



TO: City Council
FROM: Ethics Advisory Board
SUBJECT: EAB Report on Ethics Complaint 2022-05B
DATE: **March 9, 2023**

On December 20, 2022, Mr. William Stout (“complainant”) filed a complaint alleging two violations. For purposes of the investigation and reporting, we considered them as two separate complaints and have labeled them Complaint 2022-05A and 2022-05B. This report addresses only Complaint 2022-05B.

In compliance with City Council Policy 39, our report is as follows:

1. Summary of Complaint -

Mr. Stout alleges that Mayor Brandon Whipple unlawfully blocked him/citizens from the Mayor’s Facebook pages around October 2022.

2. Scope of Investigation -

The investigation included review of the complaint and the Mayor’s response, review of City of Wichita policies, legal research regarding the legal decisions cited by both parties, and related cases.

3. Summary of Facts -

Mr. Stout’s complaint referenced the Mayor blocking people, including Mr. Stout, from his personal Facebook page(s), and he complains regarding the manner in which he was communicated. It does not appear he alleges being blocked from a City of Wichita official governmental Facebook page.

Mayor Whipple responded that he is not aware of anyone being blocked from City of Wichita pages. He says he has two Facebook pages; neither belong to the City nor are used for official City of Wichita business. One page is his personal page that is limited to “friends” that he accepted. The second page is his “politician page,” identified as “VoteWhipple,” owned by the Whipple for Mayor entity, and created before he was elected. No witnesses were listed other than citizens of Wichita.

Mr. Stout references the “Swanson” case seemingly as authority for his position. If Mr. Stout is referring to *Swanson v. Griffin*, No. 21-2034, 2022 U.S. App. LEXIS 5179 (10th Cir. Feb. 25, 2022), highly summarized, the government official was accused of blocking someone from his personal Facebook page. The official’s posts on his Facebook page included some comments about his work, and the plaintiff criticized the Commissioner on the page. The Commissioner blocked the plaintiff. The *Swanson* case was decided in favor of the government official. The

court distinguished government-created Facebook pages from personal ones in terms of protections granted to citizens. The United States Supreme Court denied review of the *Swanson* Tenth Circuit decision.

The Mayor's response references the *Haulmark* decision. He is likely referring to *Haulmark v. City of Wichita*, No. 21-cv-1182-EFM-TJJ, 2022 U.S. Dist. LEXIS 82841 (D. Kan. May 6, 2022). Again, highly summarized, the court addressed whether Mayor Whipple's private campaign Facebook page was subject to ADA (Americans with Disabilities Act) claims. The court distinguished Mayor Whipple's campaign page from the City of Wichita pages in various contexts. In a subsequent decision as part of the case, the court granted summary judgement to the Mayor and distinguished his private campaign page, but in the context of the ADA. The court explained, "it is just what it claims to be—a politician's private campaign page." *Haulmark v. City of Wichita*, No. 6:21-cv-01182-EFM-TJJ, 2022 U.S. Dist. LEXIS 191917, at *8 (D. Kan. Oct. 20, 2022).

4. Applicable Section(s) of the Code of Ethics Involved –

The complaint form used by Mr. Stout is the original form, which did not specifically require listing a particular Policy 39 subsection (A-P) alleged to have been violated. Mr. Stout appears to allege the Mayor violated his legal rights by blocking him and others on social media. Arguably, this might touch upon sections A, B and/or G.

5. Findings of the EAB –

Upon review of the parties' arguments and the relevant caselaw, the Ethics Advisory Board ("EAB") finds Policy 39 was not violated by the Mayor if he blocked citizens from his personal Facebook pages.

On March 9, the EAB adopted this report and considers this matter closed.

In compliance with City policy and EAB procedures, this report is being provided to the complainant, the named official, outside counsel to the EAB, City Council, City Attorney, City Manager and City Clerk. The complainant and respondent have seven (7) days in which to email a response to Kathy.Sexton@wichita.edu stating any specific dispute of the facts or interpretation of the Code of Ethics.

After seven days, assuming no response is received, the findings become final. If a response is received within the seven days, the allegation raised will return to the EAB agenda for reconsideration and a final decision.

In either case, the City Clerk shall post the final report on the Ethics webpage at www.wichita.gov.