

WORKING DRAFT

Legislative Council Social Media Policy

Social media, such as Facebook, Twitter, Instagram, YouTube, etc., can be a useful way for legislators to inform constituents about pending legislation, to tout one's accomplishments, and to solicit feedback and gauge public opinion about important issues; however, legislators risk litigation if they block, ban, or otherwise restrict user access to a legislator's official social media account.

As such, Legislative Council sets the following recommendations for legislator social media activity to ensure members understand and mitigate the inherent risks.

Do not use a personal social media account for legislative matters.

Refrain from posting about legislative matters on a personal social media account. If a legislator maintains a personal account and uses it for purely personal reasons, blocking a person, or imposing any other access restriction is likely legally permissible.

To mitigate the risk that a personal account will be interpreted as an official account, legislators should maintain the highest privacy settings and NOT:

- Make the personal account available to the public.
- Designate the personal account as an official or public official page.
- Make the personal account look like an official account, or one related to your office.
- Include links to official email accounts or websites.
- Announce or solicit feedback about legislative matters.
- Solicit campaign contributions.
- Allow any legislative employees to manage the legislator's personal account.
- Use links to a legislator's personal social media in any official legislative communications, including newsletters or a legislative email signature block.

LEGISLATIVE COUNCIL STRONGLY ENCOURAGES COMPLYING WITH THESE RECOMMENDATIONS.

A social media account used for legislative matters should be treated like an official account.

Official accounts that have been the source of litigation have had some or all of the following characteristics:

- The account looks like a legislator's account based on pictures and content.
- The account is open to the public.
- It is designed as an official account or set up as a government or public official's page.

- It describes the account as being a place where the legislator can share information with and hear from the public.
- The legislator uses it as a tool of governance by, among other things, holding back-and-forth constituent conversations or announcing legislative activities.
- The account focuses on legislative matters.
- Legislative resources are used to administer the site and generate content.

Do not let the public interact through an official account.

There is no constitutional requirement that a public official maintain a social media account. If a legislator chooses to have an official account, there is no requirement that the public be able to participate in it. Any public forum that is created, therefore, exists only because the public official—you—created it. If you disable the public's ability to post or comment on your Twitter, Facebook, Instagram, YouTube, or other similar social media platform, there is no public forum and no First Amendment risk.

LEGISLATIVE COUNCIL STRONGLY RECOMMENDS DISABLING PUBLIC COMMENT ON ANY OFFICIAL SOCIAL MEDIA PLATFORM.

If a legislator chooses to let the public interact through an official account, then the legislator should not block, ban, or otherwise restrict access to the official account. If a legislator chooses to block, ban, or otherwise restrict access to the legislator's official account, the legislator personally assumes all risk and responsibility in defense of that action.

If a legislator chooses to engage the public through the legislator's official account and the interactive space of the account is a public forum, unrestricted access to the account should be allowed to avoid potential litigation under Article I, sections 5 and 6 of the Alaska Constitution, which uphold freedom of speech and the right of a person to petition the government. That means no filtering, blocking, or hiding any persons or conversations, even if a person posts things that may be hurtful, critical, objectionable, incorrect, false, profane, irrelevant, or just plain weird. This is currently the necessary and safe approach to managing a social media platform that allows for public input because exceptions to free speech, such as obscenity, defamation, or imminent lawless action, are nuanced and easy to misapply.

WARNING: If a legislator's use of a social media account does not adhere to the recommendations outlined above, the legislator assumes all risk and responsibility for any litigation that results from that choice.