



## **Social Media: Use of Social Media by Public Officials- Do's, Dont's, and Pitfalls**

**Presented by:**

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***The information contained in this presentation should not be considered legal advice. Please consult your legal counsel to ensure compliance with the law.***



Materials for this Presentation are from:

Social Media and the First Amendment

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*Ohio Township Association Law Directors Group* <sub>3</sub>

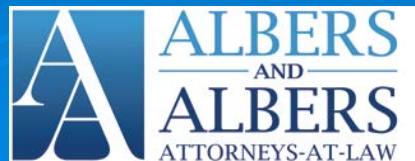
# Overview

1. Use of Social Media by Governmental Entities and the First Amendment
2. Adopting a social media policy to avoid First Amendment violations
  - Best practices for governmental entity elected officials and employees to maintain private social media accounts
  - Best practices for governmental entity to maintain official social media pages



# The First Amendment and Social Media

1. First Amendment free speech rights apply to speech on social media
2. Government-run social media sites open for public discourse are limited public forums for speech
3. Restricting/removing public comments, or blocking a user



# How is a Limited Public Forum Created

1. Government social media sites are limited public forums if they are created with the intention of allowing the public to post comments and promoting public discourse
2. Elected officials may inadvertently transform personal social media pages into limited public forums
  - Is the Public Official acting in his/her official capacity as an elected official?



# Developing Case Law

1. Social media pages are forums for speech when they are “governmental in nature”
2. Lawsuits alleging violations of constituents’ First Amendment rights when elected officials remove a comment, or block a user’s access, on personal social media sites



# Davison v. Loudoun County Board of Supervisors

1. Chair of County Board of Supervisors blocked a constituent on her personal Facebook page
2. The constituent sues, claiming his First Amendment rights had been violated
3. Court conducted a balancing test to determine if the page was a limited public forum for speech (weighed facts indicating page was private vs. facts indicating it was governmental in nature)



# Davison v. Loudoun County Board of Supervisors- Private Factors

1. Defendant's official duties did not include maintenance of a social media site
2. Facebook page was not going to revert to the county when the Defendant left office
3. Defendant did not use county-issued devices to post on page
4. Defendant's social media activity took place outside of the office/normal working hours



# Davison v. Loudoun County Board of Supervisors- Governmental Factors

1. Defendant included her official title as Chair of the County Board of Supervisors
2. Defendant's county email and phone number were listed as her contact information
3. Page included the official county website's web address



# Davison v. Loudoun County Board of Supervisors- Governmental Factors (Contd.)

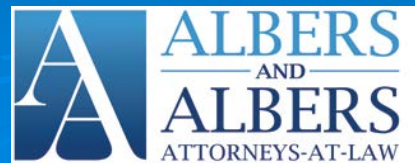
4. Defendant used the page to hold conversations with constituents
5. Defendant promoted attendance of events related to her work as Chair on the page
6. Defendant occasionally submitted posts on the page on behalf of the Board as a whole



# Davison v. Loudoun County Board of Supervisors- Governmental Factors (Contd.)

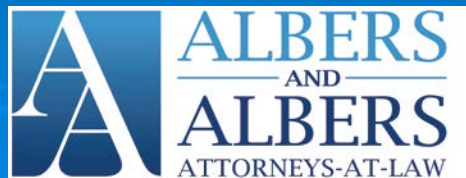
7. A reason for creating the Facebook page appeared to be Defendant's election to office (created the page the day before she took office)
8. Defendant's Chief of Staff helped her maintain the Facebook page

Subsequent cases citing the Davison case favorably.



# Davison v. Loudoun County Board of Supervisors

1. Court found the Defendant had created a limited public forum with her Facebook page
2. Defendant violated Plaintiff's First Amendment rights by blocking his access to her Facebook page



# Wilson, et al. v. Wallace

1. Complaint recently filed against Hamilton Township Trustee, David Wallace Jr.
2. Plaintiffs alleged Wallace violated their First Amendment rights by blocking them from his Facebook page
3. Complaint lists numerous facts surrounding Wallace's use of his Facebook to demonstrate it is governmental in nature



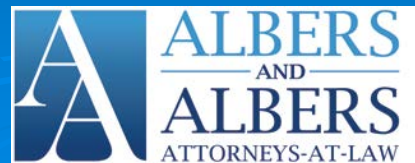
# Wilson, et al. v. Wallace (Contd.)

1. Wallace entered into a consent decree with the plaintiffs
  - Stated he would not block Facebook users from accessing his page in violation of the First Amendment in the future
2. Agreed to pay for plaintiffs' court costs and attorney's fees



# What's the Big Deal?

1. Elected official and/or governmental entity he/she represents can be on the hook for a prevailing plaintiff's attorney's fees and court costs
2. A court has discretion to award any additional damages it believes a plaintiff is entitled
3. Complaints of this nature are becoming more frequent



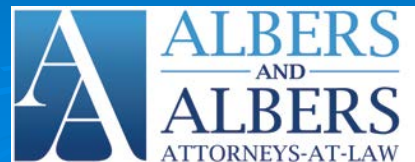
# Ways to Reduce Your Risk

1. Develop a policy which covers 3 main areas:
  - How elected officials/employees should maintain personal social media pages
  - How the governmental entity will run its official social media pages
  - Limitations on the rights of users on official governmental entity social media pages



# Best Practices for Elected Officials/Employees to Maintain Personal Sites

1. Official titles should not appear
2. Official governmental entity number/email should not be listed as contact information
3. Links to official governmental entity sites should not be provided



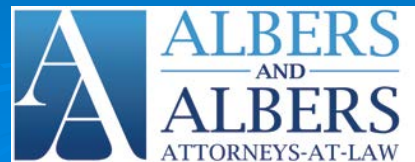
# Best Practices for Elected Officials/Employees to Maintain Personal Sites (Contd.)

1. Content from official governmental entity sites should not be shared/reposted
2. Branding from official governmental entity sites should not be copied on personal sites



# Best Practices for Elected Officials to Maintain Personal Sites

1. More likely a court would find an elected official's personal social media site constitutes a limited public forum than an employee's personal site
2. Do not discuss matters of public concern in which the governmental entity is involved



# Best Practices for Elected Officials to Maintain Personal Sites (Contd.)

1. If elected officials choose to discuss matters of public concern, they should provide a disclaimer
  - Special concern: Ohio Public Meetings Act rules, Public Records Laws



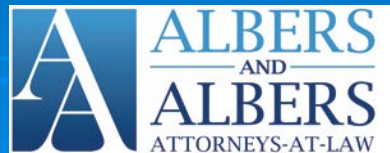
# Best Practices for Governmental Entity to Maintain Social Media Sites

1. Decide if you even want to allow public comments
2. If you allow public comments, the site is a limited public forum- users have First Amendment rights
3. Provide a disclaimer on the site stating views expressed in public comments are not those of the governmental entity



# Best Practices for Governmental Entity to Maintain Social Media Sites (Contd.)

1. Comments cannot be restricted/removed because you do not like the content, but First Amendment rights are not absolute
2. Reasonable restrictions may be placed on speech
  - Speech may be restricted to a certain topic addressed by the social media site
  - Unprotected speech may be banned (discriminatory, profane, etc.)



# Best Practices for Governmental Entity to Maintain Social Media Sites (Contd.)

2. Reasonable restrictions may be placed on speech
  - If you are unsure if speech is protected, it is wise to check with your law director/outside legal counsel before removing the posting



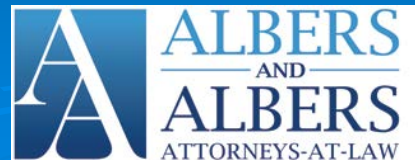
# Best Practices for Governmental Entity to Maintain Social Media Sites (Contd.)

1. Designate a person/team to maintain official sites- responsibilities may include:
  - Determining if a comment should be removed/user should be blocked
  - Responding to public comments on behalf of the governmental entity
  - Approving all content posted on sites on behalf of the governmental entity



# Best Practices for Governmental Entity to Maintain Social Media Sites (Contd.)

1. Governmental entities are bound by Ohio Public Records law
2. Institute a retention policy



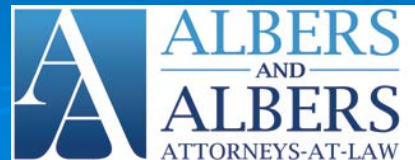
# Social Media Policy Overview

1. Provide instructional material to elected officials/employees regarding private sites
2. Have a clear procedure for maintenance of official governmental entity sites



# Social Media Policy Overview (Contd.)

1. State rules participants in governmental entity sites must follow
2. Social media policy will help reduce risk of lawsuits



# Questions ?

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