that reflects well on the district; avoid posting information that has not been verified and made public by the district; and never post anonymously about school business.

Texas Association of School Boards - Legal Services

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## GUIDELINES FOR SCHOOL BOARD MEMBERS

- Immediately report harassing or defamatory communications to the superintendent if they involve school officials, staff, students, or district business.
- Retain electronic records—including your own posts and content others post to your account—when required to do so by the district's records retention policy.
- Immediately report to the district any potential security breach if you lose control or possession of a district-issued or personal electronic device on which confidential district records could be accessed.
- Comply with the district's acceptable use policy when using district-issued devices or technology resources, including district Internet access on a personal device.

Texas Association of School Boards - Legal Services

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*The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*



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