



# **AGENDA OF THE ETHICS BOARD**

**TUESDAY, SEPTEMBER 1, 2020, 5:00 PM**

**Virtual Meeting. Public may join via Zoom.**

**A. Zoom Meeting Information.**

- I. This item contains documents which provide call in information and instructions for the Zoom Meeting.

**B. Roll Call.**

- I. William Vande Castle, Chair; Alder Bill Galvin; Branka Bakovic, Chari Graham, Cheryl RenierWigg, Aaron Weinschenk

**C. Approval of the Agenda.**

- I. Approval of the Agenda for Tuesday, September 1, 2020.

**D. Approval of Minutes.**

- I. Approval of the Minutes from the July 22, 2020 Ethics Board Meeting.

**E. Regular Business.**

- I. Scheduling Conference on Ethics Complaint against Alder John VanderLeest, filed by Mr. Tarl Knight, under the City of Green Bay Code of Conduct for Elected Officials.
2. Election of Chair and Vice Chair
3. Quasi-Judicial Hearings Training Presentation

**F. Adjournment.**

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT [www.greenbaywi.gov](http://www.greenbaywi.gov)

- 2) **ACCESSIBILITY:** Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) **QUORUM:** Please take notice that a majority or quorum of the Common Council will attend this Ethics Board meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) **REPRESENTATION:** The party requesting the communication, or their representative, should be present at this meeting.

# Virtual Meeting Instructions

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Ethics Board 9-1-20

## Zoom Meeting Information

Join Zoom Meeting

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**Meeting ID: 813 8010 0749**

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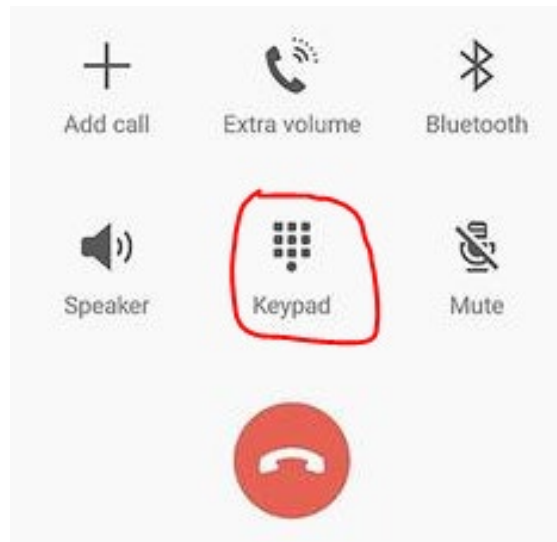
Find your local number: <https://us02web.zoom.us/j/81380100749?pwd=SFpnSUVwUHMvSkNKbDFSUSs2QWVVQT09>

## Additional Information

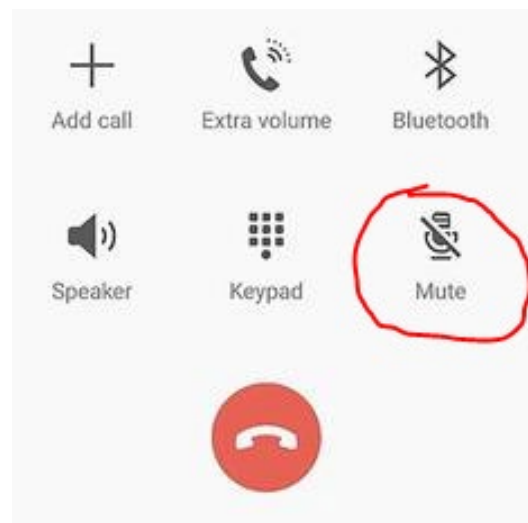
1. Wisconsin Open Meetings Law still applies
  - a. Persons interested in speaking to an item must give their name and address
  - b. Committee/Commission/Board members will still follow *Roberts Rules of Order*
2. All zoom meetings will have a password in the instructions. Please enter when prompted.
3. Please log into the Zoom meeting 10 minutes before the meeting starts to ensure proper technology is working.
  - a. If you are a Board Member, please log into [CivicClerk](#) with a computer, laptop, or tablet device.
4. Once you are in the meeting please mute yourselves.
  - a. You may unmute yourself when you are called upon to speak.
5. Waiting room
  - a. When you call in, all callers/participants will be placed in a “waiting room.”
  - b. Persons on the agenda will be admitted to the meeting, and then once the item is concluded, the host will permanently mute you from the meeting (you can still hear the meeting).
6. Using Zoom with a tablet or computer
  - a. Tablet—you will be asked to sign in. Download the app either with the Apple Store or the Play Store
  - b. Computer—you will be asked to sign in. You may download the app or click on the link to open Zoom in your browser.
7. Registering
  - a. The host may ask you to register for the meeting. A registration link will be sent to you along with the invite. You’ll receive another email confirming that you’re registered for the meeting.
  - b. If you’re using a phone, your registration will still be tied to an email.
8. Raising your hand
  - a. Committee members—you can either use CivicClerk and request to speak or you can “raise your hand” in the zoom meeting (you’d need to use a computer or tablet) to let the host know you’d like to speak. You can also un-mute yourselves and start speaking.
  - b. Persons on the agenda—you can “raise your hand” but you’d need to use a computer. You will be allowed to speak, per Wisconsin Open Meetings Rules, once the committee has “opened the floor for interested parties to speak.” Once the committee is finished with your agenda item, the host will mute you permanently, unless the committee opens the floor again.
9. What devices should I use?
  - a. Smart phone (please see more detailed instructions on page 3)
  - b. Land line
  - c. Tablet—well in advance of the meeting, please download the Zoom Meeting app before you join a meeting by using either the Apple Store or the Play Store. You will be asked to input your name, thus identifying you for the meeting. You’ll also be asked to verify your email.
  - d. Computer—well in advance of the meeting, please download the Zoom Meeting app, but you can also click on a link to open the Zoom Meeting in your browser. You will be asked to input your name, thus identifying you for the meeting.
  - e. For tablet and computer users—if you download the app you will be asked to verify your email.
10. Zoom etiquette
  - a. Muting yourselves when you’re not talking will prevent your background noise from interfering with others’ ability to listen to and participate in the meeting.
  - b. If you’re using a telephone, please identify yourself with your phone number and name before you speak. Zoom meeting hosts can see only your telephone number and will ask you to identify yourselves.
11. Closed session
  - a. Persons in the Zoom meeting will be put into a waiting room while the committee meets in Closed Session. Participants will be admitted back into the Zoom meeting once the committee reconvenes in Open Session.
  - b. Persons watching live on YouTube will see a gray screen with the City logo during closed session.
12. Persons interested in attending anonymously or listening to the meeting may call in by dialing \*67 followed by the phone number above.

## Calling into the Zoom meeting using a smartphone

1. Dial the phone number listed at the beginning of this document.
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  - a. If you're using a smartphone, you can access the keypad by clicking "Keypad" on your screen



3. Once you are in the meeting, notify the meeting host that you are in and state your name.
4. If you do not need to talk, please make sure your phone is on **Mute**
  - a. If you're using a smartphone, look at your screen and click the Mute button



- b. If you're using a computer, you should see a Mute button in the Zoom application





# **MINUTES OF THE ETHICS BOARD**

**WEDNESDAY, JULY 22, 2020, 5:00 PM**

**Telephonic Meeting of the Ethics Board.**

**To listen to the meeting go to:**

**<https://www.youtube.com/CityofGreenBay>**

## **A. ZOOM MEETING INFORMATION.**

I. This item contains documents which provide call in information and instructions for the Zoom Meeting.

## **B. ROLL CALL.**

I. William Vande Castle, Chair; Alder Bill Galvin; Branka Bakovic, Chari Graham, Cheryl RenierWigg, Aaron Weinschenk

Present: Aaron Weinschenk, Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Excused: Branka Bakovic

## **C. APPROVAL OF THE AGENDA.**

I. Approval of the Agenda for Wednesday, July 22, 2020.

Moved by Staff Cheryl Renier-Wigg, seconded by Aaron Weinschenk to approve. Motion carried. Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None, Abstain- None

## **D. APPROVAL OF MINUTES.**

I. Approval of the Minutes from the February 26, 2020 Ethics Board Meeting.

Moved by Aaron Weinschenk, seconded by Board Member William VandeCastle to approve.

Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None,

Abstain- None

## **E. REGULAR BUSINESS.**

1. Hearing on Ethics Complaint against Alder John VanderLeest , filed by Mr. Tarl Knight, under the City of Green Bay Code of Conduct for Elected Officials.

Moved by Ald. Bill Galvin, seconded by Staff Cheryl Renier-Wigg to open the floor for discussion.

Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None,

Abstain- None

Moved by Ald. Bill Galvin, seconded by Staff Cheryl Renier-Wigg to close the floor for discussion.

Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None,

Abstain- None

Both parties have until August 6, 2020 to brief the issues of standing and discovery in these proceedings. The law department will review those briefs and provide a written analysis to the Board. The hearing in this matter will occur at 5:00 p.m. on Tuesday, September 1, 2020.

2. Deliberations and action on the Ethics Complaint against Alder John VanderLeest, filed by Mr. Tarl Knight, under the City of Green Bay Code of Conduct for Elected Officials.

The Board may convene in closed session pursuant to Sections 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Board will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

3. For discussion with possible action on revising the City of Green Bay's Code of Conduct for Elected Officials, and the City of Green Bay's Code of Ethics to include provisions that detail what activities are proper and what activities should be prohibited for elected officials in regard to engaging in partisan politics through the use of their Green Bay elected offices.

Moved by Board Member William VandeCastle, seconded by Ald. Bill Galvin to open the floor for discussion. Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None,  
Abstain- None

Moved by Board Member William VandeCastle, seconded by Ald. Bill Galvin to close the floor for discussion. Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None,  
Abstain- None

Moved by Board Member William VandeCastle, seconded by Ald. Bill Galvin to refer to staff and for staff to report back with an update the week of October 11-16, 2020. Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None,  
Abstain- None

## **F. ADJOURNMENT.**

Moved by Staff Cheryl Renier-Wigg, seconded by Aaron Weinschenk to adjourn. Motion carried.

Yes- Bill Galvin, William VandeCastle, Cheryl Renier-Wigg, Aaron Weinschenk, No- None,  
Abstain- None

## VERBATIM MINUTES

- Okay.
- All right, so it's a little after five, let's call the meeting to order. This is the Ethics Board for the City of Green Bay for Wednesday, July 22nd 2020 at a little after five. I believe you should all have the agenda before you so the first item of business would be a roll call, I believe that's automatically recorded so we should have that, I can check just to see, does it, it looks like we have a quorum.
- Yes, we do.
- Yes. Okay, so we have a quorum. So an item C on the agenda is approval of the agenda for tonight's meeting. Is there a motion to approve?
- Motion to approve.
- Okay, we have a motion and is there a second?
- Second, Aaron.
- All right, we have a motion and a second. Any additions to the agenda? Otherwise all in favor.
- Alder Vande Castle, I'm sorry, I did it again. Can you just be an Alder for tonight?
- Sure.
- Could I just have you slow down just a little bit, I'm still getting used to doing these in.
- Oh sure.
- In civic clerk side, I just have to make sure I'm recording the motions correctly. That was, I can't really see. Okay. So the motion was by Cheryl and it was seconded by Aaron. Is that right?
- Correct.
- Thank you. Hold on for just one second, bear with me please.
- No problem.
- Sorry about that technical difficulties on my end, you can go ahead and vote on that one.
- All right. So all in favor of approval of the agenda for tonight's meeting signify by saying aye or clicking yes.
- Aye.

- Aye.

- Aye.

- Aye.

- Any opposed? No opposition, motion carries so the agenda is approved. We'll move on to item D, approval of the minutes. So is there a motion to approve the minutes from the February 26th, 2020 ethics board meeting?

- So move.

- A motion and I will second. Any additions, corrections or modifications to that set of minutes? Hearing none, all in favor, signify by saying aye. Aye.

- Aye.

- Any opposed? Motion carries. All right, moving on to item E on a regular business, the first item is a hearing on ethics complaint against Alder John Vander Leest filed by Mr. Tarl Knight under the City of Green Bay code of conduct for elected officials. So we have a hearing scheduled for tonight, but as you probably all seen, there were a number of documents filed by Alder Vander Leest's attorney, Mr. Miller this morning or yesterday, excuse me. And then also that Mr. Knight had filed some additional documents as well. So my recommendation would be to give everybody a chance to analyze those documents that were filed, that we schedule this down the road a couple of weeks for a hearing that would be somewhat consistent with attorney Miller's request for an adjournment for more time to investigate and review this on behalf of his client, Alder Vander Leest and I certainly have no, personally I have no objection to that, but I think because these documents were filed today or within the last 24 hours or so that we ought to make sure that both sides get all the documents that have been filed and have a chance to review and analyze them. Anybody else have any thoughts on that? Bill.

- I've seen Mr. Knight's documents that were filed I received an email earlier today, I was able to look them over. The paperwork that Alder Vander Leest's attorney filed that was done this morning?

- I saw it this morning, it might've come in yesterday afternoon or sometime yesterday.

- I'm gonna have to check again 'cause I haven't seen those and I unfortunately I've had close to 400 emails in the last five days on another minor matter, but I guess my concern is and I'm not sure how long is this issue been on the docket now for us? Does anyone know?

- This is the first time that it's come up. So this, the complaint was filed several weeks ago because of the work from home kind of set up, that's going on here at city hall, it took a little bit for it to get to my office. The complainant, Mr. Knight, has been understanding and accommodating about getting the

hearing scheduled as quickly as possible in light of that delay. So this is the first hearing on the matter. And the first motion from attorney Miller was filed on Tues, excuse me, Monday. The second was filed yesterday, but I did send them both together yesterday. So I imagine Alder Galvin, that was amidst just a couple other emails that you were getting, like you said.

- Yeah, okay. So I guess what I'm asking though is, when was and Alder Vander Leest and Mr. Knight aware that this would be going to the ethics meeting? I mean, when it's all said and done, were they notified like a week ago, two weeks ago, three weeks ago?

- I believe Haley, who does the scheduling for ethics, started reaching out, I want to say two or so weeks ago.

- Okay.

- The date was finalized early last week.

- Okay. And, and I'm not trying to be a pain. I just, we've had other things on ethics get carried out so long that people were forgetting nuanced like that, because it took so long to finally get to a hearing. I just want to make sure we're not going to start running into delays that are going to set this thing so that we're finally hearing it maybe next year, I guess, is my concern. So I just want to make sure there's some things in place, some metrics in place, some measurable metrics that we can say that, okay. You know, we need a couple of weeks to digest the material received from both parties, but we're definitely going to have a hearing, barring nothing else occurring in the world, or in Green Bay within a certain date, so that this thing can be, you know, can come to a conclusion so everyone can get this done and get it behind them. I guess that's why my thrust here. Thank you.

- My initial thoughts on this was to try to schedule it out about, well, from my schedule, I'm pretty well tied up next week. So I was thinking there, at least two weeks. But in reviewing the documents that attorney Miller submitted, he raised a couple of issues that I'm not sure we've addressed before. And that was the issue about subpoenaing witnesses, and also it looked like he might be looking for some depositions, or to take some depositions. And again, we've not dealt with that issue before. I know that there are provisions in the code of conduct dealing with subpoenaing witnesses and so forth, but I'm not sure there's anything in there about parties taking depositions before the hearing. And I guess that's a matter that we would need to refer back to legal counsel for an opinion as to whether that's covered under the code of conduct, and whether we have authority to order that or not. I just, I don't know. And so that's an issue that I think needs to be addressed. So we need to take that into consideration here, as we try to schedule this. Because if there are going to be depositions that may require us to push this out even further.

- Attorney Vande Castle, this is Vanessa Chavez. So in administrative hearings such as this, discovery is not allowed for or provided for. Instead, the parties are encouraged to fully and freely exchange information. The rules of discovery do, and

the rules of evidence don't apply, they're instructive, but they don't apply in administrative proceedings.

- I would have said that too. I agree.

- So does that mean, as much as he wants to have discovery, as much as he wants to have depositions, That's just, we're not built to handle that, so it all have to take place at the actual hearing?

- Well, that doesn't mean that they shouldn't be providing information beforehand, especially because the, the burden, so let me explain, or, let me back up. So in proceedings such as this, the burden of proof is on the plaintiff to demonstrate that the allegations occurred, not on the defendant to demonstrate that they didn't. And so the burden of proof is on that person, not on the respondent, essentially. So with that, the rules of evidence just generally don't apply. That doesn't mean that we can't choose to adopt them, but we haven't. Second, we don't have subpoena powers. Our attorney's subpoena power. This ordinance provides for subpoenas to consult with attendance of witnesses. Meaning that you can require people to show up and actually testify here, but nothing's contemplated by the ordinance to allow us to have subpoena powers for people to depose each other in these proceedings. So the original complaint is supposed to specify, or lay out with specificity, what the actions complained of are so that the person who is receiving the complaint is able to prepare a defense because he's just supposed to present to them. It's not any... it's a claim that they personally did something in these allegations. So that is one of the other reasons that discovery just generally isn't available. What I would say would be appropriate is to determine at this point whether the allegations are sufficient for the person, for Mr. Vander Leest I should say to be able to discern whether to respond to it and if there are any allegations that are listed that are not adequate. And I don't see any reason of saying those are stricken.

- Okay.

- In answering of information would that mean that the material that Mr Knight, we were given today would be be given to Alder Vander Leest and anything that Alder Vander Leest has for his defense would be given to Mr Knight by Mr Vander Leest so that they could both review it prior to the hearing?

- Yep.

- Okay. And can we make them do that or are we just asking them to be nice guys and share?

- Anything that's going to be presented to this committee we can tell them they need to share it ahead of time I don't see any issue with that but as far as compelling somebody to actually testify compel them to provide information that they weren't otherwise going to rely on we don't have that power.

- Okay so if, say, Alder Vander Leest wanted to question some of the people listed in the complaint that Mr Knight has made we can't compel them to show up at the

hearing or even there we cannot compel them to say anything about what occurred.

- We can compel them to show up, day of, what we can't do is make them... Okay so subpoenas are slightly different from a deposition. So we could require them to show up to actually testify before the board. What we can't do is tell them they have to show up and answer questions for the attorneys ahead of time.

- Okay. All right, so thank you very much. I appreciate the explanations.

- I would just add or ask for an additional clarification along those lines. We use subpoenas to require a party to show up at the hearing. That's something that the parties would have to make the request for. Is that correct?

- Generally yes.

- Yeah okay. So it wouldn't be us as the board making the decision to start calling or not calling people?

- No. Really what we would expect we would compel the attendance of the parties themselves. And then the witnesses are who they anticipate will be speaking. Like I said, it's really up to... The burden is on the person who brings the complaint to demonstrate the person did what they said and so they're going to need the testimony, witnesses, or documents or something. So if they're not producing it there's nothing for the other person to respond to other than has been provided.

- So if one of the parties wanted to subpoena a witness to appear and testify, what would be the process for them to do that or to get that subpoena?

- I'll have to look into this so that we can make sure that process is followed properly. Because we have not run into this before and we want to make sure that whatever we're doing at this point would be properly supported.

- I would just, trying to figure out what the protocol would be with the Ethics Board and then, as Chair, I'd have to sign the subpoena or would it go through your office for your office to issue the subpoena? That's the format that I'm looking for. So that the parties know what the process would be.

- And I have to go back and look at our ordinance to make sure. To make sure that what we're doing is going to be .

- Okay.

- When you do that could you get a memo out to all of us including the parties as to what that process would be if they would like to subpoena somebody?

- Sure.

- Okay. Right. So, we are at the point I think unless there is any other questions of trying to pick a date for a hearing? Does anybody from the board have any other questions before we move to that step?

- I have one quick question. There is an issue of standing raised by Alder Vander Leest's attorney. Is that relevant? I don't think you have to be personally injured to file an ethics complaint against somebody. So my sense is that the standing issue does not prohibit Mr. Knight from moving forward. Is that an accurate interpretation?

- It's really up to the board to determine whether or not that's the interpretation of the Ethics and Code of Conduct.

- Okay.

- So that's an issue that would be, it would need to be addressed before we got to the actual hearing component of this complaint as to whether there's standing to proceed? Vanessa, how do you suggest we consider that?

- We could consider that either, so there's a couple of things we could do the board could accept the board could accept brief on that issue. Otherwise the board should ask staff to make that determination or to not make the termination. I'm sorry, that's the wrong word to do the research on that and bring it back to determine whether or not standing is, is when it applies and then it can be applied. So it's up to the board on whether you want it to be, if you want independent research from council.

- My suggestion would be that we start by setting a date when the parties can file briefs as to the issue of standing and then backing it up from that a period of time after that for the law office to respond to those briefs, and advise the board accordingly and then we would set the hearing date at a time after that. Anybody have any issue with that? Right. So I think the first issue then is setting a date for the parties to address the standing issue that's been raised by Attorney Miller.

- I can hear, I'm in the meeting right now. I'll, just a minute, I'll-

- I would suggest that we pushed this out. I can't imagine it's going to be that complicated of an issue to address. So I would suggest maybe two weeks for council or for the parties to submit their briefs to the City Attorney's office on the issue of standing. Anybody have any thoughts on or comments on that?

- When we talk like the first week of August then, or the second full week of August?

- I would say that second, well two weeks from today from, let's say two weeks from, from tomorrow?.

- Okay. So we're looking at, we're looking at the 13th of of August?

- Right?

- I'm actually free, especially with today's-

- Bob!

- That that date wouldn't be for us. That would be for the parties to submit to their deposition. Their position and standing

- If I can interject really quickly, two weeks from tomorrow would be August 6th.

- Okay.

- And then we could get together a week after that?

- I think the City Attorney's office is gonna need some time to evaluate those briefs and then provide us with a position.

- Okay so the week of the 17th through 21st?

- Hello, this is Rob Miller. Could I be heard on this stuff? I was out of the meeting for awhile. They, I was bumped out.

- Alright, so let's, is there a motion to open the floor?

- Motion to open the floor.

- Second.

- Alright. All in favor of opening the floor for attorney Miller, please signify by saying aye.

- Aye.

- Aye.

- Aye.

- Aye. Any opposed?

- Okay, I-

- Motion carried.

- Okay, thank you. First off, I was bumped off once somebody, I think one of the assistant city attorneys was saying there's no opportunity for discovery. So everything that happened since then, I didn't hear, but my point is we have to conduct some discovery because the complaint basically is a conclusory and I'm not sure that Mr. Knight and apparently ethically, I've not seen Mr. Knight's recent filings. They were not sent to me. Mr. Knight comes up with some conclusions and enlists four or five people that have some knowledge of deleted posts and / or blocking. We unequivocally deny any blocking and suggest that any deleted posts were done as a matter of eliminating reprehensible statements. So in order to

actually get the facts in this question, in this matter, either of those parties should be asked to submit a complaint outlining what happened and dismiss that specific time or date, or we have to be able to conduct some depositions of the, people as to what truly happened. There's nothing in his complaint with regard to what was deleted or what is alleged to have been blocked. In fact, I'm not sure whether Mr. Knight actually has any personal knowledge of the facts here. It's entirely possible that he's reciting what other people told him. And I think it's been a matter of law for about 500 years that we don't convict people on the basis of hearsay. I can't cross examine pieces of paper. So if, if the board would ask that the people are mentioned specifically state what happened when.

- Oh, shit, sorry, I'm so sorry, Attorney Miller. I hit the wrong button. I cut you off right there. If you could just re-say

- Oh, okay.

- That last comment

- Well, it's been, sort of a nightmare with this Zoom meeting tonight, but, my point is we're entitled to a notice of what the claims are. At this point there's a large recitation of a legal analysis, much of which I think is incorrect. But we need to have some recitation of the facts. What did these people allegedly experience? When did it happen? And that sort of thing. And that's not present in the complaint as constituted. And it's entirely possible that Mr. Knight is just taking their information and putting in the complaint. So that troubles me. I can't very well be asked to defend a client when we don't have adequate notice from the people that were actually allegedly aggrieved and when and where it happened. So that's why I need an opportunity to prepare this. And I've cited the leading case with regard to administrative hearings, Goldberg versus Kelly. Basically according people in administrative hearings a right to discovery. I take this very seriously. My client spent 71 years producing his reputation. And I don't think that should be damaged willy nilly without an opportunity to find out exactly what the people listed are complaining. I don't think that's too much to ask. And as far as, I know there was some discussion as to when this was given to us. I've been in the case for about three or four days. I saw the material transmitted to my client, I think about 10 days ago. So, given the stakes with regard to my client's reputation, I think it's quite reasonable to give his attorney an opportunity to produce a defense. And right now it's just in the realm of absolute hearsay. As I indicated in my filings, some of which were actually filed on Friday. This is a legal thicket with a constitutional quicksand. And we maintain that my client was entitled to delete the tasteless posts pursuant to a Communications Decency Act, which was appended to my material.

- Attorney Miller.

- Yeah.

- I understand your points. We're not gonna get into the substance of this at this point. We're just trying to deal with some procedural things. So, the first thing that we dealt with, and I don't know if you caught all of this or not, but the

first thing that we, the last thing we just got done dealing with before we opened the floor, was the question of the issue of standing that you raised. And the proposal that was made is that the parties be given two weeks to address the brief, the standing issue under the Code of Conduct. And then the city's Law Department would have a week to 10 days or so to review those briefs and provide and advise the board accordingly. You've also raised the issue of discovery. And we had a brief discussion, and I don't know if you were online or involved at that point, but, the discussion was the issue of discovery in the proceedings under the Code of Conduct. So, it looks like we've got some issues with that that may need to be addressed as well to make sure everybody gets the opportunity to address all their concerns. One of the concerns that was expressed was whether this board has the authority to compel someone to show up for a deposition. We've not had that come up before. I reviewed the Code of Conduct, and I found no direction on that. So, again, that's another issue that I think ought to be addressed by the parties and have the Law Department again, advise us accordingly as to whether there should be any discovery. So I understand your concerns with trying to address all those concerns while at the same time, recognizing that this matter has been pending for a bit of time now to not let it lag too far before it gets addressed as a full hearing. So, any other members of the board have any comments before we move to close the floor?

- And alter Vander test, I'm sorry. I did it to Attorney Vande Castle. I'm actually gonna have to walk back my statement about our ability to compel witnesses. I could have sworn I'd seen it in our ordinances, but now I'm not finding it. So I need to do a thorough look through our Code of Conduct to determine whether or not there's anything provided for in there.

- So, am I correct?

- May I speak to this again?

- Just a second.

- Okay.

- Am I correct that I'm seeing two issues here that need to be addressed, the standing and the witnesses? Or am I missing something?

- I think that's generally correct. Although I would make it a little simpler. I guess if I could find out if Mr. Knight is actually an aggrieved party, that would accomplish a lot. And if he has some firsthand knowledge, then I would want his statements of what happened, but certainly statements from the other parties listed. I mean, right now we just have names and addresses. That's hardly the essence of a complaint against my client.

- My issues under the code of conduct is it does not require an aggrieved party. So that's where the standing issue comes in.

- Okay.

- I would reference section eight, the code of conduct, paragraph eight, filing complaints. So that's our starting point as to whether the person who's filing the complaint actually needs to be an aggrieved individual. So those are issues that I think we need an opinion on and that this board needs guidance on as we try to move forward.

- Okay and I'll accept that, but I-- we need some statement by the people that suggest that there was some wrongdoing and what it was. As opposed to conclusory statements. That's my position. That's inherent in the way we-- at least that my understanding of the way we conduct hearings.

- Point taken. The floor is open Mr. Knight, any response that you would have at this point to these procedural issues, as long as the floor is open?

- Can you hear me all right?

- Yes.

- Okay, excellent. Thanks for giving me a chance to speak to . As I stated in the formal complaint, a number of the couple complainants or the people that I've listed here will make themselves available to speak. They are available to testify, and I've listed means to contact them, but I've already organized and communicated with all of these people based on their complaints, their stories. I understand very well how they've been aggrieved and that's why I chose to help to represent them. And they're all available. And I think that the majority of them will do self harm terribly. If that helps them.

- All right. Anything further before we move to close the floor?

- Well, I'm assuming that Mr. Knight and his group are stipulating that I can conduct a deposition of these people. That's what I'm gathering.

- We need to determine whether there's the authority here to have depositions.

- I appreciate that and all I'm saying is that he-- I interpret what his statement is saying that they're agreeable to a deposition, regardless of whether you folks can be compelled or not.

- Again, what we're looking for is whether we have as a board, have the legal authority to provide for that.

- I think if the parties

- Okay.

- want to volunteer to go through depositions, that's something that you can work out on your own, outside of this board.

- Okay.

- All right. Anything further before we move to close the floor? There are none. I will make that motion to close the floor. Is there a second?

- Second.

- All right, we have a motion and a second, any further discussion? Otherwise all in favor, signify by saying I.

- I.

- All right, any opposed? Very good, the floor is closed. So, now we're back to trying to calendar and schedule this. As I said, I see two issues here that need, that the board needs guidance on from the law department. That is the issue of standing. And then secondly, the issue regarding essentially discovery in these proceedings prior to the trial. My suggestion before, when we were talking about discover-- I'm sorry, standing was that the parties be given two weeks to submit briefs on their position with respect to standing. I think as long as we're doing that, we can also do the same thing for the discovery issue. I don't imagine that's gonna be that difficult to address. And then the question would be to the law department as to how long beyond that do you think it would be for your department to get a response and direction back to the board and the parties?

- I imagine that we will be able to have something in time for a-- I would think that it's at least two weeks. So if you guys wanna plan on having the hearing the first week of September, I don't see an issue with that.

- Okay. I don't have a problem with that either. So then let's look at dates for the first week of September. Well, from my perspective, I'm open that entire week.

- My only bad day is Wednesday the second.

- Okay. Anybody else have any issues with that? That first week of September? Any dates?

- I'm not available on Thursday. This is Alder Vander Leest, on Thursday I have a County Board meeting.

- Okay.

- Unless you have it earlier in the day,

- Well we'll try to accommodate that. What about the first? Tuesday the first, anybody have any issues with that?

- That works for me,

- Works for me.

- I'm free that day

- Five o'clock?
- Five o'clock on the first
- And this is Rob Miller, and that would be the trial this matter before the ethics board,
- Correct.
- And is that going to be in person or what, how, is it going to be conducted?
- That's a very good question.
- I would imagine the City will be having another meeting, council meeting where the emergency powers will be rediscussed, we've been extending at every council meeting and should something changed dramatically between now and then there's a possibility it could be the emergency powers would be canceled before then, and then we might start in-person meetings. So I guess I would have to say it's all up in the air right now.
- I would agree.
- So we'll have to wait to play that by ear as it, as it unfolds over the next month.
- Well, this is Rob Miller. I strongly request an in-person hearing, even if it has to be delayed. That's I think it's just better for the conduct of the fact finding.
- Well, I, again, because we don't know yet, it may be possible to have an in-person hearing on the first, if not, we'll have to take that into consideration on the first.
- Okay. I understand.
- Alright. Alright. Anything further for the scheduling with respect to this hearing? Alright. So I think that covers this issue for this evening that we would also, since we did not have a hearing that would address the second issue under regular business, that being the deliberations with respect to the hearing that would move us on then to the third item under regular business-
- Attorney Vander Castle-
- And that would be for discuss,
- If I can-
- I'm sorry
- interject for just a second. Do we need like a motion to hold it until September 1st or anything like that? I guess that's a question for attorney Chavez.

- No, by virtue of this they are going for it. So that is the effect of it.
- Okay, thank you.
- Okay Alright. And well, just as a procedural matter, will there be a follow-up notice going out or will it just be the agenda?
- Typically just the agenda.
- That's what I thought, okay. That should be-
- Oh, I have a question, does the complainant understand what needs to happen between now and the hearing time?
- I just, if he needs to provide things, will he be notified of what he needs to provide-
- Are you asking a person?
- So the obligations are set forth in the Code of Conduct, which would be the parties, or at least the claimant should have since the complaint was filed in compliance or pursuant to it, I should say. And it does state their obligations as far as disclosing their witnesses and stuff.
- Okay.
- Alright. All right, so then let's move on to item number three then, and that is for discussion with possible action on revising the City of Green Bay's Code of Conduct for elected officials and the City of Green Bay's Code of Ethics to include provisions that detail what activities are proper and what activities should be prohibited for elected officials in regard to engaging in partisan politics through the use of their Green Bay elected offices. Again, this is a matter that in part has been discussed in the past with respect to amending the Code of Conduct. I don't know that we've had any discussion about the Code of Ethics, because I think that's just an adoption of state statutes, but this is something that I would suggest be referred back to the law office for their review and and comment back to the board.
- I agree. Can I make that a motion?
- Could I speak up, be open?
- Sure.
- Let's, I'll move to open the floor to allow Alder Brett to speak.
- Second.
- I second.

- I have a motion and a second. All in favor.

- Aye.

- Aye.

- Any opposed?

- Yeah.

- Motion carries.

- Sorry, I didn't mean to, anyway. Thank you, chairman Vande Castle, good seeing you. Just a little background for a few of the committee members who may not have been on the city council meeting last night. We had discussed revising the code of ethics and Alderman Wori had put a recommendation that it be returned back in September to the Ethics Board for discussion. So it's sort of an ongoing issue in that. There obviously are a lot of things within the code of conduct for elected officials that should be updated and revised. I think we, many of us would probably agree to that. So I, what I'm suggesting is that we add some provision because City of Green Bay Government is nonpartisan. The positions are nonpartisan as similar to the other six sections, where there are details on how City of Green Bay elected officials should conduct themselves with the media, with meeting members, with fellow Aldermen and women that I think it would be appropriate to put some language in their regards, to their conduct with political parties. And I, this is not a political lightning rod issue for me. It's a sincere belief I've had for quite a while. We want our city government to descend into partisan politics. Everyone has different opinions about that obviously. I'm just looking for a, a discussion. My only fear referring to the law firm deadline, just out of respect for the Legal Department yesterday, they went through the last few weeks and months. They have indicated how far they are, how far behind they are and a lot of critical things. And as Alderman Galvin mentioned yesterday, not entirely their fault, it's just the work has picked up with not a whole lot of staff-increased hours. So I just don't want to refer there and, and let it die. I want to have some input into this. It's not my deal completely. I've been receiving comments, thousands, 50 comments, probably from interested people, constituents fellow community members ever since I went public with this idea. So I think there's a community conversation that has to happen. I think we should have that openly somehow some way. I just don't want to refer to the Law Department and have it get lost amongst all their many other duties. So just a little more of a timeline would be, if you refer to illegal staff, but if you could put some sort of deadline on, so it doesn't have to be September. It could be October, November. I just want to know that it's being worked on progressively.

- For a point. Vanessa, any, any comment on your part as to where this should go? I know we've had discussions about this in the past.

- There's no issue with, with referring this to staff. My department can definitely look into this. The, what we would do at this point is look into what others are

doing as far as putting limitations on political activity in office. We'd also look at it from a First Amendment standpoint. I mean, put that research back to you before the board would make a determination as to, to move forward with that process. And then we would be looking to you for direction from, for direction as far as what we should be drafting. So what we have been discussing, probably for the last month is a lot of comment workloads. And I realized that there's a lot of frustration around how long it has taken our department to be able to get these items in front of the board, especially with the ethics code and what we have discussed with the fact that it's based exclusively on our ability to get to items. We prioritize based off country growth, legal exposure to the city, as far as drafting goes, and we have one person who's dedicated to that who is Attorney Mather. And so as you can see, Attorney Mather's going to be pretty busy working not only on other items this month, but also on this ethics hearing. And so we, there is no way that September is a realistic deadline for us to have completed all of that research. In addition to considering the ethics code revisions that are being asked for. And so, while I respect the request that we do this in timely fashion, I would ask that you give us at least a few months before you ask that this becomes, be brought back to you.

- Vanessa procedurally, it goes back to your office, for, for consideration and drafting of possible changes. What is your thoughts on having it go? Where does it go after it leaves your office? Does it go back to city council or one of the committees, council's committee?

- It'll come back to this board. This board is the one that's charged under ordinance with making recommendations for changes to the ethics board or the ethics ordinance. So it would come back to you all.

- Okay. So can we then set a tentative date for future hearing or future meeting of the Board to be involved in that discussion.

- Sure.

- Okay.

- Can I ask a question just so I understand the issue? Is this about, is the thought trying to prohibit members who are elected to city government from going to political party meetings, attending rallies, that kind of thing? Is that what you mean by partisan involvement in politics?

- Obviously there is First Amendment right and we don't want to infringe on that. It's similar to the Code of Conduct it details what sorts of activities are allowed or prohibited for elected officials in regards to dealing with the public for example or city employees. Like in the Code of Conduct, city aldermen and women are not allowed with a penalty or risk of penalty, to criticize public and city employees. In a similar sense we could put in a provision that says if a City of Green Bay elected official wants to engage in a partisan activity and use their elected position in that partisan activity that they do so as an individual and not use their official position. So there are a lot of reasonable things, but quiet honestly, we'd have to look at what other municipalities are doing, like Attorney

Chavez says. I got a lot of input. I mean people are reaching out. They don't want Green Bay to descend into partisanship and I think a lot of times and I want to make it clear to this committee, my timing was right after Mayor Genrich letter to President Trump, which depending on what your opinion is of the letter, the timing was not a direct response to that, but that certainly is something that we could address in the code of conduct. If you use a city letterhead to discuss a partisan issue or engage in what could be considered partisan activity, that you don't use City of Green Bay letterhead. So again, I don't want it to be about that alone. It's just a number of things and I have ideas that I would be more than willing to share with the city attorneys office. It's not just my ideas. It's ideas I've been collecting from the community.

- Thank you. I just wanted to understand what you were thinking.

- Yeah and I'm not looking for anything combative or destructive. I'm really looking to build up the community and say okay engage in partisan politics, but this is what the City of Green Bay expects of you when you do that. Similar to the other six provisions in the code of conduct.

- Hey Bill? Bill?

- Yes.

- Could Alder Brunette forward the emails and communications that he's received from the constituents and concerned citizens to the city staff to give them material to be able to reference with all these different suggestions and ideas and action thought that's behind them then where they'd probably be better explained?

- Yeah, many phone calls, Facebook posts, things like that, but I would be more than happy to gather them Aldermen Gavin.

- Sure, thank you.

- That's good.

- About ten to twelve years so a lot of things I can gather.

- All right anything further, otherwise a motion to close the floor. Is there a motion to close the floor?

- Motion to close the floor.

- All right. Is there a second?

- Second.

- There you got a motion and a second. Any further discussion, otherwise all in favor signify by saying I.

- I.

- I.

- I.

- All right. Any opposed? Motion carries. The floor's closed and back to item three under regular business and I think we're looking for setting a tentative date for a meeting in sometime in the future to address this potential revisions to the Code of Ethics and the Code of Conduct. While we were talking I was looking at my calendar. I know there is discussion in September and in October. I am gone the first about ten days or so of October so if we're looking at sometime in the middle of October, is that sufficient time for your office Vanessa to address this?

- We can definitely give you an update on where we are at that time.

- Okay.

- So could we get an update then in the week of the 11th through the 16th? Of October?

- I'm pulling that date up right now.

- Somewhere in that week.

- Yeah I don't see any conflicts on my calendar so we could definitely find a date that works for everybody.

- So if we get to that point in time and you want to schedule a hearing, just go ahead and do that and we'll go through the regular scheduling process to set up, I shouldn't say a hearing, to set up a meeting, to discuss this topic and get it on our agenda and published and posted.

- Okay.

- More time for you.

- I'm thinking it'll have to be that Thursday only because it looks like there are a, that looks like it's a committee meeting week.

- Okay. All right, well we'll leave that open at this point depending on how this goes through your office and we'll look to set a date sometime in that timeframe. So we're not pushing it out too far, but it'll give you some time to address all these issues.

- Okay.

- All right, I don't think we need a motion on that effect, but anybody else got any thoughts on whether we need a motion to set that timeframe? I don't, I don't think so.

- I would say that the proper motion would be to refer to staff with the...
- Oh, sure.
- to report back in October.
- All right. I will make that motion. Is there a second?
- Second.
- All right. We have a motion and a second. Any further discussion? Hearing none. All in favor, signify by saying aye. Aye.
- Aye.
- Aye.
- Aye.
- Any opposed? Motion carries. Very good. Next item on the agenda is adjournment. Is there anything further before we adjourn? I don't think there's anything on the agenda. So we are ready for adjournment. Is there a motion to adjourn?
- Motion to adjourn.
- We have a motion. Is there a second?
- Second.
- We have a motion and a second. All in favor of adjournment signify by saying aye. Aye.
- Aye.
- Aye.
- Any opposed? We are adjourned. Thank you all very much for your time and participation this evening. Stay safe and we will be in touch. Thank you very much.

My name is John S. Vander Leest. I ran for Green Bay City Council in 2014 and created a Facebook election page in Fall 2013. I was not elected in Spring 2014 but continued to use the Facebook election page in 2016 when I ran again for Green Bay City Council. I was elected to the Green Bay City Council in April 2016. I regularly used the John S. Vander Leest for City Council Facebook page to communicate with supporters who liked my election page.

I used the Facebook election page for my election updates, updating my supporters on items that concerned me, personal/family updates and other local interest items that my supporters cared about.

The Facebook page was operated as a campaign page. At no time did I operate it as an official City page. No city taxpayer dollars were used to maintain the John Vander Leest for City Council Facebook site.

If parties attacked me in posts, name called other parties, made comments that were off topic, I would remove these related Facebook comments. For example, I deleted posts similar to the following:

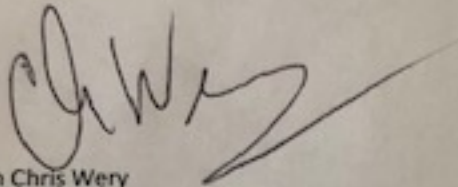
- 1 Off topic comments on a post related to the Spring 2020 election problems
- 2 Name calling. Referred to as a schmuck. Also, derogatory terms used toward other parties posting.
- 3 Negative remarks about my business interests

In mid-April 2020, Attorney Chavez indicated that Facebook comments on my election page should not be removed nor should anyone be blocked/restricted from the Facebook page. Since that recommendation was made, I have completely complied with Chavez's recommendation. I have not blocked/restricted any individuals or removed any comments from any social media.

Before from Attorney Chavez's advice in April 2020, I had never received any communication from the City attorney's office, other city staff or any other related provider on rules or guidelines regarding social media use by public officials.

Alderman John S. Vander Leest

My name is Chris Wery. I served on the Green Bay City Council from 2002-2012 and again from 2014 to present. During that entire time period the City Attorney's office, other city staff or any other provider has not provided any training or communication on social media usage or rules to follow for city Facebook pages or campaign Facebook pages. Again, I have never received any communication from the City attorney's office, other city staff or any other related provider on rules or guidelines to follow on social media for public or campaign sites.

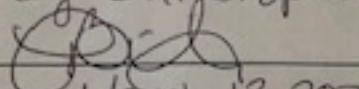


Alderman Chris Wery

This document was signed before me on Aug 13, 2020 date by Chris Wery.

Signed by Christopher A Wery

Notary signature



Notary expiration date

March 13, 2024

Notary seal

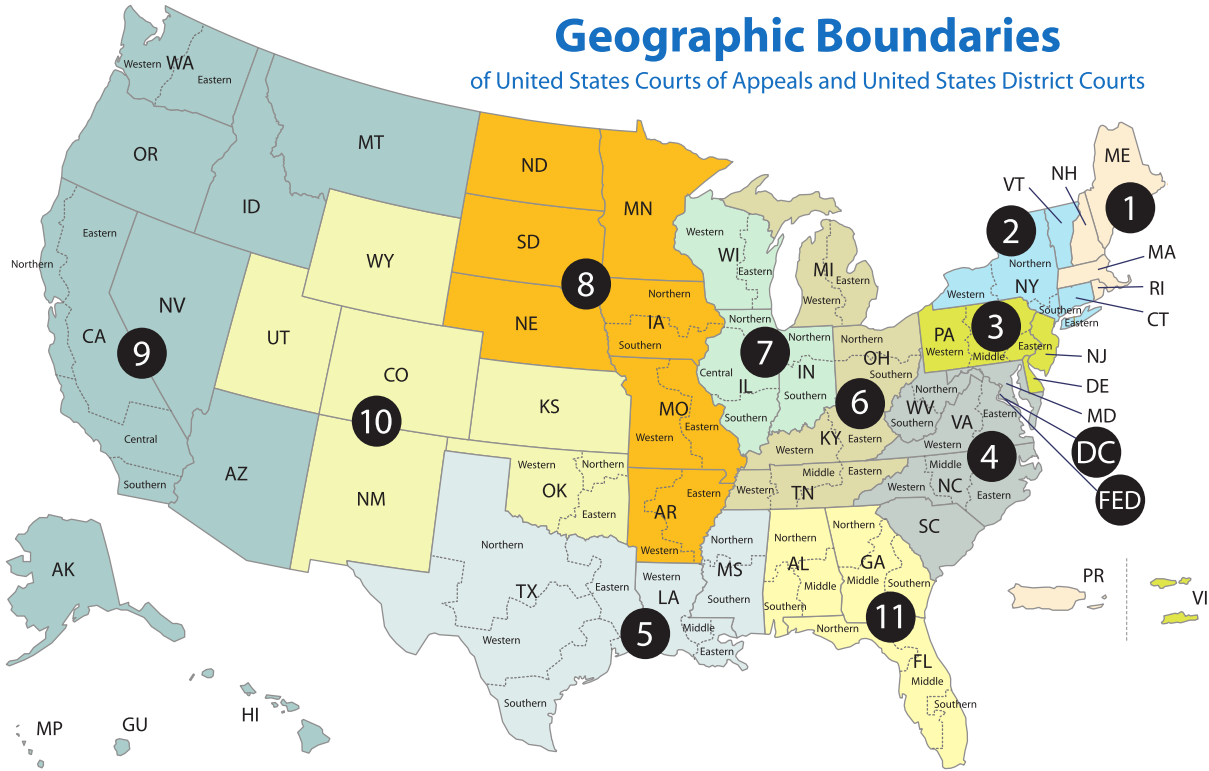


**DAVISON VS. RANDALL** , NO. 17-2002 (4TH CIRCUIT COURT OF APPEALS), is not binding precedent in the Eastern District of Wisconsin

Davison was issued on 1/19/2019 in final form.

# Geographic Boundaries

of United States Courts of Appeals and United States District Courts



**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 17-2002**

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BRIAN DAVISON,

Plaintiff - Appellee,

v.

PHYLLIS RANDALL, In her official and individual capacity,

Defendant - Appellant,

and

LOUDOUN COUNTY BOARD OF SUPERVISORS, In their official and individual capacities; LEO ROGERS, In his official capacity; TONY BUFFINGTON, In his official capacity; RON MEYER, In his official capacity; GEARY HIGGINS, In his official capacity,

Defendants.

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LOCAL GOVERNMENT ATTORNEYS OF VIRGINIA, INC.;  
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION; VIRGINIA  
ASSOCIATION OF COUNTIES; VIRGINIA MUNICIPAL LEAGUE,

Amici Supporting Appellant,

AMERICAN CIVIL LIBERTIES UNION; ACLU OF VIRGINIA; ACLU OF  
MARYLAND; ACLU OF NORTH CAROLINA; ACLU OF SOUTH  
CAROLINA; ACLU OF WEST VIRGINIA,

Amici Supporting Appellee.

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**No. 17-2003**

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BRIAN C. DAVISON,

Plaintiff - Appellant,

v.

PHYLLIS RANDALL, In her official and individual capacity; LOUDOUN COUNTY BOARD OF SUPERVISORS, In their official and individual capacities,

Defendants - Appellees,

and

LEO ROGERS, In his official capacity; TONY BUFFINGTON, In his official capacity; RON MEYER, In his official capacity; GEARY HIGGINS, In his official capacity,

Defendants.

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Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:16-cv-00932-JCC-IDD)

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Argued: September 26, 2018

Decided: January 7, 2019

Amended: January 9, 2019

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Before KEENAN, WYNN, and HARRIS, Circuit Judges.

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Affirmed by published opinion. Judge Wynn wrote the opinion, in which Judge Keenan and Judge Harris concurred. Judge Keenan wrote a separate concurring opinion.

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**ARGUED:** Scott E. Gant, BOIES SCHILLER FLEXNER, LLP, Washington, D.C.; Leo P. Rogers, LOUDON COUNTY ATTORNEY, Leesburg, Virginia, for Appellant/Cross-



## WHICH COURT IS BINDING?<sup>1</sup> Binding vs. Persuasive Cases

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You have found the perfect case: the facts are similar to yours and the law is on point. But does the court before which you are practicing (or, in law school, the jurisdiction to which you have been assigned) have to follow the case? *Stare decisis* is the common law principle that requires courts to follow precedents set by other courts. Under *stare decisis*, courts are obliged to follow some precedents, but not others. Because of the many layers of our federal system, it can be difficult to figure out which decisions bind a given court. This handout is designed to help you determine which decisions are mandatory and which are persuasive on the court before which you are practicing.



<b>Binding versus Persuasive Authority: What's the Difference?</b>
<ul style="list-style-type: none"> <li>• <i>Binding authority</i>, also referred to as mandatory authority, refers to cases, statutes, or regulations that a court <b>must</b> follow because they bind the court.</li> <li>• <i>Persuasive authority</i> refers to cases, statutes, or regulations that the court <b>may</b> follow but does not have to follow.</li> </ul>

### To get started, ask yourself two questions:

- 1) Are the legal issues in your case governed by state or federal law? and
- 2) Which court are you in?

Once you know the answers to these questions, you are well on your way to determining whether a decision is mandatory or persuasive.

### *Step 1: Are the Legal Issues in Your Case Governed by Federal or State Law?*

First, a lawyer needs to know the facts and issues of the case. Facts such as where the events took place, where the home(s) of the parties are, and where the parties conduct most of their business frame the legal issues. In other words, identifying key facts will help you to determine what law governs the legal issues in your case.

The hypothetical case below illustrates how you might analyze a particular set of facts to identify whether the legal issues are governed by state or federal law. The first step is to identify the facts and brainstorm all the possible legal issues raised by those facts.

<sup>1</sup> By Robyn Painter and Kate Mayer. Revised in 2017 by Kate Mathews.

Hypothetical Case: Pick-Pocketing in Virginia

<b>Facts</b>	<b>Possible Legal Issues</b>
<ul style="list-style-type: none"><li>• You are shopping in a grocery store in Virginia when a little old woman in line at the checkout starts screaming that she's been pick-pocketed.</li><li>• The police arrive on the scene, and the woman identifies you as someone who suspiciously brushed against her.</li><li>• The police arrest you and throw you in jail.</li><li>• Later, the police interrogate you without first informing you of your right to have a lawyer present.</li></ul>	<ul style="list-style-type: none"><li>• Is pick-pocketing a crime in Virginia? If so, under what law?</li><li>• Did the police have probable cause to arrest you based on the identification of the old woman?</li><li>• How reliable was the old lady's identification?</li><li>• How long can the police hold you?</li><li>• Were any of your Constitutional rights violated during the police's arrest and interrogation of you?</li><li>• If you are found guilty, can the little old lady also sue you in civil court for infliction of emotional distress or another tort?</li></ul>

After you have brainstormed all the possible legal issues the facts raise, determine whether the legal issues are governed by federal or state law. In any given case, there may be both federal and state issues. America operates on a system of dual sovereignty: the fifty states and the federal government all retain their own sovereignty. Because each state is a sovereign, each state sets its own laws and has its own Constitution. In addition, the United States federal government makes laws and has a Constitution.

When determining whether a legal issue is governed by federal or state law, keep in mind that some areas of the law, such as criminal and environmental law, are governed by both state and federal laws. Generally, the principle of **preemption** means that a legitimate federal action supersedes a state law in certain cases. Although a full discussion of preemption is beyond the scope of this handout, you should be aware of some basic principles. Federal law preempts state law when the two laws conflict, when Congress expressly or implicitly says so, or when federal laws are so pervasive that they occupy the entire field of law.

Hypothetical Case: Pick-Pocketing in Virginia

*There is no preemption issue in your case because there is no conflict between state and federal law such that federal law would override Virginia state law. Specifically, there is no federal law prohibition against pick-pocketing that could conflict with Virginia's local pick-pocketing law. So, two sets of laws potentially govern.*

<i><b>Federal Issues</b></i>	<i><b>State Issues</b></i>
<ul style="list-style-type: none"> <li>• <i>Your Fourth, Fifth, and Sixth Amendment rights were triggered once you were arrested—these rights are governed by federal law, i.e., the U.S. Constitution.<sup>2</sup></i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Virginia’s or the town’s local pick- pocketing statute will lay out the elements of and punishment for the offense; the court’s decision in your case will also be informed by state cases about pick-pocketing.</i></li> <li>• <i>Your arrest might also implicate Virginia’s state Constitution—state Constitutions must provide at least as many rights as the Federal Constitution, but can also entitle you to broader protections.</i></li> </ul>

*In sum, your case involves legal issues governed by both state and federal law.*

**Step 2: Which Court Are You In?**

Next, determine which court you are in, which is a two-part inquiry.

**(1)** First, ask yourself whether you are in federal or state court.

Dual sovereignty means that each sovereign has its own court system: the states each have courts and the United States has courts, which are called federal courts. Federal courts are located throughout the United States.

**(2)** Second, ask yourself whether you are in a trial court, an intermediate appellate court, or a supreme court.

Most American court systems—whether they are federal or state—have a similar structure, consisting of trial courts, intermediate appellate courts, and the highest court in the jurisdiction, usually supreme courts. In the federal court system, the trial courts are called United States District Courts. There are twelve federal courts of appeals that each cover a geographical region called a circuit and are, accordingly, called the United States Court of Appeals for the [insert number] Circuit or Circuit Courts.<sup>3</sup> States vary in the names they give to their courts, but regardless of the nomenclature, the structure is the same.<sup>4</sup>

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<sup>2</sup> Usually, there are state cases adopting Federal Courts’ interpretation of the Constitution. If this is so, you should cite your state case. Be careful, though, to check and see if there are any new federal decisions governing basic Constitutional rights surrounding your case.

<sup>3</sup> Additionally, there is a thirteenth federal appellate court called the Court of Appeals for the Federal Circuit, which unlike the regional Circuit Courts of Appeal, has nationwide jurisdiction to hear appeals in only certain types of cases including cases involving patent laws and cases appealed from the U.S. Court of Federal Claims and the U.S. Court of International Trade.

<sup>4</sup> In some states, such as New York and Maryland, the highest court in the state is actually called the Court of Appeals.

### Hypothetical Case: Pick-Pocketing in Virginia

*In your case, the local police arrested you. These police were acting under the authority of the Virginia state or local statute against pick-pocketing. Thus, at this point, you are in a Virginia state trial court. Realize, though, that even though you are in a state court, the federal Constitutional issues you identified in **step 1** can still be heard by that court.*

*If you lose at trial and need to appeal, that appeal will go to Virginia's intermediate appellate court, and then to Virginia's highest court, the Virginia Supreme Court. Only if you lose at the state's highest court and believe that the state law violates the U.S. Constitution can you appeal to the U.S. Supreme Court.*

*If you had been arrested by the FBI or for a federal offense, then you could be tried in federal district court, perhaps in the U.S. District Court for the Eastern District of Virginia. If the case were appealed, it would go to the U.S. Court of Appeals for the Fourth Circuit, then to the U.S. Supreme Court.*

*In sum, at this point, your case is in a state trial court for the purpose of determining whether a particular case is binding or persuasive.*

### ***NOW YOU ARE READY! Is the case you have found binding or persuasive?***

Now that you have found a case on point, some general principles will help you to figure out whether a law is binding or persuasive. Use your answers to the above questions to apply these principles to your case.

First, **higher courts bind lower courts** within their particular state or circuit. With the exception of the U.S. Supreme Court, courts of appeals and state courts do not bind courts outside the state or circuit in which they are located. That is, a federal Supreme Court decision is binding on all lower federal courts, both circuit courts of appeals and district courts. A federal circuit decision is binding on all federal district courts within its circuit, but not federal courts in other circuits. For example, a decision of the U.S. Court of Appeals for the Ninth Circuit binds the U.S. district courts within the Ninth Circuit, but not federal courts in any other circuit. However, a district court or trial court decision would not bind higher courts. A decision by a state's highest court is binding on all appeals courts and trial courts in that state, but not on state courts in other states, and usually, a state court of appeals' decision binds state trial courts in that state.<sup>5</sup>

Second, with the exception of the U.S. Supreme Court, **federal courts bind only other federal courts, not state courts**. Thus, a decision by the U.S. Court of Appeals for the Ninth Circuit, a federal court, is binding on federal district courts within the boundaries of the Ninth

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<sup>5</sup> Although some states have appellate courts that bind all lower courts in the state, others have regional districts or circuits and a state appellate court may bind only lower courts within its geographic district or circuit. Therefore, be sure to research the structure of the courts in your particular state. <http://www.law.georgetown.edu/w-p-content/upload/2018/07/Matthew-Schaffer-FederalLawFederalCourtsandBindingandPersuasiveAuthority.pdf>

Circuit. It is not binding on California state courts, even though California is geographically within the Ninth Circuit. Similarly, **state courts bind only other state courts within the state.** A decision of the California Supreme Court would thus bind other California state courts, not state courts in any other state. However, sometimes a federal court must apply a state's law. In that case, the state's interpretation of that law is binding on the federal court. Therefore, a California Supreme Court decision on a matter of California law would bind federal courts on that state law issue. Similarly, state courts must sometimes decide issues of federal law, but they are not bound by federal courts except the U.S. Supreme Court. A decision of the U.S. Supreme Court, a federal court, is binding on state courts when it decides an issue of federal law, such as Constitutional interpretation.

Hypothetical Case: Pick-Pocketing in Virginia

<i>Federal Issues</i>	<i>State Issues</i>
<ul style="list-style-type: none"> <li>• <i>The Constitutional issues are federal. The state trial court is thus bound by the U.S. Supreme Court's decisions about the Constitutional issues in your case.</i></li> <li>• <i>Any decisions from other federal courts other than the U.S. Supreme Court are persuasive authority on the federal law issues.</i></li> <li>• <i>Note that if you had been accused of a federal offense, you probably would have appeared in a federal district court, which would have been bound by the court of appeals for your circuit (i.e., the Fourth Circuit), and the U.S. Supreme Court on all federal issues.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>The Virginia state trial court in which your case will be heard is bound by Virginia courts of appeal and by the Virginia Supreme Court on all state issues. Because the pick-pocketing law is a state law issue, the state's courts of appeals and state supreme court decisions will bind the state trial court you are in.</i></li> <li>• <i>All other court decisions are persuasive authority on the state law issue—that is, decisions from all federal courts, other states' state courts, and other state trial courts in the same state.</i></li> </ul>

Applying this analysis from the outset will help you to be a smarter, faster researcher and to narrow down the body of case law at which you are looking. Knowing what the court is bound to follow will help you to write more effective memos, motions, and briefs.

For a more detailed discussion of binding and persuasive authority at the federal level, see the Writing Center's handout, "Federal Law, Federal Courts, and Binding and Persuasive Authority." Also, for a discussion about using persuasive authority in your legal writing, see the following handout: "When and How to use Secondary Sources and Persuasive Authority to Research and Write Legal Documents."

The table below displays the above principles in another form. Use your answers from **Steps 1 and 2**—whether the issue is state or federal and which court you are in—to find the box in the

left hand column that applies to your case. Then, read across that row to find out which courts bind you and which courts are only persuasive to you.

1) State or Federal Issue? 2) Which court are you in?	Binding Authority	Persuasive Authority
State issue in state trial court	That state's state appeals court That state's highest court	All federal courts Other states' state courts Other state trial courts in the same state
State issue in state appeals court	That state's highest court	All federal courts Other states' state courts State trial courts in the same state Other state courts of appeals in the same state
State issue in state's highest court	N/A	That state's highest court* State trial courts in the same state State courts of appeals in the same state Other states' state courts All federal courts
State issue in federal district court	Interpretations from the state's highest court	All federal courts Other state courts
State issue in federal circuit court	Interpretations from the state's highest court	All federal courts Other state courts
State issue in U.S. Supreme Court	Interpretations from the state's highest court	All federal courts Other state courts
Federal issue in state trial court	U.S. Supreme Court That state's court of appeals That state's highest court	All federal district courts All federal circuit courts State courts
Federal issue in state appeals court	U.S. Supreme Court That state's highest court	All federal district courts All federal circuit courts State courts
Federal issue in state's highest court	U.S. Supreme Court	All federal district courts All federal circuit courts State courts
Federal issue in federal district court	U.S. Supreme Court Federal circuit court in the circuit where the district court is	Other federal circuit courts Federal district courts All state courts
Federal issue in federal circuit court	U.S. Supreme Court	That federal circuit court* Other federal circuit courts Other federal district courts All state courts
Federal issue in U.S. Supreme Court	N/A	U.S. Supreme Court* All federal circuit courts All federal district courts All state courts

\* Technically, courts of the same level do not bind each other. Thus, the U.S. Supreme Court may overturn its prior decisions, though it has adopted different practices of *stare decisis* for its constitutional precedents and its precedents interpreting federal statutes. For a discussion of *stare decisis* practices of the U.S. Supreme Court, see Amy Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 GEO. WASH. L. REV. 2 (2005). Further, although federal circuit courts technically do not bind themselves, nearly every circuit court has adopted a strong rule of *stare decisis*, or "law of the circuit" rule, under which the holding of a published decision by a three-judge panel of the circuit binds subsequent panels. Joseph W. Mead, *Stare Decisis in the Inferior Courts of the United States*, 12 NEV. L. J. 787, 794–95 (2012). Therefore, in practice, a published circuit court opinion is generally binding on that court. *Id.* However, "law of the circuit" rules vary slightly by circuit. *Id.* at 797.

WISCONSIN ETHICS COMMISSION ADVICE:

First Document: Explaining purpose and advice to local governments ( from their web site)

Second Document: Table indicating that legislator and staff can “manage” facebook posts

Third Document: Complete document containing advice on social media use

Fourth Document: Additional advice on social media use

We find almost no restrictions on public officials use of social media except insofar as it restricts the use of public money for some activities.

e of Wisconsin  
Ethics Commission

# Requests for Advice

## Requesting advice from the Wisconsin Ethics Commission

Any individual, either personally or on behalf of an organization or governmental body, may request of the Ethics Commission an advisory opinion regarding the propriety under the ethics, lobbying, or campaign finance laws of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of the Ethics Commission an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party.

## Confidentiality

Written requests for advice and the Commission's replies are confidential unless made public by the requestor. No member or employee of the Ethics Commission may make public the identity of anyone requesting an advisory opinion or of persons mentioned in an opinion. Periodically, the Commission publishes summaries of its opinions after making sufficient alterations to prevent the identification of the requestor and persons mentioned in the opinions.

## How to request an advisory opinion

A request for an advisory opinion of the Commission may be made in writing or electronically. The request should state each question upon which an opinion is desired, present all relevant facts, be as specific as possible, identify the names of all parties that are pertinent to the question, and include references to pertinent law known to the requestor. Requests should be submitted to the Commission Administrator or addressed generally to the Commission. Please see the [Contact Us \(/Pages/AboutUs/ContactUs.aspx\)](/Pages/AboutUs/ContactUs.aspx) page for current contact information.

A request posed by an attorney-at-law on a client's behalf should also set forth: a tentative conclusion upon each question presented, the reasoning upon which that conclusion is based, and all relevant statutory provisions, case law, opinions of the Attorney General, prior opinions of the Ethics Commission, and other authorities, whether or not they support the tentative conclusion concerning the questions presented.

A request requiring the resolution of questions of fact should not be submitted because the Ethics Commission cannot resolve factual issues in an opinion. A local public official may request an advisory opinion relating to the code of ethics for local government officials, Wis. Stat. § 19.59, from the attorney for the official's local unit of government. A local government attorney may seek advice from the Ethics Commission.

## Requesting opinions - County, municipal and other local government attorneys

Pursuant to Wis. Stat. § 19.59(6), a county corporation counsel, an attorney for a local governmental unit, or a state-wide association of local governmental units may ask the Wisconsin Ethics Commission to issue an opinion concerning the interpretation of Wis. Stat. § 19.59, the Code of Ethics for local government officials, employees and candidates. Written requests for advice are confidential. No member or employee of the Ethics Commission may make public the identity of anyone requesting an advisory opinion or of persons mentioned in an opinion. Periodically, the Commission publishes summaries of its opinions after making sufficient alterations to prevent the identification of the requestor and persons mentioned in the opinions. The Statutes do not authorize the Commission to issue an opinion to an official or representative of a local government other than the local government's legal counsel.

A request from a county corporation counsel, an attorney for a local governmental unit, or a state-wide association of local governmental units should:

- State on whose behalf the opinion is requested.
- State each question upon which an opinion is desired.
- State all of the facts giving rise to each question presented.
- Set forth a tentative conclusion upon each question presented and the reasoning upon which that conclusion is based.
- Set forth and analyze all relevant statutory provisions, case law, prior opinions of the Ethics Commission, and the authorities whether or not they support the tentative conclusion concerning the questions presented.


A request requiring the resolution of questions of fact should not be submitted because the Ethics Commission has no authority to decide questions of fact. The Ethics Commission does not issue opinions on whether past conduct has violated the law. Although the foregoing criteria are subject to exception when the circumstances warrant, a request which does not meet these criteria may be returned and the requestor asked to resubmit the request in an appropriate form.

## Advisory Opinion Request Process

Upon receipt of a valid opinion request, staff will confirm receipt with the person making the advisory opinion request. Staff will then prepare an analysis of the request and document relevant statutes, case law and constitutional law. For formal opinion requests, staff will also confirm with the requestor whether or not they wish to request a public hearing on the matter. Upon completion of the analysis of the request, staff will contact the Commission to schedule the opinion request for the next available Commission meeting. At the Commission's discretion, a special Commission meeting may be schedule to

address the request if the requestor can demonstrate the need for such urgency. Requestors may also wish to consider an informal advisory opinion for urgent matters. Please see the section below for additional information about informal advisory opinion requests.

## Informal Advisory Opinions

At its March 7, 2017 meeting the Ethics Commission delegated the authority to issue informal advisory opinions. A copy of the adopted policy and the delegation of authority is available here:  [Ethics Commission Policy - Delegation of Authority for Informal Advisory Opinions.pdf](#) (</Resources/EthicsCommissionPolicy-DelegationOfAuthorityForInformalAdvisoryOpinions.pdf>). As required by Wisconsin Statutes, the Commission shall review each informal advisory opinion at its next scheduled meeting.

## Evidence of intent to comply with law

It is prima facie evidence of intent to comply with the Ethics Code for State Public Officials (subch. III, ch. 19, Wisconsin Statutes) and the lobbying law (subch. III, ch. 13, Wisconsin Statutes) when a person refers a matter to the Ethics Commission and abides by the Commission's advisory opinion, if the material facts are as stated in the opinion request. Wis. Stat. § 19.46(2).

[Wisconsin.gov](https://www.wisconsin.gov) (<https://www.wisconsin.gov>).

[Campaign Finance Information System \(CFIS\)](https://cfis.wi.gov) (<https://cfis.wi.gov>).

[Eye on Lobbying](https://lobbying.wi.gov) (<https://lobbying.wi.gov>).

[Contact Us](/Pages/AboutUs/ContactUs.aspx) (</Pages/AboutUs/ContactUs.aspx>).

[Financial Disclosure](https://sei.wi.gov/) (<https://sei.wi.gov/>).



[\(https://twitter.com/](https://twitter.com/)

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# TABLE AT PAGE 8

3. A legislator should **not use state resources**, such as a state computer, to post non-legislative content to a website, Facebook page, or other social media other than purely personal (not campaign or business) content.
4. **Legislative staff** may post **legislative content** to a mixed-use website, Facebook page, or other social media at any time, even if using state resources, but not to a campaign website, campaign Facebook page, or other forms of campaign social media. However, legislative staff should do this only with respect to materials that are distributed more broadly to the press and public.
5. **Legislative staff** may post personal, business, or campaign content to a mixed-use website, Facebook page, or other social media **only** on personal time and without using state resources.
6. Although a mixed-use website may contain a link to the legislator's official state webpage, a state webpage should not be linked to a mixed-use website, Facebook page, or other social media.

See the below table that was included in the GAB letter to illustrate permissible and impermissible activities:

Type of website	Legislative		Personal		Campaign		Business	
Example	WI State Rep John Doe (Facebook)		John Doe (Facebook)		Doe for Assembly (Facebook)		Doe Consulting, LLC (Facebook)	
Type of Person	Legislator	Staff	Legislator	Staff	Legislator	Staff	Legislator	Staff
Using State Resources	I Some P No C No B	I Some P No C No B	I Some P No C No B	I Some P No C No B	X	X	X	X
On State Time	I Some P No C No B	I Some P No C No B	Any	I Some P No C No B	Any	X	Any	X
Off State Time/Resources	I Some P No C No B	I Some P No C No B	M	M	Any	Any	Any	Any
Link of the Wisconsin Legislature's Website	No	No	No	No	No	No	No	No
Publishing content from others	No	No	NA	NA	NA	NA	NA	NA
Notes	This is essentially a legislative resource.							

**Key**  
 I = Legislative post      M = Mixed Content  
 P = Personal post      X = Not Allowed  
 C = Campaign post      NA = Not applicable  
 B = Business post

It is the understanding of this Commission that paragraphs 1-5 of the above GAB advice was further adopted by the Chief Clerks and incorporated into their respective chambers' policy manuals for legislative staff. On June 21, 2018, the Ethics Commission re-iterated this advice in a letter to the Chief Clerks of the Legislature with the clarification that paragraph 2 only applied to posts to mixed-use websites/accounts and that official legislative social media accounts should only be used for official governmental purposes. A legislator's use of an official legislative social media account for campaign or business purposes, even when not using a state computer or on state time, could be a violation of Wis. STAT. § 19.45 (2) and (5).

Consistent with that prior advice, the Commission again advises that legislative staff may only post and manage legislative content on a mixed-use website or social media account while on state

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## 2020 ETH 01

### CAMPAIGN FINANCE & ETHICS – 50-PIECE RULE AND MIXED-USE SOCIAL MEDIA ACCOUNTS

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You are a legislative staff person. You have asked for an advisory opinion regarding the use of official legislative social media accounts and legislative office budgets for various types of communications when under the restrictions of [Wis. STAT. § 11.1205](#) (“the 50-piece rule”).

#### Summary:

It is the opinion of the Commission that legislators and legislative staff may use official legislative social media accounts and legislative office budgets as described below.

#### Analysis:

##### A. Wisconsin’s 50-Piece Rule

The questions in this section primarily require the application of [Wis. STAT. § 11.1205](#):

#### **11.1205 Use of government materials by candidates.**

##### **(1)**

**(a)** Except as provided in sub. **(2)**, no person elected to state or local office who becomes a candidate for national, state, or local office may use public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material distributed after:

- 1.** In the case of a candidate who is nominated by nomination papers, the first day authorized by law for circulation of nomination papers as a candidate.
- 2.** In the case of a candidate who is nominated at a primary election by write-in votes, the day the board of canvassers issues its determination that the person is nominated.
- 3.** In the case of a candidate who is nominated at a caucus, the date of the caucus.
- 4.** In the case of any other candidate who is nominated solely by filing a declaration of candidacy, the first day of the month preceding the month which includes the last day for filing the declaration.

**(b)** This subsection applies until after the date of the election or after the date of the primary election if the person appears as a candidate on a primary election ballot and is not nominated at the primary election.

**(2)** This section does not apply to use of public funds for the costs of the following:

- (a)** Answers to communications of constituents.
- (b)** Actions taken by a state or local government administrative officer pursuant to a specific law, ordinance or resolution which authorizes or directs the actions to be taken.
- (c)** Communications between members of the legislature regarding the legislative or deliberative process while the legislature is in session.
- (d)** Communications not exceeding 500 pieces by members of the legislature relating solely to the subject matter of a special session or extraordinary session, made during the period between the date that the session is called or scheduled and 14 days after adjournment of the session.

1. Does one Facebook/Twitter post count as sending out one item regardless of how many individuals view or share it?

Wisconsin law prohibits individuals elected to state or local office who become candidates for national, state, or local office from using public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material distributed during a campaign period (“the 50-piece rule”), except as specifically permitted. [WIS. STAT. § 11.1205](#).

Over the course of 2018 and 2019, the Commission has taken several steps to clarify the appropriate uses of social media by public officials and explain the application of the 50-piece rule to social media communications. See [2018 ETH 03](#), Guidelines [ETH-1251](#) and [ETH-1253](#). In [2018 ETH 03](#), the Commission formally analyzed [WIS. STAT. § 11.1205](#) and considered how to count instances of electronic communication under the 50-piece rule. In that opinion, the Commission held that electronic communications where the sender actively selects recipients would be counted as a single “piece” per recipient (e.g., emails, text messages, or direct messages); however, electronic communications that were published in a singular form, but could be read by multiple individuals (e.g., a website page, Facebook post, or tweet) would only be counted as a single piece. [2018 ETH 03](#). This remains true regardless of the number of times the page, post, or tweet is viewed.

However, [2018 ETH 03](#) is silent as to the question of how a recipient’s share of a communication with others should be counted under the 50-piece rule. The statute is similarly silent. See [WIS. STAT. § 11.1205](#). For example, if a legislator who is up for election uses a state computer system during the campaign period to send a single individual an email and that person independently decides to forward that email to 50-plus others, would that be a violation of the 50-piece rule? What if the sender asks the original recipient to forward it and the recipient sends it to 50 plus others, would that be a violation of the 50-piece rule? The answer to these questions require an interpretation the language of [WIS. STAT. § 11.1205](#).

The purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, [2004 WI 58](#), ¶44. Statutory interpretation begins with the language of the statute. *Id.* at ¶45. Statutory language is given its common, ordinary, and accepted meaning. *Id.* Statutory language should also be interpreted in the context in which it is used; not in isolation, but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. *Id.* at ¶46. If the meaning of the statute is plain, the inquiry ordinarily ends there. *Id.* at ¶45. However, a literal reading of a statute may be rejected if it would lead to an absurd or unreasonable result that does not reflect the legislature’s intent. *State v. Jennings*, [2003 WI 10](#), ¶11. Additionally, statutory interpretations that render provisions meaningless should be avoided. *Belding v. Demoulin*, [2014 WI 8](#), ¶17.

While the 50-piece rule is codified in Chapter 11, the campaign finance laws, the 50-piece rule is more akin to the prohibitions of subchapter III of Chapter 13 or Chapter 19 in that it regulates conduct by current officeholders and seeks to prohibit abuses of office. In these contexts, there are long-standing interpretations that an official cannot do indirectly what he or she is prohibited from

doing directly, even where the statute is silent as to indirect applications. *See e.g.*, [2003 Eth Bd 11](#), ¶3; [2001 Wis Eth Bd 02](#), ¶7. As these other prohibitions are similar in nature to the prohibition of the 50-piece rule, the Commission believes a similarly inclusive interpretation would be appropriate when interpreting the prohibition here. However, reading [WIS. STAT. § 11.1205](#) to include every email forward, Facebook share or Twitter retweet of an original communication would likely produce an absurd result where the sender has no knowledge or control over the republication including how many times the message is shared subsequent to the initial communication.

To avoid counting every instance of an initial recipient subsequently sharing a communication while still prohibiting circumvention of the restrictions of the 50-piece rule by employing another, the Commission again will look to the original sender's intentions and adopt an objective test where only the republications intended by the original sender will be counted. Accordingly, where the sender requests or intends for an initial recipient(s) to share the original communication with others, the Commission would then count the republications by the initial recipient(s) done at the request of the original sender as if they were done by the original sender.

2. Can elected officials use office funds to take out a legislative ad in a local newspaper while under the "50-piece rule"?

For each of the remaining 50-piece rule questions, it is important to note that the Ethics Commission can only speak to the laws it administers (Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19). The Commission generally has no authority over the use of legislative office funds. It is the understanding of the Commission that questions regarding the distribution of materials by legislators at government expense should be directed to either the Senate or Assembly Chief Clerk as appropriate. However, as you have asked specifically if these uses of funds would be permitted under the 50-piece rule, the Commission will answer your questions with caveat that when contemplating a use of legislative office funds, you should first seek an answer from the Chief Clerk's Office as to whether a specific expenditure is an appropriate use of state resources and consistent with the policies of the Legislature.

As explained in response to the first question, the 50-piece rule prohibits the use of public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material during a campaign period. [WIS. STAT. § 11.1205](#). This is true regardless of whether the sender is communicating a legislative or campaign message. *See* [WIS. STAT. § 11.1205](#), [2018 ETH 03](#). Additionally, the selection of recipients is only a factor in counting the number of pieces for electronic communications. [2018 ETH 03](#). In this situation, while the elected official may only be sending one piece (i.e., the proposed ad) to the newspaper, it is clear that by paying the newspaper to publish the advertisement, the elected official would be using public funds to pay for the newspaper's subsequent production and distribution of the ad in each newspaper that is to be printed. Assuming the newspaper prints 50 or more copies, this practice would likely run afoul of the 50-piece rule when done during the campaign period. This conclusion is consistent with an informal opinion of the Elections Board in 1996, which held that "because public money would be used to purchase the distribution of more than 49 pieces of identical material (the ad in the newspaper), and because publication is deemed to fall within the statutory language, 'the cost of materials or distribution,' the post-June 1 publication would be proscribed by s. 11.33, Stats."

3. Can elected officials use office funds to place a legislative radio ad while under the “50-piece rule?”
  - a) Are members restricted to 49 spots per ad?

The 50-piece rule only applies to the cost of materials or distribution for 50 or more pieces of substantially identical material. [WIS. STAT. § 11.1205](#). A radio ad is a single audio recording broadcast on a specific radio frequency that can be received by any listener with a radio tuned to that frequency within range of the transmitter.<sup>1</sup> This singularity of material makes radio broadcasts more akin to a bulletin board or billboard, which are similarly platforms for a single message to be received by a large number of individuals. As such, the Commission believes that the 50-piece rule would not prohibit elected officials from using office funds to place legislative radio ads during a campaign period. However, to address the follow-up question, if subject to the 50-piece rule, an elected official is still limited to no more than 49 pieces of substantially identical material, so any single radio ad could not be played more than 49 times during the campaign period without running afoul of the statute.

4. Can an elected official use office funds to mail a legislative newsletter to a Postal patron route or “Every Door Direct Mail” list while under the “50-piece rule”? (see USPS postal patron map attached)

Similar to the response to Question #2, it is important to note that the 50-piece rule prohibits a candidate from using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material during a campaign period. [WIS. STAT. § 11.1205](#). A USPS Postal Patron mailing, also known as Every Door Direct Mail, delivers a copy of the submitted piece to every mailbox within a certain area or route. Again, the selection of recipients is only a factor in counting the number of pieces for *electronic communications* per [2018 ETH 03](#). In this situation the elected official is still using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material (i.e., each piece of direct mail). The fact that the sender is not selecting the recipients is not a consideration in physical communications like legislative newsletters. As such, the Commission believes such a use of office funds would be prohibited under [WIS. STAT. § 11.1205](#) if done by a covered official during the campaign period.

Additionally, the Commission would note an opinion issued by the Elections Board, [1976 Wis El Bd 16](#) (withdrawn December 6, 2016) that spoke to the practice of sending out legislative newsletters during the campaign period. While this opinion has been withdrawn by the Commission due to its references to laws that have since been repealed and recreated, this opinion considered the use of legislative office accounts to send out legislative newsletters under the prior iteration of the 50-piece rule and while it was not the central holding of the opinion, the Board did state that since distribution of 100 or more newsletters during the campaign period would be prohibited, distribution prior to the campaign period would presumably be allowed. While the language of the 50-piece rule has changed between 1976 and 2019 (notably moving the maximum number of pieces allowed from 99 to 49), the Commission believes this opinion demonstrates that the prior practice was for legislative offices to be restricted from such expenditures during the

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<sup>1</sup> Many radio stations simulcast their broadcasts to the Internet. Consistent with [2018 ETH 03](#) we believe the simulcast, if known to and intended by the sender, would count as one additional piece.

campaign period and we see no evidence that in the various changes to the 50-piece rule over years the Legislature intended any different conclusion.

5. Can elected officials use office funds to promote their account, boost a post or take out legislative ads on social media platforms including Facebook, Twitter, and Youtube while under the “50-piece rule”?
  - a) If so, how targeted can these be?
    - 1) Can you target an ad to individuals only within your Legislative District?
    - 2) Can you target an ad to individuals based on other criteria? (Individuals within a certain radius of an event? Individuals who follow other social media pages? Individuals that meet certain demographic criteria? ... see attached photos *FBad1* and *FBad2* for example of potential targeting)
  
6. Example #1:
  - a) We hold regular monthly listening sessions around the district throughout the year
  - b) For each listening session, we send out a news release, post the event on our website and create a Facebook event.
    - 1) Once under the 50-piece rule, we send press releases to fewer than 50 email addresses.
  - c) If we are allowed to continue promoting these events on Facebook using office funds, those posts can reach hundreds or thousands of local residents.
    - 1) For example, one Facebook ad for a local listening session during the budget process, using \$250 from our office account, reached 8,996 residents in the [legislative district] and resulted in 170 rsvp’s for that listening session.
    - 2) See attached *FBlisteningession* and *FBlisteningession2* graphics for an example of what those ads generally look like.
  - d) Can we continue to use office funds to promote these listening sessions?
  
7. Example #2:
  - a) We generally research policies and draft legislation in the summer and fall months of even numbered years.
  - b) We will be rolling out a list of legislative priorities later this year and asking the public to weigh in on the list of policies that they’d like the legislature to focus on and prepare for.
  - c) Can we promote a post soliciting feedback from the public on legislative priorities?
    - 1) i.e. “I’m working to ensure every family has access to quality health care, strong schools, safe roads and clean drinking water. Let me know what issues you’d like the state legislature to focus on.”
  - d) Can we promote a post that provides information to residents on relevant and timely legislative issue?
    - 1) i.e. “As children head back to school, many communities are struggling with teacher shortages, outdated facilities and a lack of state funding.

Visit *[legislative website link]* to learn more about what's being done to address these issues.”

In order to answer these questions, a brief review of how the Commission understands these social media platforms to work at present is necessary as technology is constantly evolving. Facebook, Twitter, and YouTube each have “feeds” which show content to the user. A feed is created by the platform via an algorithm and largely consists of content that the user has either indicated they wish to see by liking, following, or subscribing to the content producer or by the platform placing the content in the user’s feed due to other factors (e.g., demographics of the user, similarity to other content the user has viewed, etc.) It is important to note that a user does not see every piece of content from every content producer they like, follow, or subscribe to unless the user goes to that specific content producer’s page on the platform. A content producer who wishes to expand the number of users who see the producer’s content in their user “feed” can choose to pay the platform to place their content in more users’ feeds.

There are multiple ways a content producer can expand their reach on social media platforms. On Facebook in particular, a content producer can choose to “boost” a post. A boost is essentially an advertisement consisting of the chosen post. After selecting a post to boost, the content producer can choose their audience through the following options (see FBad1):

- People you choose through targeting
  - Targeting options are extensive and include criteria like location, age, education, financial status, interests, behaviors, political affiliation, etc.
- People who like your Page
- People who like your Page and their friends
- People in your local area

After defining the intended audience, the content producer is then asked to set a duration for the ad and the total budget (see FBad2). Depending on the budget, Facebook estimates the number of users who will be reached per day and attempts to divide the total budget evenly across the entire duration of the ad. Facebook also permits content producers to create custom audiences from custom lists of phone numbers, email addresses, website cookies, etc.; although it is the understanding of the Commission that Facebook will not allow either targeting options or custom audiences that would narrow the potential audience for an ad to less than 50.

If the content producer would like to get more users to like their page (and thereby gain more viewers of their content via posts, instead of via paid advertising), another option is to “promote” the content producer’s page. Promoting is essentially creating an advertisement for the content producer’s page as a whole instead of just a particular post. These ads can then be tailored to a particular audience similar to selecting the audience for a boosted post and have similar duration and budget options.

The final option on Facebook is to simply place a traditional paid advertisement. These ads are not placed in the user’s feed between posts, but instead are located in a static position elsewhere on the screen. Traditional ads have the same options for audience selection, duration, and budget.

You ask if elected officials can use their office accounts for these types of advertising (boosted posts, promoted pages, and traditional paid advertisements) on social media when under the 50-piece rule. Again, by its terms, the 50-piece rule prohibits officials from using public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material during a campaign period. [WIS. STAT. § 11.1205](#). Consistent with the Commission’s prior advice in [2018 ETH 03](#), the Commission believes an official could continue to include a notice of a listening session on their legislative website, create a Facebook event, create a Facebook post about the session, and send a news release regarding the event out to up to 49 recipients when under the restrictions of the 50-piece rule. However, using legislative office funds to further promote those sessions via paid advertisement (boosted post, promoted page, or traditional paid advertisement) on social media during the campaign period, would be limited by the 50-piece rule as the official is paying to distribute substantially identical material multiple times. As such, a covered official may be able to boost a post or promote a page during the campaign period, but only to no more than 49 people, which may not be technically possible on the social media platforms described.<sup>2</sup>

## B. Mixed Use Accounts

1. Can legislative staff manage and post content on “mixed use” social media accounts used by elected officials?

In 2012, the Government Accountability Board (“GAB”) issued an informal advisory opinion on the use of social media by legislators and described its recommendations for best practices to avoid potential campaign finance and ethics violations. This letter was approved by the Government Accountability Board at its March 20, 2012 meeting. In this letter, the GAB advised that because state resources would be used to create and maintain official legislator social media pages, those pages may not be used for campaign or personal purposes.

Later in 2012, the Chief Clerks of the Legislature followed up their initial request with further questions on the permissible uses of social media by legislators and their staff. On October 11, 2012, the Director and General Counsel of the GAB issued a letter which reiterated the earlier guidance approved by the GAB and expanded into the topic of “mixed-use” sites such as a legislator’s personal or campaign social media sites. The relevant advice is excerpted below:

*With respect to the use of state staff and resources to create and post materials to the web or other social media pages that contain a mix of legislative and personal materials, including business and campaign materials, our advice is:*

1. *State resources should not be used to **create** a website or Facebook page that will be used for mixed purposes.*
2. *Subject to paragraph 3, **a legislator** may post any type of content at any time to a website, Facebook page or other social media.*

---

<sup>2</sup> If the social media ad is substantially identical to either the notice on the legislative website, Facebook post, Facebook event, or news release, those instances of substantially identical communication are combined with the instances of the social media ad when tallying the 49 pieces allowable under the rule.

3. A legislator should **not use state resources**, such as a state computer, to post non-legislative content to a website, Facebook page, or other social media other than purely personal (not campaign or business) content.
4. **Legislative staff** may post **legislative content** to a mixed-use website, Facebook page, or other social media at any time, even if using state resources, but not to a campaign website, campaign Facebook page, or other forms of campaign social media. However, legislative staff should do this only with respect to materials that are distributed more broadly to the press and public.
5. **Legislative staff** may post personal, business, or campaign content to a mixed-use website, Facebook page, or other social media **only** on personal time and without using state resources,
6. Although a mixed-use website may contain a link to the legislator's official state webpage, a state webpage should not be linked to a mixed-use website, Facebook page, or other social media.

See the below table that was included in the GAB letter to illustrate permissible and impermissible activities:

Type of website	Legislative		Personal		Campaign		Business	
Example	WI State Rep John Doe (Facebook)		John Doe (Facebook)		Doe for Assembly (Facebook)		Doe Consulting, LLC (Facebook)	
Type of Person	Legislator	Staff	Legislator	Staff	Legislator	Staff	Legislator	Staff
Using State Resources	L Some P No C No B	L Some P No C No B	L Some P No C No B	L Some P No C No B	X	X	X	X
On State Time	L Some P No C No B	L Some P No C No B	Any	L Some P No C No B	Any	X	Any	X
Off State Time/Resources	L Some P No C No B	L Some P No C No B	M	M	Any	Any	Any	Any
Link of the Wisconsin Legislature's Website	Yes		No		No		No	
Policing content from others	Yes		NA		NA		NA	
Notes	This is essentially a legislative resource.							

**Key**

L = Legislative post      M = Mixed Content  
P = Personal post        X = Not Allowed  
C = Campaign post        NA = Not applicable  
B = Business post

It is the understanding of this Commission that paragraphs 1-5 of the above GAB advice was further adopted by the Chief Clerks and incorporated into their respective chambers' policy manuals for legislative staff. On June 21, 2018, the Ethics Commission re-iterated this advice in a letter to the Chief Clerks of the Legislature with the clarification that paragraph 2 only applied to posts to mixed-use websites/accounts and that official legislative social media accounts should only be used for official governmental purposes. A legislator's use of an official legislative social media account for campaign or business purposes, even when not using a state computer or on state time, could be a violation of WIS. STAT. § [19.45 \(2\)](#) and [\(5\)](#).

Consistent with that prior advice, the Commission again advises that legislative staff may only post and manage legislative content on a mixed-use website or social media account while on state

time and may only post such materials to a mixed-use website or account that are distributed more broadly to the press and public. Legislative staff may only post personal, business, or campaign content to a mixed-use website or social media account on personal time and without the use of state resources.

2. Can elected officials with a “mixed use” social media account promote their account, boost a post or take out ads on Facebook/Twitter using office funds?

Reviewing the above table summarizing the advice provided by the Government Accountability Board and reaffirmed and further clarified by the Commission, it is clear that no person is authorized to use state resources to post campaign or business material. This is consistent with the general public purpose doctrine established by the courts in *State ex rel. Thompson v. Giessel*, 265 Wis. 207 (1953). This doctrine holds that expenditures of public money have to be made for a public purpose. However, the Commission does not make the determination of whether a given expenditure is for a public purpose. The proper way for such an issue to be decided is by way of a taxpayer civil action against the spending authority, which the courts would adjudicate, not this Commission.

It would logically follow that if legislative staff on state time can use state resources to post legislative content to a mixed-use social media account, state resources could also be used to boost or take out ads for such legislative posts on the mixed-use social media account. However, as legislative staff are only permitted to post such legislative content to a mixed-use social media account when the content is more broadly distributed to the media and the public, paying to boost or take out an ad for a post on a mixed-use social media account would not appear to be consistent with the original advice as it appears to contemplate that the post to the mixed-use account would be secondary to the original broader communication to the public and the media. Furthermore, as a general question as to the proper use of legislative resources, this is also a question that cannot be answered by the Ethics Commission alone and should also be directed to the Chief Clerk’s Office.

Finally, because paid promotion of a mixed-use account as a whole could potentially benefit the official, their immediate family, or organizations with which the official is associated via the other content contained within and disseminated by that mixed-use social media account (i.e., business, campaign, etc.), the Commission advises against officials using state resources to promote mixed-use social media accounts as it could be a potential violation of [WIS. STAT. § 19.45\(2\)](#). This issue is further complicated by the potential for an official to later take a mixed-use account with them when they leave their public position, potentially retaining an asset of substantial value that was maintained or potentially even enhanced in value through the use of public resources.

**From:** [REDACTED]  
**To:** [Carlton, Daniel - ETHICS](#)  
**Subject:** RE: Social Media Guidance  
**Date:** Wednesday, September 18, 2019 10:20:20 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[FBad1.png](#)  
[FBad2.png](#)  
[USPSpostalpatron.png](#)

---

Hi Dan,

Thanks for sitting down last week to talk more about our request. At this time, I'd like to clarify that our request is for an informal opinion. Below are a list of questions that we would like guidance on:

### **50 piece rule questions**

Does one Facebook/Twitter post count as sending out one item regardless of how many individuals view or share it?

Can elected officials use office funds to take out a legislative ad in a local newspaper while under the "50 piece rule?"

Can elected officials use office funds to place a legislative radio ad while under the "50 piece rule?"

- Are members restricted to 49 spots per ad?

Can an elected official use office funds to mail a legislative newsletter to a Postal patron route or "Every Door Direct Mail" list while under the "50 piece rule?"

- (*see USPS postal patron map attached*)

Can elected officials use office funds to promote their account, boost a post or take out legislative ads on social media platforms including Facebook, Twitter, and Youtube while under the "50 piece rule?"

- If so, how targeted can these be?
  - Can you target an ad to individuals only within your Legislative District?
  - Can you target an ad to individuals based on other criteria? (Individuals within a certain radius of an event? Individuals who follow other social media pages? Individuals that meet certain demographic criteria? ... see attached photos *FBad1* and *FBad2* for example of potential targeting)

### **Example #1:**

- We hold regular monthly listening sessions around the district throughout the year

- For each listening session, we send out a news release, post the event on our website and create a Facebook event.
  - Once under the 50 piece rule, we send press releases to fewer than 50 email addresses.
- If we are allowed to continue promoting these events on Facebook using office funds, those posts can reach hundreds or thousands of local residents.
  - For example, one Facebook ad for a local listening session during the budget process, using \$250 from our office account, reached 8,996 residents in the [REDACTED] District and resulted in 170 rsvp's for that listening session.
  - See attached *FBlisteningession* and *FBlisteningession2* graphics for an example of what those ads generally look like.
- Can we continue to use office funds to promote these listening sessions?

Example #2:

- We generally research policies and draft legislation in the summer and fall months of even numbered years.
- We will be rolling out a list of legislative priorities later this year and asking the public to weigh in on the list of policies that they'd like the legislature to focus on and prepare for.
- Can we promote a post soliciting feedback from the public on legislative priorities?
  - i.e. "I'm working to ensure every family has access to quality health care, strong schools, safe roads and clean drinking water. Let me know what issues you'd like the state legislature to focus on."
- Can we promote a post that provides information to residents on relevant and timely legislative issue?
  - i.e. "As children head back to school, many communities are struggling with teacher shortages, outdated facilities and a lack of state funding. Visit [REDACTED] to learn more about what's being done to address these issues."

**"Mixed Use" accounts (social media accounts containing a mix of legislative and campaign content)**

- Can legislative staff manage and post legislative content on "mixed use" social media accounts used by elected officials?
- Can elected officials with a "mixed use" social media account promote their account,

boost a post or take out ads on Facebook/Twitter using office funds?

Again, happy to chat more or clarify any of these requests if you or your staff have questions.

Thanks,

[REDACTED]

[REDACTED]  
**Office of** [REDACTED]  
[REDACTED]



---

**From:** Carlton, Daniel - ETHICS <Daniel.Carlton@wisconsin.gov>

**Sent:** Tuesday, August 20, 2019 12:32 PM

**To:** [REDACTED]

**Subject:** RE: Social Media Guidance

When I ask whether you want it to be public, I need to clarify something...the requestor's identity is always redacted. I'll talk to you a little more about it after the meeting today. May not be able to follow up with you until tomorrow morning, though.

Dan

---

**From:** [REDACTED]

**Sent:** Tuesday, August 20, 2019 11:53 AM

**To:** Carlton, Daniel - ETHICS <[Daniel.Carlton@wisconsin.gov](mailto:Daniel.Carlton@wisconsin.gov)>

**Subject:** RE: Social Media Guidance

Thanks Dan,

I did have one other follow-up question for you... Would this opinion be made public by the commission, or would it only be provided to our office?

Thanks,

[REDACTED]

[REDACTED]  
**Office of** [REDACTED]  
[REDACTED]



**From:** Carlton, Daniel - ETHICS <[Daniel.Carlton@wisconsin.gov](mailto:Daniel.Carlton@wisconsin.gov)>  
**Sent:** Friday, August 16, 2019 12:16 PM  
**To:** [REDACTED]; ETH Ethics <[ethics@wisconsin.gov](mailto:ethics@wisconsin.gov)>  
**Cc:** [REDACTED]  
**Subject:** RE: Social Media Guidance

Good afternoon,

This email is to acknowledge receipt of your opinion request. As you are probably aware, the Commission is meeting on Tuesday, August 20, 2019. As we are within a few business days, we will not be able to prepare the opinion you requested in time for this meeting. The next regularly scheduled meeting of the Wisconsin Ethics Commission is December 3, 2019. A formal opinion can definitely be prepared and deliberated by the Commission at that meeting.

After the Commission's meeting on Tuesday, we will begin working on this request. I anticipate that we will be requesting some additional information from you at that point. Until then, should you have any questions or need anything further, please don't hesitate to contact me.

Sincerely,

Dan

**Daniel A. Carlton, Jr.**  
Administrator

Wisconsin Ethics Commission  
Campaign Finance | Lobbying | Ethics  
<https://ethics.wi.gov> | (608) 266-8123 | Twitter: [@EthicsWi](https://twitter.com/EthicsWi)

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**From:** [REDACTED]  
**Sent:** Friday, August 16, 2019 12:01 PM  
**To:** ETH Ethics <[ethics@wisconsin.gov](mailto:ethics@wisconsin.gov)>  
**Cc:** Carlton, Daniel - ETHICS <[Daniel.Carlton@wisconsin.gov](mailto:Daniel.Carlton@wisconsin.gov)>; [REDACTED]  
**Subject:** Social Media Guidance

Hello,

I would like to request a formal opinion from the ethics commission regarding the use of

social media accounts by legislative offices. In particular, I would like official guidance from the commission on the following matters:

- **Wisconsin’s “50 piece rule”**
  - Does one Facebook/Twitter post count as sending out one item regardless of how many individuals view or share it?
  - Can elected officials use office funds to promote their account, boost a post or take out legislative ads on Facebook/Twitter while under the “50 piece rule?”
  - Do legislative social media accounts not associated with a specific official fall under any “50 piece rule” restrictions? (i.e. “Senate Republicans” [@WIGOPSenate](#) or “WI JFC Democrats” [@JFCDemocrats](#))
  
- **“Mixed Use” accounts**
  - Can legislative staff manage and post content on “mixed use” social media accounts used by elected officials?
  - Can elected officials with a “mixed use” social media account promote their account, boost a post or take out ads on Facebook/Twitter using office funds?
  
- **Blocking/banning users and deleting/hiding content**
  - Can legislators block/ban individuals who use profane or threatening language from following their official social media accounts?
  - Can legislators block/ban members of the public from viewing or following “mixed use” social media accounts?
  - Can legislators delete or hide public comments on their official social media account if they are deemed to be profane, threatening, or campaign related?

I appreciate your consideration of these issues and would be happy to answer any questions or provide additional clarification of these requests if needed.

Thank you,

- [REDACTED]

[REDACTED]  
**Office of** [REDACTED]  
[REDACTED]



## AUDIENCE

People you choose through targeting

Edit

Location - Living In United States: [REDACTED]  
(DMA)

Age 18 - 65+

People Who Match Interests: Knights of Columbus or The Wall Street Journal, Behaviors: Anniversary (within 61-90 days) or Likely engagement with US political content (moderate), Job title: Football Coach

Less ▲

People who like your Page

People who like your Page and their friends

People in your local area

Create New Audience

### Automatic Placements (Recommended)


ON

Use automatic placements to maximize your budget and help show your ads to more people. Facebook's delivery system will allocate your ad set's budget across multiple placements based on where they're likely to perform best. [Learn more.](#)


## DURATION AND BUDGET

Duration ⓘ

Days   

End date  Sep 27, 2019

Total budget ⓘ



Estimated People Reached ⓘ

5,000 - 15,000 people per day

of 43,000

Refine your audience or add budget to reach more of the people that matter to you.

You will spend **\$100.00** per day. This ad will run for **10** days, ending on Sep 27, 2019.



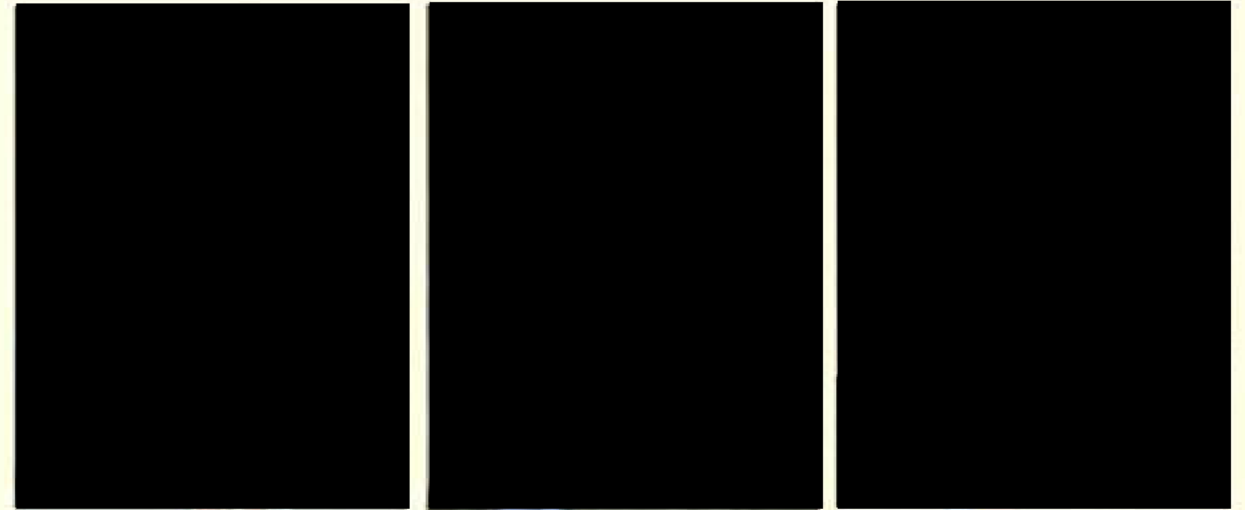
# BUDGET LISTENING SESSION

with Senator [REDACTED],  
Senator [REDACTED]  
& Representative [REDACTED]

[REDACTED], 2019

5:30 pm - 7:00 pm

[REDACTED] LIBRARY  
[REDACTED]  
[REDACTED]



Sen. [REDACTED]  
[REDACTED] Senate District

Sen. [REDACTED]  
[REDACTED] Senate District

Rep. [REDACTED]  
[REDACTED] Assembly District

FOR MORE INFORMATION, PLEASE CONTACT:

[REDACTED]  
[REDACTED]  
[REDACTED]



Join Sen. [REDACTED]  
and Rep. [REDACTED]

# BUDGET LISTENING SESSION


[REDACTED], 2019  
5:30 PM - 6:30 pm

[REDACTED]  
Community Room



[REDACTED]

*This event is free and open to the public.*



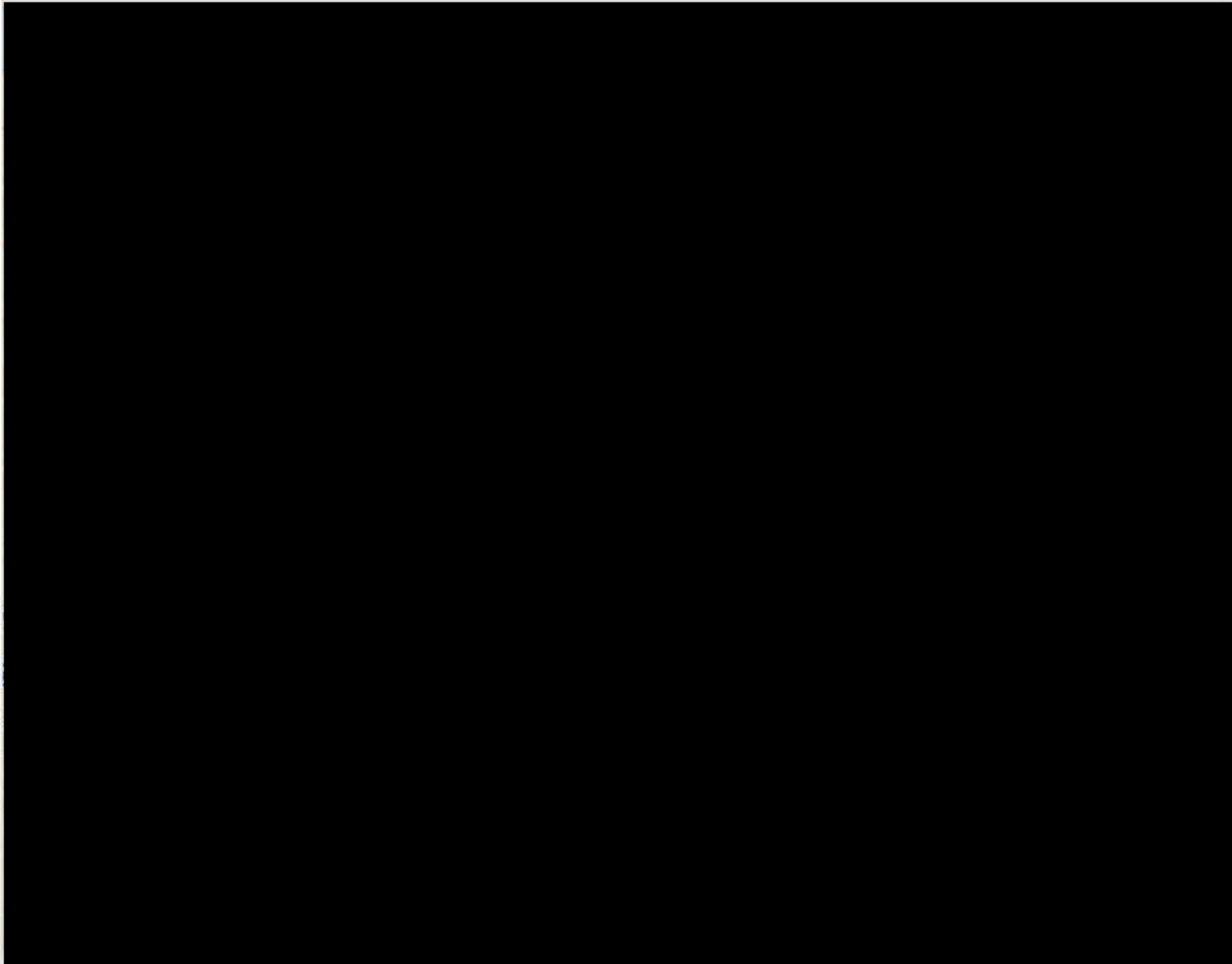
# Every Door Direct Mail®

[Select Routes](#) | [Find a Printer](#) | [Using EDDM®](#)

[Mailpiece Size Checker >](#) 

✕ 🔍 📍

ROUTE	RESIDENTIAL	BUSINESS	TOTAL	AGE 25-44	SIZE	INCOME	COST
<input type="text" value=""/>	707	15	722	28%	2.46 PPL	\$50.82K	\$135.01



## Order Summary

Individual Routes Selected  
**6**

Post Office™ Drop-Offs >  
**1**

Total Delivery Addresses [Clear](#)  
**3872**

Approximate Cost [i](#)  
**\$724.06**

[Continue](#)

[Save](#)

# Wisconsin Ethics Commission

For persons elected to state or local office who become a candidate for national, state, or local office

## Social Media Use by Officials

### GENERAL GUIDANCE

The Code of Ethics for State Public Officials prohibits the use of an official's public position for private benefit. [WIS. STAT. § 19.45\(2\)](#). As such, it is important for an official to be able to distinguish between a public purpose and a private purpose when considering the use of public resources. To avoid the appearance of misuse of public resources a public official should include some indication of whether a social media account is for their official position or is a campaign, business, or personal account in the profile, summary, or other description of the account.

### Best Practices for Official Social Media Accounts

Official social media accounts are the most restricted. Officials should limit use of their official social media accounts to information related to an official's position, duties, and issues with a public purpose.

Examples of acceptable communications from an official social media account:

- Posts discussing how the state could address an issue through state laws or actions;
- General legislative activity like information about bills that the official has sponsored or co-sponsored;
- State budget information;
- Sharing newsletters from the official's office;
- Publicizing public events;
- Public service announcements and;
- Endorsements and messages of support when justified by having a state purpose. For example: "I support [candidate or organization] and their work to address [state policy issue] in Wisconsin."

Examples of communications that should NOT come from an official social media account:

- Solicitation of campaign contributions;
- Promotion of campaign-related events;
- Photos of campaign-related branding and events such as T-shirts, signs, or banners; and
- Any content that is strictly personal or commercial such as promoting the official's personally owned business or a business with which the official is associated.

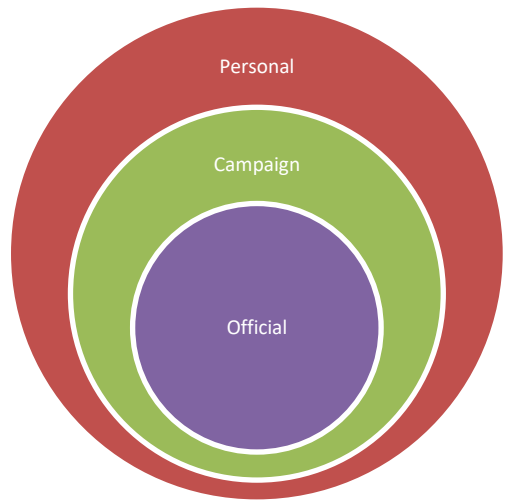
See WIS. STAT. §§ [11.1208\(2\)\(a\)](#), [19.42\(2\)](#), [19.45\(2\)](#).

## Best Practices for Campaign and Personal Social Media Accounts

A campaign may use a campaign social media account for all communications allowable for an official account, in addition to campaign-related activities including solicitation of contributions. Campaign social media accounts should not be used for strictly personal or commercial purposes. *See* WIS. STAT. § [11.1208\(2\)\(a\)](#).

A personal account may contain both official and campaign-related information.

Please see the diagram to the right for an illustration of acceptable uses by type of account.



### **USE OF SOCIAL MEDIA ON “STATE TIME”**

Elected officials will often switch between official and campaign activities throughout the day because an elected official is simultaneously an official and a candidate. [WIS. STAT. § 11.0101\(1\)](#). However, to avoid the appearance of misuse of public resources an elected official is advised not to create campaign-related social media communications or content while performing their official duties (i.e., while participating in an event in their official capacity – e.g., an event listed on their official calendar, a floor session, or committee hearing). [WIS. STAT. § 19.45\(2\)](#). Also, no person may enter or remain in any state building, office, or room for the purpose of requesting or collecting a contribution; therefore, elected officials should take special care as to the content of their social media communications while in a state building. [WIS. STAT. § 11.1207\(4\)](#).

An elected official is also advised to not use campaign committee resources for strictly personal benefit, or for commercial purposes. WIS. STAT. §§ [11.1208\(2\)\(a\)](#), [19.45\(2\)](#), [19.42\(2\)](#). For example, the candidate should not use a campaign social media account or campaign website to advertise for a personal business.

### **50-PIECE RULE APPLICATION TO SOCIAL MEDIA**

The “50-Piece Rule” prohibits the use of public funds for the distribution of 50 or more pieces of substantially identical material by a covered person during a specified time period. [WIS. STAT. § 11.1205](#). The language of the “50-Piece Rule” does not distinguish between electronic pieces and printed pieces. Electronic communications almost always result in multiple copies being created even when sent to a single recipient. This is due to the nature of the technical systems that enable electronic communications. When calculating the number of pieces distributed under the “50-Piece Rule” the Commission will only count those instances of electronic communication intended by the sender. *See* [2018 ETH 03](#).

If a message is actively communicated to individually addressed recipients (e.g., via email, instant messages, or direct messages), each individual recipient is considered a single piece under the “50-Piece Rule.” However, a passive message such as a website, Facebook post, or tweet, where the sender has no direct control over the audience of his or her message, is only counted as a single piece under the “50-Piece Rule.”

# 7 U.S. Code § 230 - Protection for private blocking and screening of offensive material

U.S. Code

(a) Findings—The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy—It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).<sup>[1]</sup>

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions—As used in this section:

(1) Internet

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider—The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, § 230, as added Pub. L. 104–104, title V, § 509, Feb. 8, 1996, 110 Stat. 137; amended Pub. L. 105–277, div. C, title XIV, § 1404(a), Oct. 21, 1998, 112 Stat. 2681–739; Pub. L. 115–164, § 4(a), Apr. 11, 2018, 132 Stat. 1254.)

U.S. Code Toolbox



**Before the Ethics Board of the City of Green Bay**

---

**TARL KNIGHT,**

**Complainant,**

**vs.**

**JOHN S. VANDERLEEST,**

**Respondent.**

---

**ARGUMENT**

The Ethics Complaint lodged by the Complainant, a former candidate for City Council, against the Respondent accuses the Respondent of having blocked social media posts made by other individuals on a social media account used by the Respondent for governmental purposes. Such material as has been blocked was on the ground that the posts contained offensive and insulting material. None of the material at issue directly concerned the Complainant.

The Respondent submits that his actions constitute neither misconduct nor unethical behavior, as similar actions by public officials have been upheld by multiple courts. The Respondent exercised his discretion as a public official in good faith and in a manner that was objectively reasonable. The Ethics Complaint filed against him has no merit.

Section 1 of the City of Green Bay Code of Conduct states, in part, that

August 3, 2020  
Robert J. Miller, Atty.  
Page 2

[M]embers of the Common Council and Mayor shall maintain the utmost standards of personal integrity, trustfulness, honesty, and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, comply with all applicable laws, and never use their City position or authority improperly or for personal gain.

City of Green Bay, Wisconsin Code of Conduct § 1.

The conduct at issue here, blocking or deleting offensive and insulting posts on a social media account used for a governmental purpose, does not violate any of the above-mentioned general standards. The only specific category in the Code of Conduct that conceivably could apply here is Section 4, on elected officials' conduct toward the public. Nothing in that section, which primarily deals with public meetings, applies to the use of social media.

Nor is the conduct in question in violation of the requirement in the City's social media policy that use of social media adhere to applicable federal, state, and local laws.

The federal Communications Decency Act provides, in pertinent part, as follows:

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected[.]

47 U.S.C. § 230(c)(2).

There is an abundance of case law in which courts have upheld similar actions by public officials and/or have declined to impose liability on the officials.

August 3, 2020  
Robert J. Miller, Atty.  
Page 3

In *Morgan v. Bevin*, 298 F. Supp. 3d 1003 (E.D. Ky. 2018), a civil rights action for the alleged violation of the First Amendment, citizens whose accounts were blocked by the Governor of Kentucky on social media websites failed to show that the public interest would be served by issuing an injunction. Thus, a preliminary injunction preventing the Governor from blocking anyone in the future and restoring the citizens' accounts and accounts of other similarly situated individuals was not warranted. In addition, the Governor's use of privately owned social media websites was personal speech because he was speaking on his own behalf. The First Amendment did not apply, and the Governor's accounts were privately owned channels of communication that were not converted to public property by their use by a public official. *Id.* at 1010-11.

In *McKercher v. Morrison*, No. 18CV1054 JM(BLM), 2019 WL 1098935 (S.D. Cal. Mar. 8, 2019), the court dismissed an action alleging that a mayor blocked the plaintiff from accessing the mayor's personal Facebook website in retaliation for, among other things, criticizing him as an elected official. The mayor had qualified immunity from such a lawsuit. Significantly, such immunity applies to officials who have a reasonable, *even if mistaken*, belief about the facts or about what the law requires in any given situation. *Id.* at \*3.

In *Price v. City of New York*, No. 15 CIV. 5871 (KPF), 2018 WL 3117507 (S.D.N.Y. June 25, 2018), the court granted qualified immunity to city officials in an action brought by a citizen whose posts on social media had been blocked. *Accord*

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Robert J. Miller, Atty.  
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*Tanner v. Ziegenhorn*, No. 4:17-CV-780-DPM, 2019 WL 2344094, at \*1 (E.D. Ark. May 31, 2019) ("The Court assumes, for purposes of Kennedy and Chapman's motion to dismiss, that these deletions [from the State Police Facebook account] infringed Tanner's free speech rights. The guiding law, though, wasn't clear enough then to subject Kennedy and Chapman to suit. State actors are entitled to qualified immunity unless they violate clearly established law."); *Davison v. Rose*, No. 1:16CV0540 (AJT/IDD), 2017 WL 3251293, at \*10 (E.D. Va. July 28, 2017) ("Here, the law is less than settled as to whether the Plaintiff had a right to post on a Facebook page maintained by a public official and that this right was violated when those postings were removed or when Plaintiff was prevented from posting his comments. . . . It is not clear as a legal matter whether the Facebook pages at issue in this litigation can be said to constitute either type of public forum. In any event, it cannot be said that such a First Amendment right was a 'clearly established' right, 'of which a reasonable person would have known.' These Individual Defendants are therefore entitled to qualified immunity for the actions they took against Plaintiff with respect to their Facebook pages."); *Davison v. Plowman*, 247 F. Supp. 3d 767, headnote 12 (E.D. Va. 2017) ("It would not have been apparent to a reasonable government official that excluding county resident from limited public forum, a county commonwealth's attorney's social media page, after resident repeatedly disregarded the forum's rules, would violate the First Amendment, and thus county commonwealth's attorney was entitled to qualified immunity from resident's § 1983 action with respect to

attorney's decision to block resident from further posting on the county commonwealth's attorney's social media page[.]"), *aff'd*, 715 F. App'x 298 (4th Cir. 2018) (unpublished opinion); *Hunt v. Bd. of Regents Univ. of N.M.*, 338 F. Supp. 3d 1251 (D.N.M. 2018) (even assuming that university official violated medical student's First Amendment right to post on social networking website by subjecting him to corrective action after his inflammatory post was found to constitute unprofessional conduct in violation of university's social media policy, student's right was not "clearly established" when the discipline was imposed, and so chair was entitled to qualified immunity), *aff'd*, 792 F. App'x 595 (10th Cir. 2019) (unpublished opinion); *Wagschal v. Skoufis*, No. 19 CIV. 2393 (CM), 2020 WL 1033873 (S.D.N.Y. Mar. 3, 2020) (state legislator was entitled to qualified immunity from liability in private citizen's § 1983 action alleging that legislator violated his First Amendment rights by blocking him from social media pages); *Novak v. City of Parma*, 932 F.3d 421 (6th Cir. 2019) (police officers were entitled to qualified immunity from liability in action alleging that officers violated social media page creator's First Amendment rights by seeking to have social media platform remove comments).

The Respondent does not dispute that there are some reported cases in which public officials have been found to have violated the First Amendment rights of persons or groups by blocking access to social media, but he submits that such cases differ significantly from this case. For example, in *One Wisconsin Now v. Kremer*, 354 F. Supp.

3d 940 (W.D. Wis. 2019), state legislators violated the First Amendment by blocking a liberal advocacy group from the legislators' respective accounts on an online social media platform where, as is not the case here, the legislators blocked only a select number of accounts and articulated no specific reason for blocking the group. Unlike anything in the instant case, the defendants in *Kremer* blocked the plaintiff because of its prior speech or identity and even indicated, either directly or indirectly, that they did not approve of the plaintiff's political perspective. *Id.* at 956.

There is a well-established presumption in the law that public officers, in performing their official duties, have complied with all statutory requirements, and such presumption applies to acts of official boards and legislative bodies as well as to the acts of individual officers. *Bohn v. Sauk Cty.*, 268 Wis. 213, 67 N.W.2d 288 (1954); *State ex rel. Richey v. Neenah Police & Fire Comm'n*, 48 Wis. 2d 575, 180 N.W.2d 743 (1970).

Members of a city's governing council, in particular, are presumed to have acted regularly and lawfully. *Town of Medary v. City of La Crosse*, 88 Wis. 2d 101, 277 N.W.2d 310 (Ct. App. 1979). The actions of the Respondent, as alleged in the Ethics Complaint, were entirely reasonable and lawful. At the very least, such actions are far short of what is required to overcome the presumption of good faith and legality.

August 3, 2020  
Robert J. Miller, Atty.  
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Respectfully submitted,

*Robert J. Miller*

---

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Email: [robmiller227@gmail.com](mailto:robmiller227@gmail.com)

Attorney for Respondent John S. Vanderleest

Before the Ethics Board  
of the City of Green Bay

---

Tarl Knight, Complainant

vs.

John S. Vanderleest  
Respondent

---

ARGUMENT

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**I. The grant of right to counsel in section 8 (d) (3) connotes the rights for effective counsel.**

The grant of a right to counsel is illusory unless counsel has a right to adequately prepare the defense. We have not allowed “trial by ambush” in the American courts for over 100 years.

The respondent is requesting a suspension of the proceedings so that he can depose the complainants. This is especially necessary as the complaint as presently constituted has nothing from the actual parties.

In **Goldberg vs. Kelly**, 397 U.S. 254 1970 at paragraph 17, the U.S. Supreme Court addressed this issue:

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment \* \* \*.

This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, \* \* \* but also in all types of cases where administrative \* \* \* actions were under scrutiny.<sup>1</sup>

## **II. The right to call witnesses and cross-examine witnesses is meaningless without the right to compel the witnesses to appear.**

A. Part of the effectiveness of the right to counsel is the presentation of testimony. This right is an empty one if an individual with valuable testimony cannot be compelled to appear. Again, this issue was discussed in the **Goldberg** case, at paragraph 19.

'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.' *Powell v. Alabama*, [287 U.S. 45](#), 68—69, 53 S.Ct. 55, 64, 77 L.Ed. 158 (1932). We do not say that counsel must be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires. Counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests of the recipient.

B. The Wisconsin Municipal Administrative Procedure Act ( Chapter 68 of the Wisconsin Statutes) may have applicability here. At the very least, section 68.11 of the Wisconsin Statutes accords counsel the right to subpoena witnesses/records in a proceeding under the section.

## **III. The Communications Decency Action (appended) permits the deletion of objectionable content and the federal government has pre-empted the area.**

A. 47 U.S.Code 230 (c) (2) permits the removal of objectionable content. Among the elevated political discourse which is sought to be preserved by the petitioner is the following:

1. I reliably informed that one post called the respondent a “schmuck.”  
This is Yiddish for penis.
2. Another post according to my information, denigrated my client’s business and his integrity.
3. Yet another post called my client a criminal.

B. 47 U.S. Code 230 (e)(3) highlighted in purple) indicates that any state or local action contrary to this is prohibited. The federal government has pre-empted the area.

**IV. Considerations for Ethics Board-- The action of policing content is a legal thicket surrounded by constitutional quicksand.**

Second-guessing the deletion of posts, etc on the web could mushroom into a full-time occupation for this board.

Ultimately, limiting council members abilities to superintend their sites will have them appear to ratify, endorse, and sponsor the reprehensible content. It will have the government compelling speech, which is, in itself a constitutional violation. Moreover, the adoption and support of this repulsive content is an ethics violation.

Thus council members, such as my client, are damned to ethics code violations if they delete the content and damned to ethics violations if they do not.

Respectfully submitted by:

*Robert J. Miller*

---

Robert J. Miller  
Attorney for the Respondent—John Vanderleest  
227 S. Van Buren St.  
Green Bay, WI 54301  
SB NO. 1018487

# 47 U.S. Code § 230 - Protection for private blocking and screening of offensive material

[U.S. Code](#) [Notes](#)

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**(a) FINDINGS** The Congress finds the following:

- (1) The rapidly developing array of [Internet](#) and other [interactive computer services](#) available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.
- (2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.
- (3) The [Internet](#) and other [interactive computer services](#) offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.
- (4) The [Internet](#) and other [interactive computer services](#) have flourished, to the benefit of all Americans, with a minimum of government regulation.
- (5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

**(b) Policy** It is the policy of the [United States](#)—

- (1) to promote the continued development of the [Internet](#) and other [interactive computer services](#) and other interactive media;
- (2) to preserve the vibrant and competitive free market that presently exists for the [Internet](#) and other [interactive computer services](#), unfettered by Federal or [State](#) regulation;
- (3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the [Internet](#) and other [interactive computer services](#);
- (4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and
- (5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

**(c) PROTECTION FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL**

**(1) TREATMENT OF PUBLISHER OR SPEAKER**

No provider or user of an [interactive computer service](#) shall be treated as the publisher or speaker of any information provided by another [information content provider](#).

**(2) CIVIL LIABILITY** No provider or user of an [interactive computer service](#) shall be held liable on account of—

- (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
- (B) any action taken to enable or make available to [information content providers](#) or others the technical means to restrict access to material described in paragraph (1).<sup>[1]</sup>

**(d) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE**

A provider of [interactive computer service](#) shall, at the time of entering an agreement with a customer for the provision of [interactive computer service](#) and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

**(e) EFFECT ON OTHER LAWS**

**(1) NO EFFECT ON CRIMINAL LAW**

Nothing in this section shall be construed to impair the enforcement of section [223](#) or [231](#) of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

**(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW**

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

**(3) STATE LAW**

Nothing in this section shall be construed to prevent any [State](#) from enforcing any [State law](#) that is consistent with this section. No cause of action may be brought and no liability may be imposed under any [State](#) or local law that is inconsistent with this section.

**(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW**

Nothing in this section shall be construed to limit the application of the [Electronic Communications Privacy Act of 1986](#) or any of the amendments made by such Act, or any similar [State law](#).

**(5) NO EFFECT ON SEX TRAFFICKING LAW** Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

- (A) any claim in a civil action brought under [section 1595 of title 18](#), if the conduct underlying the claim constitutes a violation of section 1591 of that title;
- (B) any charge in a criminal prosecution brought under [State law](#) if the conduct underlying the charge would constitute a violation of [section 1591 of title 18](#); or
- (C) any charge in a criminal prosecution brought under [State law](#) if the conduct underlying the charge would constitute a violation of [section 2421A of title 18](#), and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

**(f) DEFINITIONS** As used in this section:

**(1) INTERNET**

The term "[Internet](#)" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

**(2) INTERACTIVE COMPUTER SERVICE**

The term "[interactive computer service](#)" means any [information service](#), system, or [access software provider](#) that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the [Internet](#) and such systems operated or services offered by libraries or educational institutions.

**(3) INFORMATION CONTENT PROVIDER**

The term "[information content provider](#)" means any [person](#) or entity that is responsible, in whole or in part, for the creation or development of information provided through the [Internet](#) or any other [interactive computer service](#).

**(4) ACCESS SOFTWARE PROVIDER** The term "[access software provider](#)" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, §230, as added [Pub. L. 104-104, title V, §509](#), Feb. 8, 1996, [110 Stat. 137](#); amended [Pub. L. 105-277, div. C, title XIV, §1404\(a\)](#), Oct. 21, 1998, [112 Stat. 2681-739](#); [Pub. L. 115-164, §4\(a\)](#), Apr. 11, 2018, [132 Stat. 1254](#).)

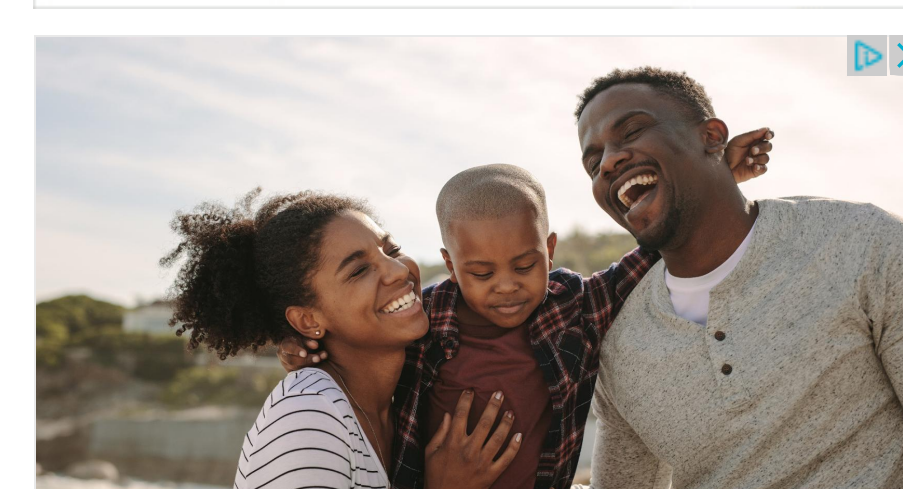
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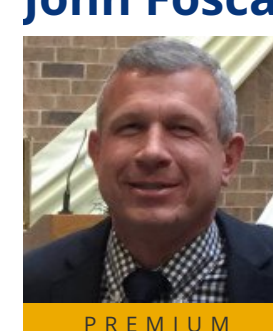
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Police say everyone should carry this new safety device that protects against attackers.

OPEN

Before the Ethics Board  
of the City of Green Bay

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Tarl Knight, Complainant

vs.

John S. Vanderleest  
Respondent

---

MOTION FOR POSTPONEMENT OF PROCEEDINGS

---

The respondent, by his counsel, Robert J. Miller, moves for an order granting a postponement of the hearing as he has been in the case for approximately 3 business days. This is an inadequate time to prepare for the hearing.

Dated this 20<sup>th</sup> day of July 2020

*Robert J. Miller*

---

Robert J. Miller  
Attorney for the Respondent  
227 S. Van Buren St.  
Green Bay, WI 54301  
SB No 1018487  
Phone 920 432 1900

Before the Ethics Board  
of the City of Green Bay

---

Tarl Knight, Complainant

vs.

John S. Vanderleest  
Respondent

---

MOTION FOR COMPLAINTS FROM THE ALLEGED AGGRIEVED PARTIES

---

The respondent, by his attorney, Robert J. Miller, states as follows

1. Upon information and belief, no posts of Mr. Knight have been blocked or deleted by the respondent.
2. Mr. Knight may not have standing to complain and may not have any personal (first-hand) knowledge of the facts.
3. The respondent is entitled to a complete outline of the complainants allegations before proceeding.
4. Mr. Knight suggests that “several are available to provide proof of having been blocked” He attached a list of parties.
5. Respondent’s counsel is unclear whether he has the right to subpoena their testimony at a deposition or even at a hearing.
6. Respondent’s counsel is unable to cross-examine pieces of paper or even compel testimony from the actual aggrieved parties.

Dated this 20<sup>th</sup> day of July 2020

*Robert J. Miller*

---

Robert J. Miller  
Attorney for the Respondent  
227 S. Van Buren St.  
Green Bay, WI 54301  
SB No 1018487  
Phone 920 432 1900





# CITIZENS BLOCKED OR DELETED BY MR. VANDER LEEST


**Bethe Lane**  
He has deleted my comments before.   
2w Like Reply

**Jon Schultz**  
My deleted posts and block today would say otherwise.  
17m Like Reply Message

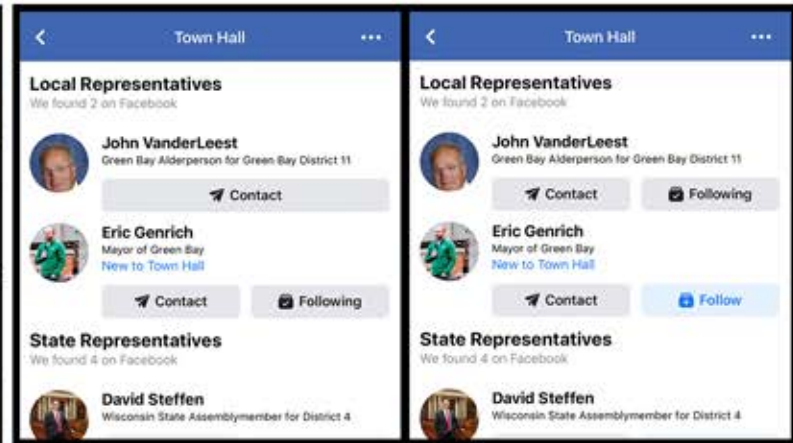
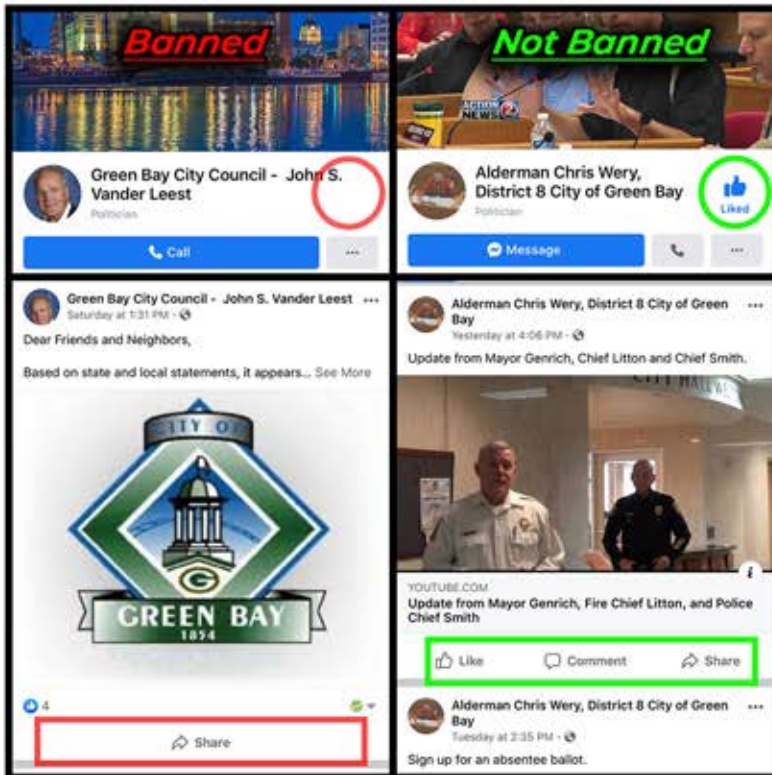
**Abbey Vizelka**  
I never paid much attention but just looked through and it seems he's not a fan of my comments either.  
2w Like Reply

**Jon Schultz**  
  
17m Like Reply Message

**Jennifer Jacobson Carew**  
I got blocked during the Colburn Pool debate when I suggested that kids in his district would also benefit with a revamped pool. Now he includes that in his newsletter as a "neighborhood" improvement.  
17m **Sad** Reply   2

**Wendy J. Coriell** And I'm blocked now. Yippie!   
Like · Reply · 1d   4

# HOW TO TELL IF YOU HAVE BEEN BLOCKED ON FACEBOOK



Facebook offers a "Town Hall" feature that shows you your elected officials based on your street address. You then have the ability to follow those officials' pages and get their mailing address, email and phone #.

When blocked by Alderman Vander Leest (shown at left), no option to follow the page exists, preventing you from getting new content from the alderman in your news feed, and barring you from interacting with the conversation that happens there.

On the page, no "like" button will be present to follow the page, and no "like" or "comment" buttons will be available, cutting off all interaction with the page.

# ALDERMAN VANDER LEEST BLOCKS MARK ZAHN (AUG '17)

**Green Bay City Council - John S. Vander Leest**  
August 16, 2017 · 🌐

Green Bay is one of the highest taxed communities in NE Wisconsin. We spend over \$100 million dollars in our City budget. I'm working on the property tax issue through a Budget task force to hold property taxes down for the City of Green Bay.

We need to prioritize our current spending to devote more resources to road construction and maintenance. We don't need a wheel tax to tax you further.

The wheel tax is a bad idea and would have started at \$20 and continued to climb to +\$50 plus or more to solve the City's spending problems. That's what government does with a new tax, it would start small then grow larger over time.

I voted NO. We must do better for taxpayers. **What do you think?**

<http://www.greenbaypressgazette.com/.../proposed-g.../570166001/>

Proposed Green Bay wheel tax runs out of gas

Proposed Green Bay wheel tax

2 Comments 1 Share

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In August of 2017, Alderman Vander Leest posted a link to an article about the “wheel tax” that the city was debating at the time. He offered his stance on the matter and then concluded by asking “What do you think?” This is clearly an elected official seeking public comment on a city issue. I offered my input on the matter as a vocal supporter of the wheel tax. I have known people who have been devastated by special assessments of tens of thousands of dollars. Even though I knew he wouldn’t agree with my stance, I expected him to at least consider my opinion.

**Mark David Zahn** I strongly disagree with your vote on this issue. I would have happily paid \$20-50 per year rather than an unexpected several thousand dollars in one go. The whole “holding the line on property taxes” thing is bluster and farce. The city fire department uses my street as a shortcut route and the constant back and forth of those huge trucks badly beats up on our street and it takes forever for it to get patched up. I was really hoping this would have passed, but I already knew I couldn't count on your vote on this.

Like · Reply · 2y

**Author**  
**Green Bay City Council - John S. Vander Leest** The city would jack up the \$20 wheel tax to cover more spending and waste. I believe it would be \$40 per vehicle or more in a few years. That's what government does.

Like · Reply · 2y

Shortly after his rebuttal, and before I had a chance to continue the debate, Alderman Vander Leest blocked me from participating in his Facebook page with no explanation or warning whatsoever - a ban that continued well into 2020. This prevented me from posting, commenting and “liking” his posts, and also prevented me from seeing his content in my regular news feed.

I strongly believe this act prevented me from exercising my First Amendment rights to participate in the exchange of ideas in this public forum, and also my right to petition my elected official on matters that affected me as a taxpayer in the City of Green Bay. While there are certainly other ways for one to contact their alderperson, the fact that Mr. Vander Leest solicits input from constituents and excludes those who have views that differ from his own inaccurately paints a picture of support, slanted to his own political preference. This act of ill-will from one’s own elected representative puts a chilling effect on speech and effectively closes the lines of communication. I have no trust that if I would make a phone call to Mr. Vander Leest about a simple issue like a pothole that he would even work on my behalf.

Mr. Vander Leest has said in the past, “I’m here to represent all the people of the district.” In a March 2020 newspaper profile, he stated, “I listen to residents of my area and know what is important to them.” I believe his actions clearly show he has no intention of “making the public feel welcome” or conveying to the public his “respect and appreciation for the public’s participation, input, and opinions” as the city’s own Code of Conduct for Elected Officials mandates. His conduct during his time in office demonstrates anything but fairness, openness and willingness to work for all he represents. I have no ill-will towards Mr. Vander Leest. On the contrary, I want nothing more than to have a fruitful relationship with my public officials and have the ability to have my viewpoints not only heard but genuinely considered. This has nothing to do with an election and I’m not looking to run him out of office. But I do expect more of my elected officials and I wish for him to take responsibility in this matter and commit to respecting *all* his constituents’ Constitutional rights.

-- Mark Zahn, 4/23/20



# CLAIM THAT PAGE IS A "CAMPAIGN PAGE"

After deleting user Jon Schultz's comments (and prior to blocking him) Alderman Vander Leest claimed that the page is a "campaign page," in an apparent attempt to portray the page as not being subject to First Amendment protections as an official page of an elected official.

On April 10, 2020, all 115 posts on Alderman Vander Leest's page were analyzed for campaign and non-campaign-related content. Only 25 posts, or 22% of the page's content (boxed in green), is related to his campaign or elections in which he was on the ballot. The remaining 78% of content contains posts reflective of an elected alderman:

*tax issues, the local business environment, COVID-19, public works, loose leaf pickups, city budgets, listening sessions, district crime alerts, seeking input on paid volunteerism by city employees, community events, public notices, advertising his official city e-mail and phone number, and asking for input on a proposal he authored that failed in council voting.*

POSTS ARCHIVED: <https://greenbay11th.org/2020/04/alderman-vander-leest-claims-city-facebook-page-is-for-campaign-as-excuse-to-block-citizen-comments/>

**CAMPAIGN POSTS**

**25 POSTS (22%)**

**NON-CAMPAIGN POSTS**

**90 POSTS (78%)**



Report to the  
Ethics Board  
of the City of Green Bay

**MEETING DATE**

September 1, 2020

**PREPARED BY**

**AGENDA ITEM # E.2**

Election of Chair and Vice Chair

**BACKGROUND**

**RECOMMENDATION**

**FISCAL IMPACT**

**ATTACHMENTS**

None



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**MEETING DATE**

September 1, 2020

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**AGENDA ITEM # E.3**

Quasi-Judicial Hearings Training Presentation

**BACKGROUND**

**RECOMMENDATION**

**FISCAL IMPACT**

**ATTACHMENTS**

None