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POLITICS JUN 25

Can your elected official block you on Twitter or Facebook? New Texas case may provide an answer



James Barragán, State government reporter

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AUSTIN — Can your elected official block you on Twitter? Or Facebook?

As politicians move more of the public discourse online, allowing them to relay their message directly to supporters and avoid media and opponents' scrutiny, federal courts are beginning to see an increase in First Amendment claims from critics who were shut out on social media by their elected officials.

The results of these lawsuits are barely starting to trickle in, with some beginning to set legal precedents and others ending in settlements, but all are being handled on a case-by-case basis.

“Courts have just started dealing with these kinds of cases,” said Lyrissa Lidsky, the dean of the University of Missouri Law School and a prominent First Amendment scholar. “It’s really arisen as public officials have seen how powerful social media is for connecting with their constituents.”



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Elected officials from local sheriffs to governors to President Donald Trump have been sued after blocking critics from their social media accounts. In 2017, a woman sued the sheriff of Hunt County, about an hour northwest of Dallas, after Sheriff Randy Meeks’ office deleted a comment he disagreed with on the official Hunt County Sheriff’s Office page and blocked her. In April, the 5th U.S. Circuit Court of Appeals ruled that the sheriff’s office engaged in unconstitutional viewpoint discrimination when the comment was deleted.

In the most recent battle in Texas, a group of gun rights activists sued House Speaker [Dennis Bonnen](#) after he blocked them from his Facebook page over disagreements on a gun bill in the last legislative session.

Lone Star Gun Rights activists allege in a May lawsuit filed in Austin that Bonnen blocked the group and some of its members from his Facebook page after they advocated for a “constitutional carry” bill that he opposed, which would have allowed Texans to carry a firearm without a license.



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Bonnen blocked Derek Wills, a member of the group, after he posted a comment on the page about prioritizing the legislation, the lawsuit alleges. Bonnen began posting about Lone Star Gun Rights and saying that “fringe gun activists” were harassing him and making death threats against him.

Because the group and its members were banned, they could not respond to Bonnen’s criticisms of the legislation or the group and could not dispute the implication that the death threats came from their group, which they deny, the lawsuit says. The group sees the move as a First Amendment violation and has asked a court to declare that Bonnen violated its rights.

Bonnen’s lawyer, G. Alan Waldrop, argues that the gun rights group and its members have no right to free speech because the Facebook page is not a governmental account, but a personal campaign site, and that the case should be thrown out altogether.

“Simply because Rep. Bonnen is also the Speaker of the Texas House of Representatives does not mean that he acts in his official government capacity with respect to every action he takes and every presence he undertakes on a social media website such as Facebook,” he wrote in a motion to dismiss. “Rep. Bonnen’s control of his personal campaign Facebook page does not and cannot implicate the First Amendment rights of any other person as a matter of law.”

Through a spokesman, Bonnen declined to comment, citing the pending litigation.



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Katie Fallow, a senior attorney at the Knight First Amendment Institute at Columbia University, said the question over whether an account is a personal website or a governmental account is a key factor in these lawsuits, including the institute’s challenge to Trump’s blocking of critics on his Twitter account.

In that case, [a federal judge in Manhattan ruled that the president’s @realdonaldtrump account was a “public forum,”](#) despite being labeled as a personal account, and that his blocking of critics was unconstitutional. Trump has appealed that ruling.

Fallow’s group convinced the district judge that Trump veered into an official capacity by using the account for formal announcements, defending his actions as president, reporting details about meetings with foreign leaders and promoting the administration’s positions on issues.

“You want to look at not just one-offs but how is it used regularly?” Fallow said. “Look at all the tweets, and that’s what the court has done. It’s not just what a public official says, but how they are actually using this.”

Bonnen shares photos on his Facebook account of his family and events in his home district, as well as updates about bill signings that he pushed as speaker and the House’s legislative achievements.

Even for elected officials with both a personal and a governmental account, the differentiation can be tricky. Texas Gov. Greg Abbott, for example, runs two Twitter accounts: his personal [@GregAbbott_TX](#) account, where he tweets about [meeting Texas Longhorns quarterback Sam Ehlinger](#) and posts [pictures of his dogs](#), and his official [@GovAbbott](#) account.

But the personal posts can be drowned out by the professional ones he shares on the [@GregAbbott_TX](#) account, such as [videos of him signing bills](#) and announcing the [deployment of national guard troops to the southern border](#). He also used the account as a [bully pulpit to go after local elected officials who opposed his priority property tax revenue cap bill](#) in the last legislative session.



Greg Abbott
@GregAbbott_TX

Are you tired of deceptive calls from telemarketers?

I just signed a law out-lawing it in Texas.

Thanks [#txlege](#)

42.3K 4:25 PM - Jun 14, 2019

[10.4K people are talking about this](#)

Lidsky said those posts could blur the line between personal and official government accounts.

“These lawsuits are definitely raising awareness about the obligations of public officials and should be a cautionary tale for people in the political sphere that there are rules that you have to be aware of, lest you get into one of these lawsuits,” she said.

John Wittman, an Abbott spokesman, said there's no written policy that strictly delineates what should be done on each account. But the governor's communications team does not take down comments on his account so Abbott would likely avoid any First Amendment claims.

The Texas House has no social media guidelines, but the Senate considers all of its members' social media accounts extra-official, Senate Secretary Patsy Spaw said.

"It's either personal or campaign. We do not want to misuse state resources," she said. "If we keep it completely separate, then there's not an issue of misuse of state resources."

While Texas senators have official government websites, those pages never link to personal social media accounts.

"We don't link out to any member's Twitter or Facebook pages. We do not link out to anything that would be connected to personal or campaign," Spaw said. "We don't help them. We don't know about them. We don't want to look at them. It's really to protect them and to protect the Senate. We just stay away from it."

In Congress, the U.S. House has rules about what its members can do with social media accounts and when an account is designated a personal or government account. For example, congressional accounts should ensure that their social media URLs and account names reflect their position, and they cannot maintain those titles after a lawmaker leaves office.

Experts say more legislative bodies should adopt similar rules to avoid further lawsuits.

"That would be ideal if elected officials had guidance," Lidsky said. "Everyone should know what the First Amendment requires as these cases emerge, but even simple guidance on how social media works effectively and how to use it in ways that don't trigger First Amendment lawsuits."

But until lawmakers start adopting such rules, Lidsky said, she expects these lawsuits to continue.

"I expect them to keep coming. Social media is too important," she said. "The temptation to block people you don't want to listen to is too great."



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