

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARL PITTMAN,

Plaintiff,

V.

ADRIAN GARCIA, in his official capacity as
Harris County Sheriff,

Defendant.

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CIVIL ACTION NO. _____

PLAINTIFF’S COMPLAINT AND APPLICATION FOR PRELIMINARY INJUNCTION

Plaintiff Carl Pittman (“Pittman” or “Plaintiff”) brings this suit against Harris County Sheriff Adrian Garcia (“Garcia” or “Defendant”) in his official capacity, showing as follows:

SUMMARY

1. The Supreme Court has long recognized that public employees have the right to speak as citizens about their public employer.

2. Garcia, in his role as Harris County Sheriff, has recently enacted a Social Media Policy for employees in his office that is facially unconstitutional. Taken as written, it prohibits employees like Pittman from engaging in speech as citizens that may even be the slightest bit critical of the Harris County Sheriff’s Office (“HCSO”) or put it in a negative public light.

3. Pittman asks this Court to grant him prospective declaratory and injunctive relief, and protect his First Amendment rights from further deprivation.

PARTIES

4. Pittman is a peace officer employed by the HCSO.
5. Garcia is the Harris County Sheriff and has actual and apparent authority to make policy for the HCSO.
6. “Official-capacity suits ... ‘generally represent only another way of pleading an action against an entity of which an officer is an agent.’” *Castro v. Harris Cty Jail*, Civil Action No. H-05-0002, 2007 WL 2446821, at *15 (S.D. Tex. Aug. 22, 2007) (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dep't. of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978))). “A suit against a government official in his official capacity is the same as a suit against the entity the official represents.” *Id.* (internal quotation omitted). The claim asserted the Sheriff “in his official capacity is a claim against Harris County, although Harris County was not named as a defendant.” *Id.* (citing *Bennett v. Pippin*, 74 F.3d 578, 584 (5th Cir.), *cert. denied*, 519 U.S. 817 (1996) (“A suit against the Sheriff in his official capacity is a suit against the County.”)).

JURISDICTION AND VENUE

7. Pittman is a resident of Harris County, Texas, and works in Harris County, Texas.
8. The Court has personal jurisdiction over Garcia because he is a resident of Harris County, Texas, and serves as the Harris County, Texas, Sheriff in Harris County, Texas.
9. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this case involves a federal question under 42 U.S.C. § 1983 and the First Amendment of the United States Constitution.
10. Venue is appropriate in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim in this lawsuit occurred in this judicial district.

FACTS

11. On July 16, 2014, the HCSO, which Garcia heads, enacted a new Social Media Policy (“the Policy”). See Exhibit 1 (copy of the Policy).

12. The Policy applies to Pittman and other employees of the HCSO.

13. The Policy states that its purpose is to “place reasonable restrictions on the conduct of our employees and our appearances in person and in print, as well as holding all personnel to a greater standard of conduct, whether on or off duty.” (Ex. 1 at 1).

14. The Policy further states that “[s]uch communications, when they can be identified with a HCSO employee, must never conflict with our core values, our mission, or our law enforcement code of ethics.” (*Id.* at 2).

15. The Policy is riddled with language unnecessarily curtailing the rights of Pittman and others employed within the HCSO from speaking out as citizens on matters of public concern. For example:

- a. The Policy dictates that “[a]n employee’s actions must never bring the HCSO into disrepute, nor should conduct be detrimental to the HCSO’s efficient operation.” (Exhibit 1 at Section II, p. 2).
- b. Employees are instructed that: “Personnel, who through their use of social media, cause undue embarrassment or damage the reputation of and/or erode the public’s confidence in the HCSO shall be deemed to have violated this policy and shall be subject to counseling and/or discipline.” (Exhibit 1 at Section II, p. 2).
- c. Section VI (pages 11 and 12) of the Policy states:
 - “The HCSO personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships of the HCSO ... where such speech ... negatively affect[s] the public perception of the HCSO.”

- “HCSO personnel are cautioned that speech on or off duty, made pursuant to their official duties ... is not protected speech under the First Amendment and may for the basis for discipline if deemed detrimental to the HCSO. Bureau personnel shall assume that their speech and related activity on social media sites will reflect upon their Bureau and on the HCSO.”
- “HCSO personnel shall not post, transmit, or otherwise disseminate any information and/or opinion to which they identify themselves, including the source of the information, as attached to the HCSO.”
- “For safety and security reasons, HCSO personnel are cautioned not to disclose their employment with the HCSO.”
- “HCSO personnel shall not post information pertaining to any other member of the HCSO that would disclose their employment with the HCSO.”
- That HCSO employees are prohibited (unless they receive “express permission from the Chief”) from posting HCSO logos or badges, or personal photographs that may cause them to be identified as HCSO employees.
- That employees are prohibited from making speech about “other HCSO personnel reflecting behavior that would reasonably be considered reckless or irresponsible.”
- That employees cannot engage in “blasphemous” or “negative” speech about the HCSO or its personnel.

16. This Policy is in effect at the time this lawsuit has been filed.

APPLICABLE LAW

17. The U.S. Supreme Court “has made clear that public employees do not surrender all their First Amendment rights by reason of their employment.” *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006).

18. The “First Amendment protection of a public employee’s speech depends on a careful balance ‘between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the

efficiency of the public services it performs through its employees.” *Lane v. Franks*, ___ U.S. ___, 134 S. Ct. 2369, 2374 (2014) (quoting *Pickering v. Board of Ed. Of Township High Sch. Dist. 205, Will Cty.*, 391 U.S. 563, 568 (1968)).

19. “Speech by citizens on matters of public concern lies at the heart of the First Amendment, which ‘was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” *Lane*, 134 S. Ct. at 2377 (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

20. “This remains true when speech concerns information related to or learned through public employment. After all, public employees do not renounce their citizenship when they accept employment, and [the Supreme] Court has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights.” *Id.* (internal citations omitted).

21. “There is considerable value, moreover, in encouraging, rather than inhibiting, speech by public employees.” *Id.* “For, ‘[g]overnment employees are often in the best position to know what ails the agencies for which they work.’” *Id.* (quoting *Waters v. Churchill*, 511 U.S. 661, 674 (1994)).

22. “‘The interest at stake is as much the public’s interest in receiving informed opinion as it is the employee’s own right to disseminate it.’” *Id.* (quoting *San Diego v. Roe*, 543 U.S. 77, 82 (2004)). On the other hand, “[g]overnment employers, like private employers, need a significant degree of control over their employees’ words and actions; without it, there would be little chance for the efficient provision of public services.” *Id.* (quoting *Garcetti*, 547 U.S. at 418).

23. In 1968, the Supreme Court developed a “framework for analyzing whether the employee’s interest or the government’s interest should prevail in cases where the government seeks to curtail the speech of its employees.” *Id.* The Court requires “balanc[ing] ... the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.* (quoting *Pickering*, 391 U.S. at 568).

24. “In *Pickering*, the Court held that a teacher’s letter to the editor of a local newspaper concerning a school budget constituted speech on a matter of public concern.” *Lane*, 134 S. Ct. at 2377-78 (citing *Pickering*, 391 U.S. at 571). “And in balancing the employee’s interest in such speech against the government’s efficiency interest, the Court held that the publication of the letter did not ‘impede the teacher’s proper performance of his daily duties in the classroom’ or ‘interfer[e] with the regular operation of the schools generally.’” *Id.* at 2378 (quoting *Pickering*, 391 U.S. at 572-73). “The Court therefore held that the teacher’s speech could not serve as the basis for his dismissal.” *Id.* (citing *Pickering*, 391 U.S. at 574).

25. In 2006, in *Garcetti*, the Supreme Court described a two-step inquiry into whether a public employee’s speech is entitled to protection:

The first requires determining whether the employee spoke as a citizen on a matter of public concern. If the answer is no, the employee has no First Amendment cause of action based on his or her employer’s reaction to the speech. If the answer is yes, then the possibility of a First Amendment claim arises. The question becomes whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public.

Lane, 134 S. Ct. at 2378 (quoting *Garcetti*, 547 U.S. at 418).

26. **Prong One: Speech As A Citizen.** In looking at the citizen prong, “*Garcetti* distinguished between employee speech and citizen speech. Whereas speech as a citizen may trigger protection, the Court held that ‘when public employees make statements pursuant to their

official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Lane*, 134 S. Ct. at 2378 (quoting *Garcetti*, 547 U.S. at 424).

27. “[T]he mere fact that a citizen’s speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech.” *Lane*, 134 S. Ct. at 2379. “The critical question ... is whether the speech itself is ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” *Id.*

28. Earlier this April, the Supreme Court emphasized that “speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment.” *Id.* “In *Pickering*, for example, the Court observed that ‘teachers are ... the members of the community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.’” *Id.* (citing *Pickering*, 391 U.S. at 572); *Garcetti*, 547 U.S. at 421 (“[t]he same is true of many other categories of public employees”); *Roe*, 543 U.S. at 180 (public employees “are uniquely qualified to comment” on “matters concerning government policies that are of interest to the public at large”).

29. **Prong Two: Speech On A Matter Of Public Concern.** “Speech involves matters of public concern ‘when it can “be fairly considered as relating to any matter of political, social, or other concern to the community,” or when it “is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.”’” *Lane*, 134 S. Ct. at 2380 (quoting *Snyder v. Phelps*, 131 S. Ct. 1207, 1216 (2011)).

30. “[G]overnment employers often have legitimate ‘interest[s] in the effective and efficient fulfillment of [their] responsibilities to the public,’ including ‘promot[ing] efficiency and integrity in the discharge of official duties’ and ‘manintain[ing] proper discipline in public service.’” *Id.* (quoting *Connick*, 461 U.S. at 150-51). And, the Supreme Court has “also cautioned, however, that ‘a stronger showing [of government interests] may be necessary if the employee’s speech more substantially involve[s] matters of public concern.” *Id.* (quoting *Connick*, 461 U.S. at 152).

CAUSE OF ACTION: 42 U.S.C. § 1983

31. Pittman brings this claim alleging that his First Amendment rights are being deprived by the enactment and enforcement of the overbroad Policy. 42 U.S.C. § 1983 provides Pittman statutory authority to bring suit against Garcia to stop the deprivation of those rights.

32. As demonstrated above, employees of the HCSO, including Pittman, have a First Amendment guarantee to speak out as citizens on matters of public concern. They may utilize several methods to do so, including social media. They may speak about the office’s policies, even if it brings the office into “disrepute.” They may speak about things that bring about “embarrassment” to the office or a particular officer if it is in the public interest. They can even say things that are “negative” or “blasphemous” against the office. And, they can even identify themselves as employees of the office in making those statements.

33. “A municipality such as Harris County ‘can be held liable for its policies and customs that engender constitutional deprivation, but it cannot be held liable for the actions of its non-policymaking employees under a theory of respondeat superior.’” *Castro*, 2007 WL 2446821, at *16 (quoting *Williams v. Kaufman County*, 352 F.3d 994, 1013 (5th Cir. 2003)).

34. “Under the decisions of the Supreme Court and [the Fifth Circuit], municipal liability under section 1983 requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose ‘moving force’ is the policy or custom.” *Castro*, 2007 WL 2446821, at *16 (quoting *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001) (citing *Monell*, 436 U.S. at 694)).

35. “There must be both municipal culpability and causation.” *Castro*, 2007 WL 2446821, at *16 (citing *Snyder v. Trepagnier*, 142 F.3d 791, 796 (5th Cir. 1998)). “Culpability includes both the involvement of a municipal policymaker and affirmative municipal action.” *Id.* (quoting *Piotrowski*, 237 F.3d at 578 n.17).

36. “The unconstitutional conduct must be directly attributable to the municipality through some sort of official action or imprimatur.” *Castro*, 2007 WL 2446821, at *16 (internal quotation omitted).

37. Here, Garcia is the Sheriff and he is sued in his official capacity. He is the ultimate policy maker responsible for the unconstitutional Policy. The official Policy complained of is attached as Exhibit 1, and there is affirmative municipal action because the Policy has been officially enacted and applies right now to all employees of the office, including Pittman.

DECLARATORY JUDGMENT SOUGHT

38. “The Declaratory Judgment Act, 28 U.S.C. § 2201(a) ‘is an enabling act, which confers discretion on the courts rather than an absolute right on a litigant.’” *Sherwin-Williams Co. v. Holmes Cty.*, 343 F.3d 383, 389 (5th Cir. 2003) (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995) (quoting *Public Serv. Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237, 241 (1952))).

39. ““The Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants.”” *Sherwin-Williams Co.*, 343 F.3d at 389 (quoting *Wilton*, 515 U.S. at 286). ““In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration.”” *Sherwin-Williams Co.*, 343 F.3d at 389 (quoting *Wilton*, 515 U.S. at 286).

40. Pittman seeks a declaratory judgment that the Policy is overbroad and unconstitutional as written and must be retracted or reformed to fully protect Pittman’s First Amendment right to speak as a citizen on matters of public concern.

41. Pittman only seeks prospective declaratory relief, meaning that Garcia may not assert Eleventh Amendment immunity. *Edelman v. Jordan*, 415 U.S. 651, 664 (1974); accord *Nelson v. Univ. of Tex. at Dallas*, 535 F.3d 318, 322 (5th Cir. 2008) (“prospective injunctive or declaratory relief against a state [official] is permitted ... but retrospective relief in the form of a money judgment in compensation for past wrongs ... is barred”) (internal quotation omitted).

42. “In determining whether to handle a Declaratory Judgment Action, “[a] federal district court must determine (1) whether the declaratory action is justiciable; (2) whether the court has the authority to grant declaratory relief; and (3) whether to exercise its discretion to decide or dismiss the action.”” *Darwin Select Ins. Co. v. Laminack, Pirtle & Martines, L.L.P.*, Civil Action No. H-10-5200, 2011 WL 2174970, at *1 (S.D. Tex. June 3, 2011) (quoting *Sherwin-Williams Co.*, 343 F.3d at 387).

43. All three elements are present in this case.

44. **First Element: Justiciability.** As to justiciability, “a ‘declaratory judgment action is proper even though there are future contingencies that will determine whether the controversy becomes real.’” *Darwin Select Ins. Co.*, at *2 (quoting 10B CHARLES ALAN WRIGHT, ARTHUR R. MILLER, MARY K. KANE & RICHARD L. MARCUS § 2757 (3d ed. 2010)). “A plaintiff can prove a declaratory judgment action is justiciable ‘by establishing actual present harm or a significant possibility of future harm.’” *Id.* (quoting *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 542 (5th Cir. 2008)). “‘By its very nature, a declaratory judgment action focuses on an injury that has not yet occurred; the issue is whether the injury is sufficiently likely to justify judicial intervention.’” *Id.* (quoting *RSUI Indem. Co. v. Enbridge (U.S.) Inc.*, Civil Action No. H-08-1807, 2008 WL 5158179, at *2 (S.D. Tex. Dec. 9, 2008)).

45. Moreover, the case is ripe. “A case is generally ripe for consideration if the remaining questions are purely legal ones and additional factual development is unnecessary.” *Darwin Select Ins. Co.*, at *2 (citing *New Orleans Pub. Serv. Inc. v. Counsel of New Orleans*, 833 F.2d 583, 586-87 (5th Cir. 1987)).

46. In short, the Policy is in effect right now, and currently limits Pittman’s First Amendment rights. Thus, there is an actual controversy ripe for adjudication. *Venator Group Specialty, Inc. v. Mathew/Muniot Family*, 322 F.3d 835, 838 (5th Cir. 2003); *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 896 (5th Cir. 2000).

47. **Second Element: Authority.** A federal court has authority to declare a violation of the First Amendment.

48. **Third Element: Discretionary Factors.** “In *St. Paul v. Paul Insurance Co. v. Trejo*, 39 F.3d 585, 590-91 (5th Cir. 1994), the Fifth Circuit identified seven non-exclusive factors for a federal court to consider when deciding whether to dismiss a declaratory judgment action.” *Darwin Select Ins. Co.*, at *2. These factors are: “(1) whether there is a pending state action in which all of the matters in controversy may be fully litigated; (2) whether the plaintiff filed suit in anticipation of a lawsuit filed by defendant; (3) whether the plaintiff engaged in forum shopping in bringing suit; (4) whether possible inequities in allowing the declaratory plaintiff to gain precedence in time or to change forums exist; (5) whether the federal court is convenient forum for the parties and the witnesses; (6) whether retaining the lawsuit would serve the purposes of judicial economy; and (7) whether the federal court is being called on to construe a state judicial decree involving the same parties and entered by the court before whom the parallel state suit between the same parties is pending.” *Id.*

49. As to these factors, all of them weigh in favor of Pittman. There is no pending state court action. He is not filing this case in anticipation of a lawsuit filed by Defendant. Pittman is not forum shopping: He filed this case in the proper district. There are no possible inequities that would follow from permitting this suit to go forward. This is not an inconvenient forum. This lawsuit serves judicial economy and there is no parallel state suit.

50. Accordingly, Pittman is entitled to a declaratory judgment.

INJUNCTION SOUGHT

51. Pittman seeks prospective injunctive relief against continued enforcement of the Policy. “It is black letter law that the Eleventh Amendment does not apply to a request for a

federal court to grant prospective injunctive relief against state officials on the basis of federal claims.” *Ganther v. Ingle*, 75 F.3d 207, 210 (5th Cir. 1996) (internal citations omitted).

52. Because he has named Garcia as a Defendant in his official capacity, no applicability immunity protects Garcia from injunctive relief. *Graham*, 473 U.S. at 166-67; accord *Duncan v. Univ. of Tex. Health Sci. Ctr. at Houston*, 469 Fed. Appx. 364, 367 (5th Cir. 2012).

53. Pittman can proceed with a request for an injunction because he has stated “a deprivation of a constitutional right[] pursuant to an official [county] policy.” *Duncan*, 469 Fed. Appx. at 367.

APPLICATION FOR PROSPECTIVE PRELIMINARY INJUNCTION

54. “In order to obtain a preliminary injunction, the plaintiff bears the burden of persuasion on four elements: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Netherland v. Eubanks*, 302 Fed. Appx. 244, 246 (5th Cir. 2008) (quoting *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974)).

55. As demonstrated above, Garcia has enacted a plainly unconstitutional policy. The Plaintiff suffers an irreparable violation of his constitutional rights if the injunction is not granted. The harm suffered by the Plaintiff is not outweighed by any harm to the Defendant (indeed, the Defendant has no harm if the Policy is enjoined); and granting the preliminary injunction will actually serve the public interest.

ATTORNEYS' FEES AND COSTS

56. Plaintiff requests his attorneys' fees and costs pursuant to 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

57. In 1913, in a *Harper's Weekly* article entitled, "What Publicity Can Do," Louis D. Brandeis wrote: "Sunlight is said to be the best of disinfectants..."¹ Employees of the HCSO, including Pittman, are allowed to speak out as citizens on matters of public concern, even if such speech is damaging to the HCSO.

58. Accordingly, Plaintiff seeks:

- a. A prospective declaratory judgment indicating that Garcia's Policy is unconstitutional and must be withdrawn or reformed within the strictures of the First Amendment;
- b. A prospective preliminary and permanent injunction prohibiting Garcia from applying this unconstitutional Policy;
- c. Reasonable attorneys' fees;
- d. Costs of court; and
- e. All such other relief at law or equity that Plaintiff may be entitled to receive.

¹ <http://www.law.louisville.edu/library/collections/brandeis/node/196>

Respectfully submitted,

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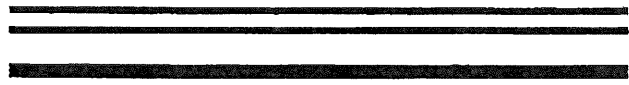
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ATTORNEYS FOR PLAINTIFF
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EXHIBIT 1



SHERIFF
Harris County Texas
Department Manual



SUBJECT: SOCIAL MEDIA POLICY	POLICY #: 317
CALEA STANDARDS REFERENCE(S): 26.1.1 & 54.1.1 e & f	NO. OF PAGES: 15

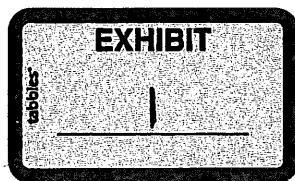
I. Purpose:

The advent of social media sites has created an environment of greater connection among people, businesses, and organizations. Many law enforcement agencies utilize social media sites for the purpose of public networking, such as providing the public with current information on crime trends, updates on law enforcement related events, and addressing safety awareness. Social media sites have also become important tools in the hands of criminals to enhance their criminal activity. To remain consistent with the standards of the 21st century, The Harris County Sheriff's office, must successfully and lawfully harness the power and value of social media sites, while ensuring that individuals' and groups' privacy, civil rights, and civil liberties are protected.

The Harris County Sheriff's Office (HCSO) also recognizes the role that social media plays in the personal lives of HCSO personnel and the bearing it may have on their official capacity. Professionalism, ethics, and integrity are of paramount importance to the HCSO. To achieve and maintain the public's highest level of respect, we must place reasonable restrictions on the conduct of our employees and our appearances in person and in print, as well as holding all personnel to a greater standard of conduct whether on or off duty.

II. Policy:

This policy is meant to direct and define the use of social media in furtherance of the goals of the HCSO. Social Media provides a new and potentially valuable means of assisting the HCSO and its personnel in community outreach, problem-solving, investigative, crime prevention, and related objectives. This policy identifies potential uses that may be explored and/or expanded upon as deemed lawful and reasonable by administrative and supervisory personnel. As such, this policy provides information of a precautionary nature as well as prohibitions on the use of social media by HCSO personnel. This policy is meant to provide guidance to HCSO personnel to ensure that social media resources are being utilized in a lawful and appropriate manner that upholds the HCSO's mission in addition to federal, state and local laws.





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All personnel, both sworn and civilian, shall be held accountable for their utterances, writings, conduct, and visual representations, including electronic and web based communications. Such communications, when they can be identified with a HCSO employee, must never conflict with our core values, our mission, or our law enforcement code of ethics.

The Sheriff's Office reserves and intends to exercise the right to review, audit, intercept, access, and disclose all messages created, received, or sent on a Sheriff's Information Technology Resource. See Departmental Policy 309 I. (D). No HCSO employee has a right to privacy in information created, received or sent on a HCSO Information Technology Resource.

An employee's actions must never bring the HCSO into disrepute, nor should conduct be detrimental to the HCSO's efficient operation. The developments in electronic technology as described within this policy are an invaluable resource to assist the HCSO in performing its mission to serve the citizens of Harris County, Texas. [CALEA Standard 26.1.1]

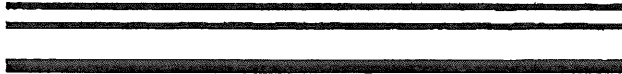
Personnel who, through their use of social media, cause undue embarrassment or damage the reputation of and/or erode the public's confidence in the HCSO shall be deemed to have violated this policy and shall be subject to counseling and/or discipline. [CALEA Standard 26.1.1]

III. Definitions:

- A. **Anonymous:** Expression or communication of thoughts or opinions from an unknown source; not named and made or done by someone unknown, in writing, by expressive conduct, symbolism, photographs, videotape, or related forms of communication.
- B. **Blog:** A self-published diary of commentary on a particular topic that may allow visitors to post responses, reactions, or comments. The term is short for "Web Log".
- C. **Monitoring Software:** software intended to allow the purchaser to actively listen to the public square and capture data within the realm of legal boundaries. For example; SnapTrends, Geofeedia, Twitterfall, Tweetdeck, etc.



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CALEA STANDARDS REFERENCE(S): 26.1.1 & 54.1.1 e & f	NO. OF PAGES: 15

- D. **Online Alias:** An online identity encompassing identifiers, such as name and date of birth, differing from the employee's actual identifiers, that uses a nongovernmental Internet Protocol address. Online alias may be used to monitor activity on social media websites or to engage in authorized online undercover activity.
- E. **Online Undercover Activity:** The utilization of an online alias to engage in interactions with a person via social media sites that may or may not be in the public domain (i.e. "friending a person on Facebook).
- F. **Page:** The specific portion of a social media website where content is displayed, and managed by an individual or individuals with administrative rights.
- G. **Phases of Social Media within a Criminal Investigation:**
 - 1. **Apparent or Overt Phase:**
The HCSO employee googles someone, searches Facebook, etc. His/her identity as a HCSO employee is apparent.
 - 2. **The Discrete Phase:**
The HCSO employee is searching and retaining public-access pictures, retaining profile status updates, etc, and his/her identity as a HCSO employee may not be apparent.
 - 3. **The Covert Phase:**
The HCSO employee will friend, follow, set up user accounts, and obtains lawful intercepts. His/her identity as a HCSO employee is hidden.
- H. **Post:** Content an individual shares on a social media site or the act of publishing content on a site.



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SUBJECT: SOCIAL MEDIA POLICY	POLICY #: 317
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- I. **Profile:** Information that a user provides about himself or herself on a social networking site.
- J. **Public Domain:** Any internet resource that is open and available to anyone.
- K. **Public Information Act:** As of September 1, 2013, the Texas Public Information Act was amended to include emails, text messages, instant messages, and internet postings made by a public employee concerning public business. What this means to HCSO employees is that all such communication made on your personal devices that concerns county business will now be subject to disclosure pursuant to the Texas Public Information Act.
- L. **Public Square:** The new public square includes, but is not limited to, all electronic mediums and social media platforms such as the World Wide Web, Facebook, Twitter, YouTube, Myspace, Instagram, Blogs, etc.
- M. **Social Media:** A category of Internet-based resources that integrates user-generated content and user participation. This includes, but is not limited to, social networking sites (Facebook, Myspace, Google, etc.), micro-blogging sites (Twitter, Nixle, etc.), photo and video sharing sites (Flickr, YouTube, Instagram, Tumblr, etc.), wikis (Wikipedia), blogs and news sites.
- N. **Social Networks:** Online platforms where users can create profiles, share information, and socialize with others using a range of technologies.
- O. **Speech:** Expression or communication of thoughts or opinions in spoken words, in writing, by expressive conduct, symbolism, photographs, videotape, or related forms of communication.
- P. **Texting:** Written communication on a personal or HCSO supplied cell phone.



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- Q. **Valid Law Enforcement Purpose:** A purpose for information/intelligence gathering development, or collection, use, retention, or sharing that furthers the authorized functions and activities of a law enforcement agency, which may include the prevention of crime, ensuring that safety of the public, furthering officer safety, and homeland an national security, while adhering to law and agency policy designed to protect that privacy, civil rights, and civil liberties of Americans.
- R. **Web 2.0:** The second generation of the World Wide Web focused on shareable, user-generated content, rather than static web pages.
- S. **Wiki:** Web page(s) that can be edited collaboratively online.

IV. Sanction Use of Social Media:

HCSO endorses the secure use of social media to enhance communication, collaboration, and information exchange; streamline processes; and foster productivity.

HCSO endorses the use of social media for pre-employment background investigations, crime analysis, situational assessments, criminal intelligence development, criminal investigations, internal affairs, marketing, recruitment, and community engagement. [CALEA Standard 54.1.1 e]

- A. There shall be a Department-Sanctioned Presence when communicating with the public.
 - 1. Each HCSO social media page shall include an introductory statement that clearly specifies the purpose and scope of the agency's presence on the website.
 - 2. The page(s) should link to the HCSO's official website
 - 3. Social Media page(s) shall be designed to better communicate with the public.



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- a. All HCSO social media sites or pages shall be approved and administrated by the HCSO Digital Media Manager.
- b. Social media pages shall clearly indicate they are maintained by the HCSO and shall have HCSO contact information prominently displayed.
- c. Social media content shall adhere to applicable laws, regulations, and policies, including all information technology and records management statues and policies.
 - i. Content is subject to public records law. Relevant records retention schedules apply to social media content.
 - ii. Content must be managed, stored, and retrieved to comply with open records laws and e-discovery laws and policies.
- d. Social media pages shall state and, as such, shall be made clear to any reader of a HCSO sponsored social media page that the opinions/views reflected on the page are the opinions/views of the readers, and do not reflect the official opinions/views of the HCSO.
 - i. Page(s) shall clearly indicate that posted comments will be monitored and that the HCSO reserves the right to remove obscenities, off-topic comments, comments that are deemed inappropriate, and any personal attacks.
 - ii. Page(s) shall clearly indicate that any content posted or submitted for posting is subject to public disclosure.
 - iii. Social media pages shall give clear notice that once content is submitted to the HCSO site(s),



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the content becomes the property of the HCSO.

- B. Personnel representing ~~this office~~ via social media outlets shall adhere to the following [CALEA Standard 26.1.1]:
1. Shall conduct themselves at all times as representatives of the HCSO and adhere to all HCSO standards of conduct and observe conventionally accepted protocols and proper decorum.
 2. Shall identify themselves as a member of the HCSO.
 3. Shall not make statements about the guilt or innocence of any suspect or arrestee, or comments concerning pending prosecutions, nor post, transmit, or otherwise disseminate confidential information, including photographs or videos, related to HCSO-training, activities, or work-related assignments without express written permission.
 4. Shall not conduct political activities or private business.
 5. The use of county computers by HCSO personnel to access social media is prohibited unless a valid law enforcement purpose exists.
 6. The usage of a cell phone to read or enter data via social media, email or text application(s) while operating a motor vehicle is prohibited.
 - a. This applies to driving a county owned vehicle or any vehicle while on county time.
 - i. Cease the operation of the motor vehicle when engaging in communication via texting (reading or entering data), email (reading or entering data) or accessing a social media site (reading or entering data).
 7. HCSO personnel are cautioned not to conduct county business on any personally owned electronic devices unless



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being done through the county email system. All county business is subject to open records inspections and production, whether conducted on county or personal devices. *Please refer to definition for Public Information Act.

8. Employees shall observe and abide by all copyright, trademarks, and serve mark restrictions in posting materials to electronic media.

C. Criminal Investigations:

Criminal Investigations that include any internet function including, but not limited to social media platforms, shall be conducted as all other criminal investigations are conducted and documented within the HCSO. The level of authorization necessary to conduct such an investigation is dependent upon the phase of such investigation:

- Apparent/Overt Phase requires supervisor authorization;
- Discrete Phase requires Lieutenant or Captain level authorization; and
- Covert Phase requires Major or above authorization.

Traditional Law Enforcement Actions



Uniformed Patrol on the Street

Plainclothes Officers/ Detectives

Undercover Officers/ Full Investigation



Social Media Actions

- "Googling" Someone
- Searching Facebook
- Searching YouTube

- Searching and Retaining Public Access Pictures
- Retaining Profile Status Updates

- "Friending"
- "Following"
- Setting Up User Account
- Lawful Intercepts



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1. Social Media is a valuable criminal investigative tool when seeking evidence or information pertaining to:
 - a. Missing persons;
 - b. Wanted persons;
 - c. Gang participation;
 - d. Crimes perpetrated online (i.e., cyber bullying, cyber stalking);
 - e. Photos or videos of a crime posted by a participant or observer;
 - f. Character evidence or evidence that tends to show a propensity for a person to commit certain types of acts; and
 - g. Evidence of extraneous offenses or extraneous bad conduct.

Note: All information gathered through an internet criminal investigation is secured and stored as all other evidence and documented within an ARS report. Harris County retention policies shall be adhered to. When information is inadvertently obtained through such investigations that are NOT authorized as a lawful criminal investigation, such materials shall NOT be retained and a supervisor shall be immediately notified and the event documented in an ARS report.

V. Potential Uses of Social Media:

- A. Social Media can be used for community outreach and engagement by the HCSO for:
 1. Providing crime prevention tips;
 2. Offering online-reporting opportunities;
 3. Sharing crime maps and data; and
 4. Soliciting tips about unsolved crimes (i.e., Crime stoppers, text-a-tip).



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5. Public safety education.
- B. Social media can be used by the HCSO to provide real-time notifications related to [CALEA Standard 54.1.1 e & f]:
1. Road closures,
 2. Special events,
 3. Weather emergencies,
 4. Missing or endangered persons, and
 5. Breaking events (i.e. mass shooting, school lock down)
- C. Employees on duty shall only utilize social media to seek or retain information deemed useful for an identified, lawful HCSO purpose such as information:
1. based upon a criminal predicate or threat to public safety; or
 2. based upon reasonable suspicion that an identifiable individual, regardless of citizenship or U.S. residency status, or organization has committed an identifiable criminal offense or is involved in or is planning criminal conduct or activity that present a threat to any individual, the community, or to the nation and the information is relevant to the criminal conduct or activity (criminal intelligence information); or
 3. relevant to the criminal investigation and prosecution of suspected criminal incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences; or the prevention or crime; or
 4. useful in crime analysis or situational assessment reports for the administration of criminal justice and public safety; or
 5. relevant to pre-employment background investigations.



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Note: Unauthorized use of social media while on the job is prohibited and subject to counseling and/or discipline. [CALEA Standard 26.1.1]

- D. Persons seeking employment and volunteer positions use the Internet to search for opportunities, and social media can be a valuable recruitment mechanism.
- E. When conducting background investigations of potential candidates for employment, the HCSO has an obligation to include Internet-based content.
 - 1. Searches shall be conducted by authorized personnel. Information pertaining to protected classes shall be filtered out prior to sharing any information found online with decision makers.
 - 2. Persons authorized to search Internet-based content shall be deemed as holding a sensitive position.
 - 3. Search methods shall not involve techniques that are a violation of existing law or HCSO policy.
 - 4. Vetting techniques shall be applied uniformly to all candidates.
 - 5. Every effort shall be made to validate Internet-based information considered during the hiring process.

VI. ~~Personal Use~~

A. Precautions and Prohibitions:

Barring state law or binding employment contracts to the contrary, off-duty HCSO personnel shall abide by the following when using social media [CALEA Standard 26.1.1]:

- 1. The HCSO personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships of the HCSO where loyalty and confidentiality are important or where such speech does not impede the performance of duties, impair



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discipline and harmony among coworkers, or negatively affect the public perception of the HCSO.

2. As public employees, HCSO personnel are cautioned that speech on or off duty, made pursuant to their official duties, that is, it owes its existence to the employee's professional duties and responsibilities, is not protected speech under the First Amendment and may for the basis for discipline if deemed detrimental to the HCSO. Bureau personnel shall assume that their speech and related activity on social media sites will reflect upon their Bureau and on the HCSO.
3. HCSO personnel shall not post, transmit, or otherwise disseminate any information to which they have access, as a result of their employment, without written permission from the Sheriff or his/her designee.
4. HCSO personnel shall not post, transmit, or otherwise disseminate any information and/or opinion to which they identify themselves, including the source of the information, as attached to the HCSO.
5. ~~For safety and security reasons, HCSO personnel are~~ cautioned not to disclose their employment with the HCSO.
6. HCSO personnel shall not post information pertaining to any other member of the HCSO that would disclose their employment with the HCSO.
7. HCSO personnel are prohibited from posting the following items without express permission from their Chief:
 - a. Any display of HCSO logos, badges, uniforms, marked units, other departmental property or on-duty personnel, including incident scenes, or similar identifying items.
 - b. Personal photographs or similar means of personal recognition that may cause them to be identified as an employee of the HCSO.



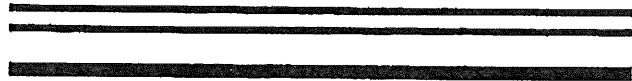
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- c. Deputies who are, or who may reasonably be expected to work in undercover operations, shall not post any form of visual or personal identification.
- 8. When using social media, HCSO personnel shall be mindful of their speech, such that it becomes a part of the World Wide Web electronic domain. Therefore, adherence to the HCSO's code of conduct is required in the personal use of social media. In particular, HCSO personnel are prohibited from the following: (This prohibition applies to any employee who participates in these forbidden actions directly or anonymously)
 - a. Speech containing obscene or sexually explicit language, images, or acts and statements or other forms of speech that ridicule, malign, disparage, or otherwise express bias against any race, any religion, of any protected class of individuals; and
 - b. Speech involving themselves or other HCSO personnel reflecting behavior that would reasonably be considered reckless or irresponsible; and
 - c. Speech containing crude, ~~blasphemy~~ negative, or untrue claims about the HCSO and/or any HCSO personnel is forbidden and therefore will be grounds for disciplinary action.
- 9. Engaging in prohibited speech noted herein, may provide grounds for undermining or impeaching a Deputy's testimony in criminal proceedings. HCSO personnel thus sanctioned are subject to discipline up to and including termination of employment.
- 10. HCSO personnel shall be aware that they may be subject to civil litigation for:
 - a. Publishing or posting false information that harms the reputation of another person, group, or organization (defamation);



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- b. Publishing or posting private facts and personal information about someone without their permission and that has not been previously revealed to the public, is not of legitimate public concern, and would be offensive to a reasonable person;
 - c. Using someone else's name, likeness, or other personal attributes without that persons permission for an exploitative purpose; or
 - d. Publishing the creative work of another, trademarks, or certain confidential business information without the permission of the owner.
11. HCSO personnel shall be aware that privacy settings on social media sites are constantly in flux, and they should never assume that personal information posted on such sites is protected.
 12. Any information created, transmitted, downloaded, exchanged, or discussed in a public online forum may be accessed by the HCSO at any time without prior notice.
 13. Any employee becoming aware of or having knowledge of a post, website(s) or web page in violation of the provision of this policy shall notify his or her supervisor immediately for follow-up action.
 14. The Internet is a valuable source of information and should be utilized when doing so for the furtherance of fulfilling your required job tasks with the HCSO. Therefore, any non-work related use of the Internet while on duty is prohibited and any infraction may result in counseling and/or discipline.
 15. Fraternalization via social media is prohibited when it violates Departmental Policy # 303.
 16. All contact via social media between HCSO personnel and present/former inmate(s) shall be kept professional.



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- a. If an employee feels that he/she has a special circumstance. The employee shall notify their Bureau Major or Division Director, who may under their discretion permit the association if it will not adversely affect the security of the HCSO.

Revision:

This policy has been revised on the below listed dates:

July 16, 2014