



Social Media / Digital Communications and Civic Engagement

Cal Cities' Mayors and Council Members Academy

January 2025

Information Sources 20 Years Ago



Today's Information Diet

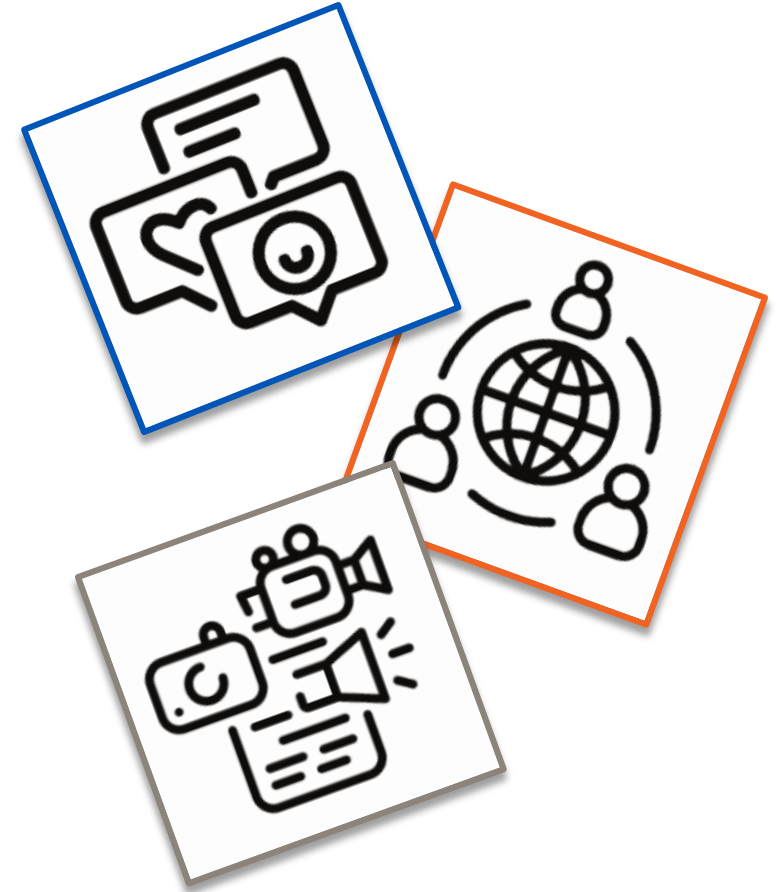


We're Addicted to Media!



Per day watching,
reading, listening or
simply interacting
with media

*Source: Statista, December 3, 2024, "Time spent
per day with major media in the United States
from 2019 to 2026."*



...And We're Addicted to Our Phones!

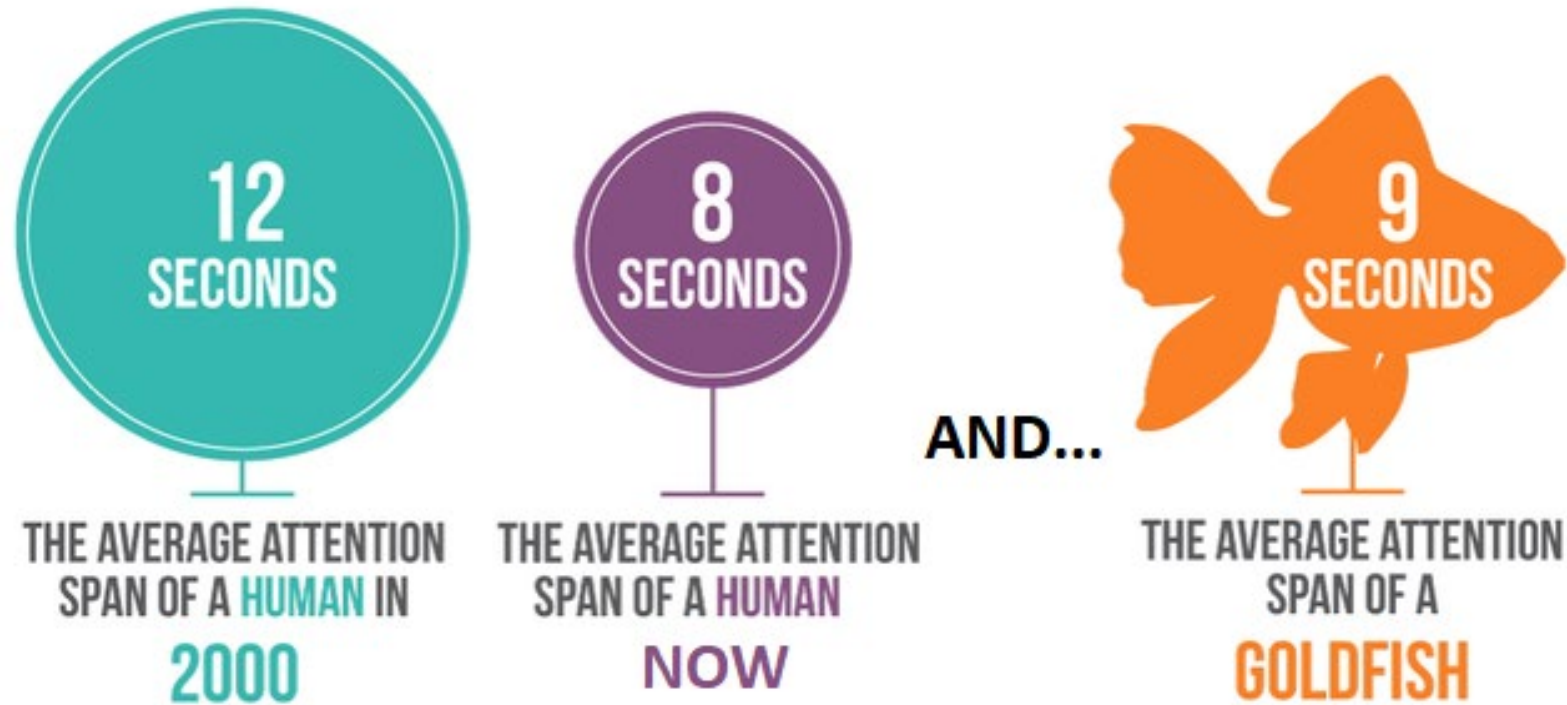
**Americans check
their phones...**



...times per day!

Source: Reviews.org, December 16, 2024, "Cell Phone Usage Stats 2024: Americans Check Their Phones 205 Times a Day."

Attention Span & Digital Media



Source: [Muck Rack, July 14, 2020, "How declining attention spans impact your social media."](#)

Gen Z's Attention Span...

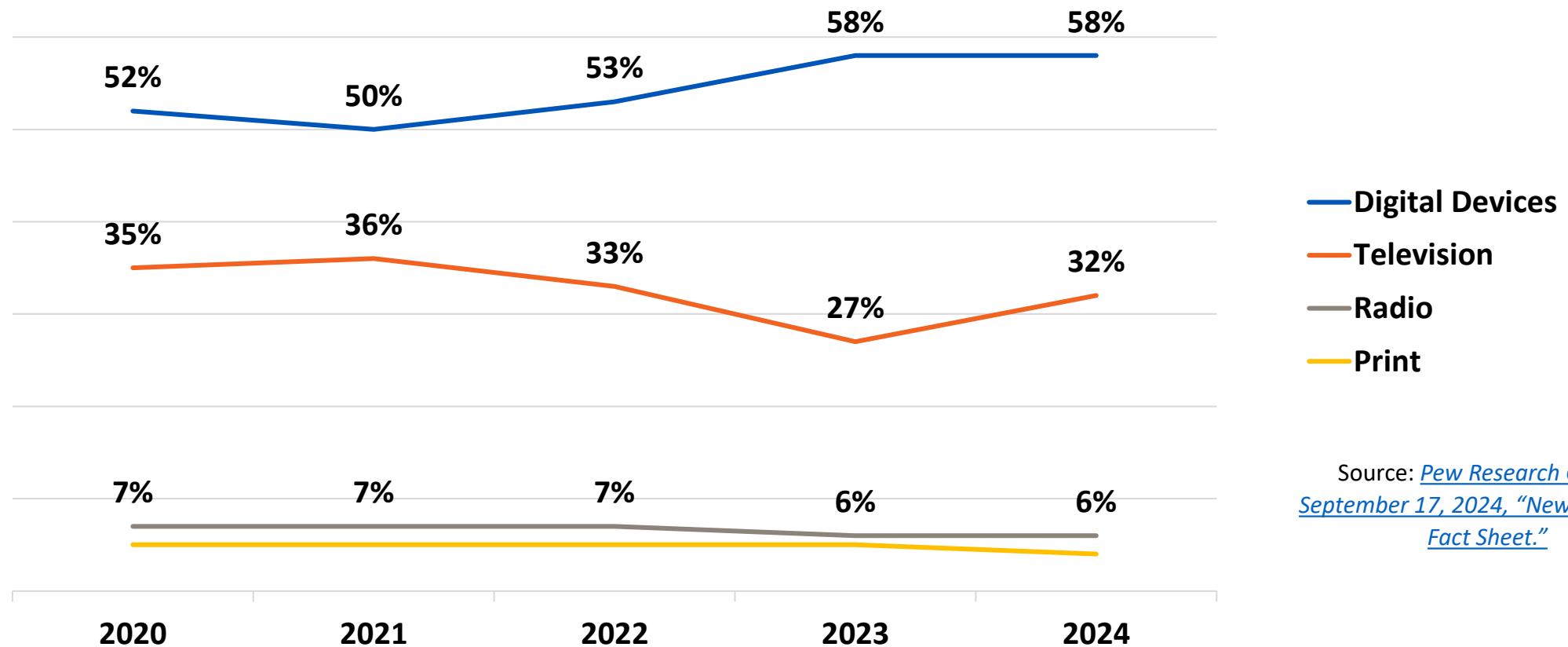
**Members of Generation Z lose active
attention for ads after...**

1.3 Seconds!

Source: [MNTN Research, August 2023, "Audience Deep Dive: Generation Z."](#)

Digital Devices: #1 Way to Consume News

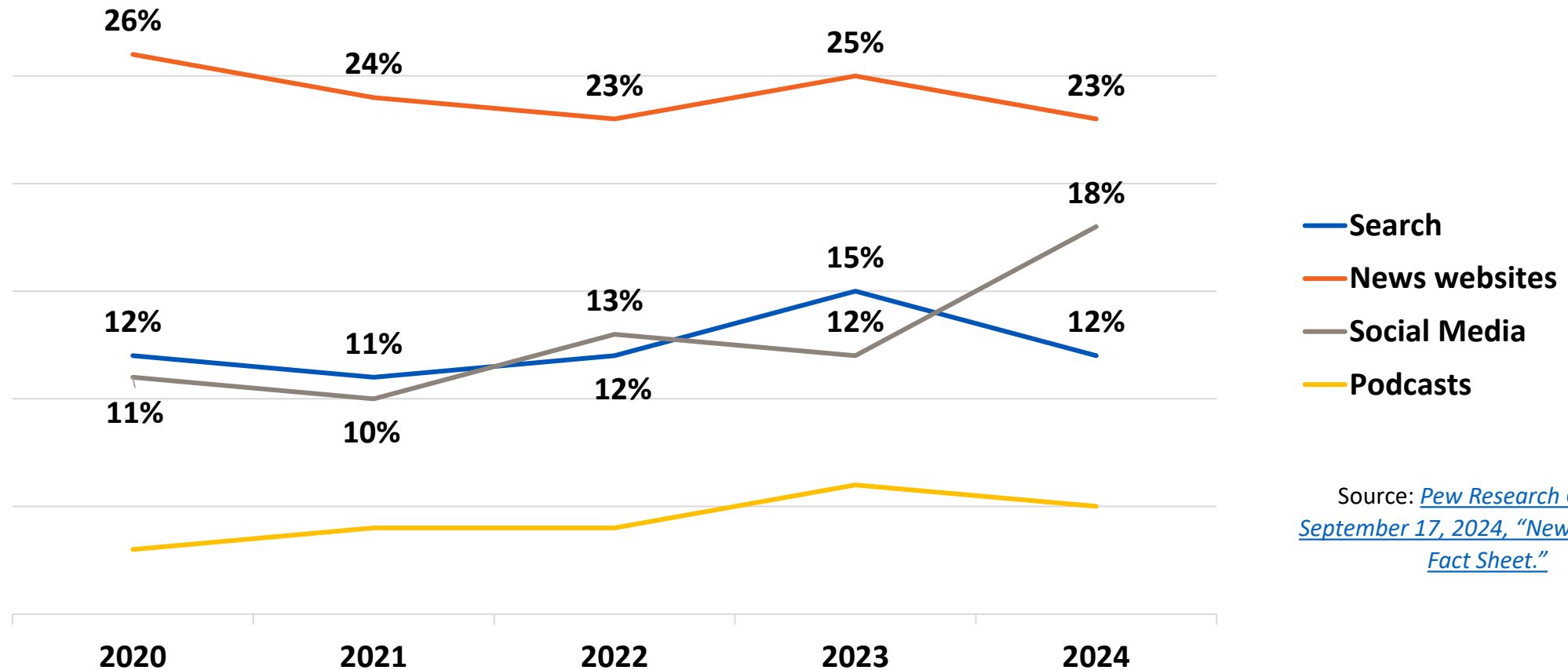
Total % of U.S. adults who say they prefer ____ for getting news...



Source: [Pew Research Center, September 17, 2024, "News Platform Fact Sheet."](#)

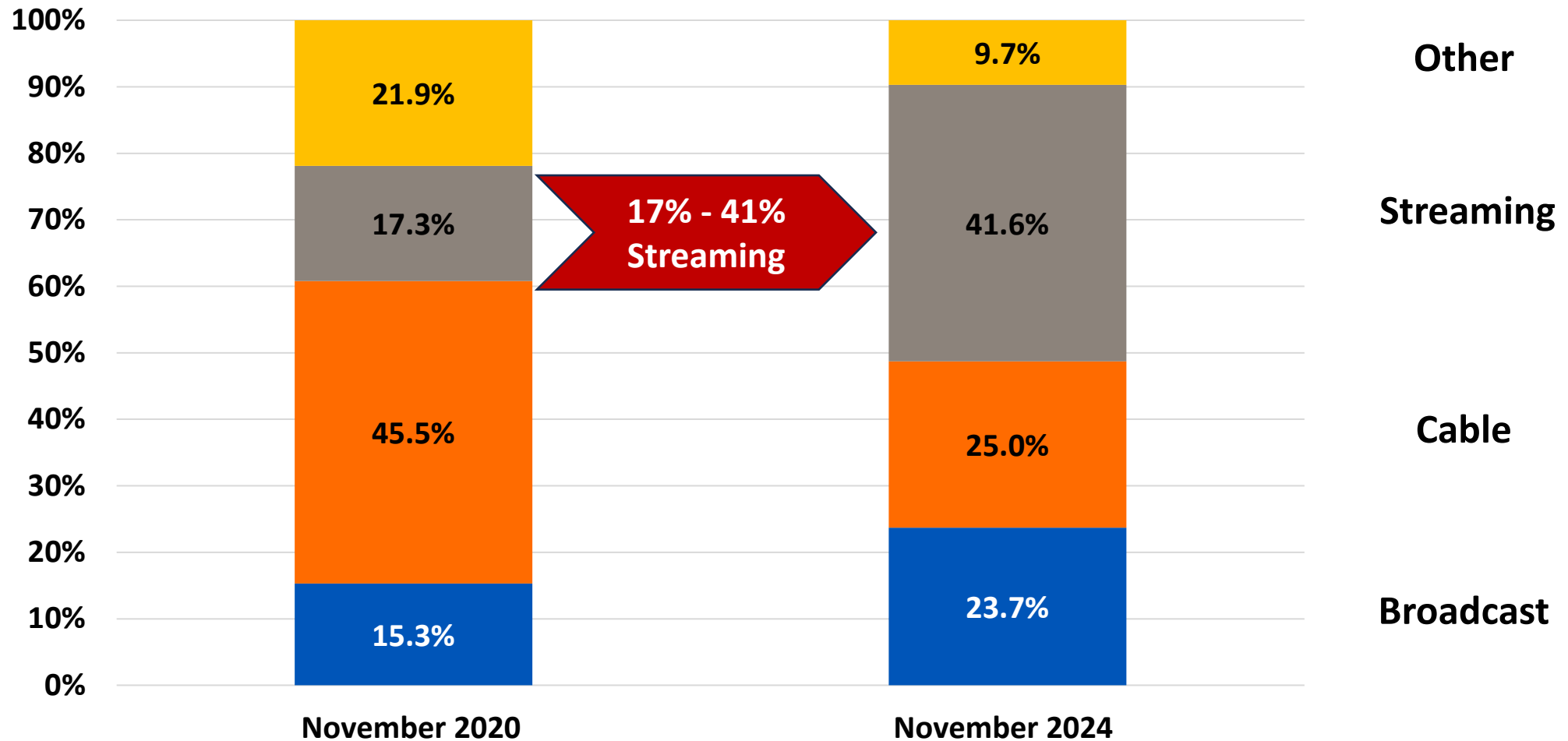
Digital Devices: #1 Way to Consume News

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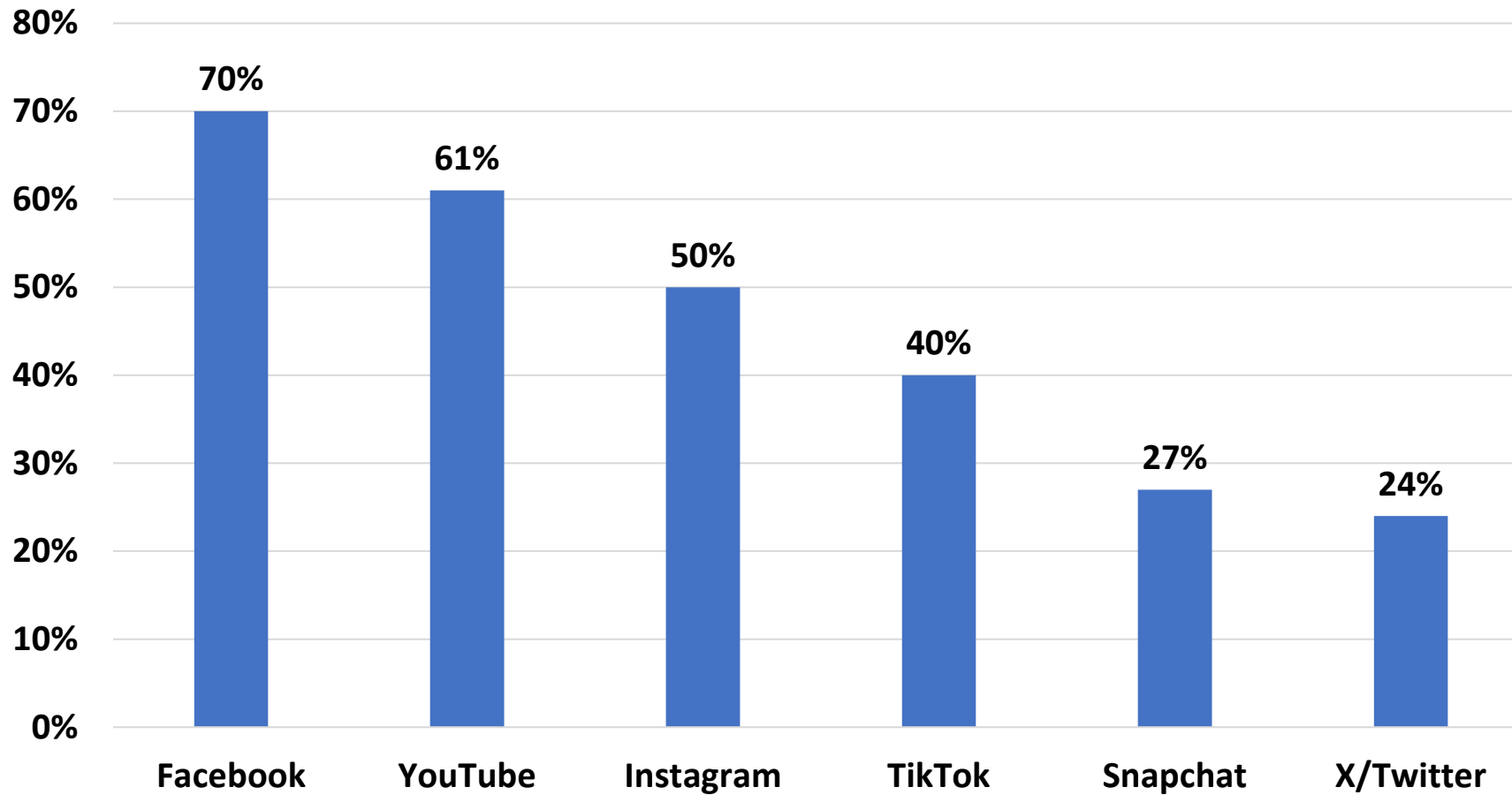
Source: [Pew Research Center, September 17, 2024, "News Platform Fact Sheet."](#)

Television: Streaming Increasing in Popularity



Source: [Nielsen, December 2024, "TV Viewing in November Interval Reaches Highest Level Since February, Streaming Nabs Largest Share of TV Ever in The Gauge™."](#)

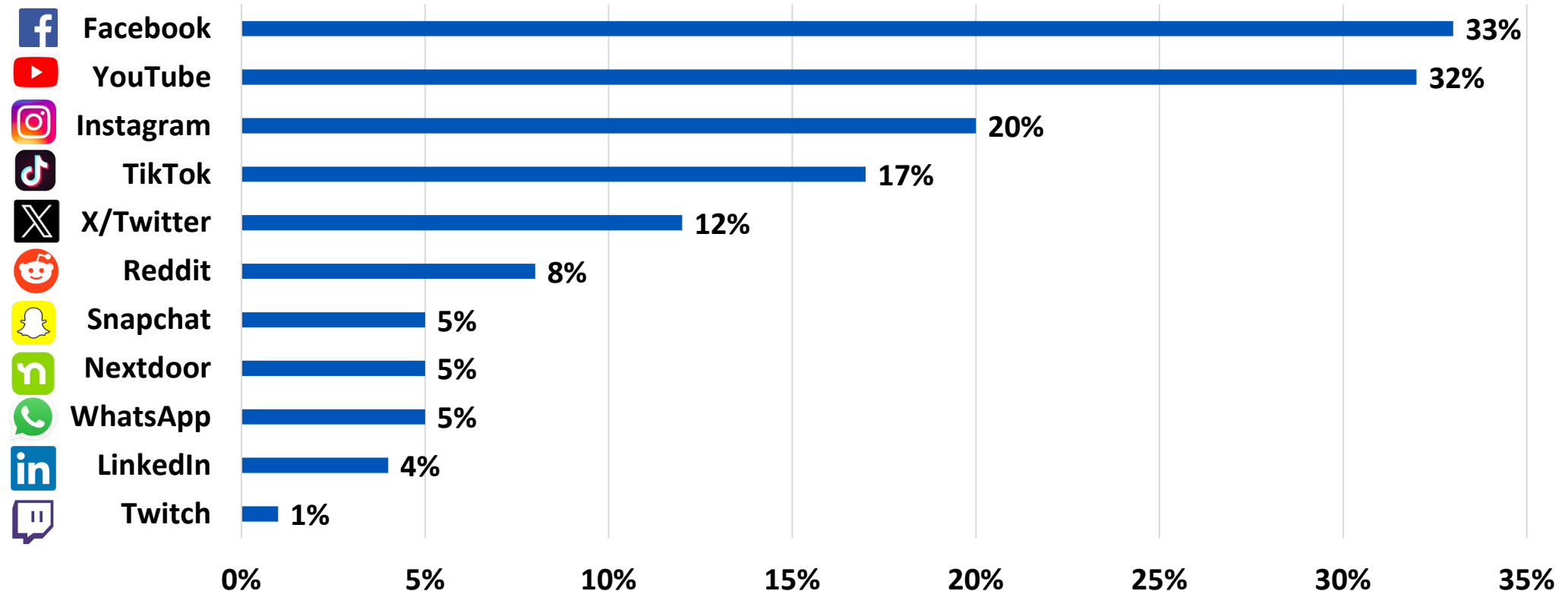
Facebook is Still the Most Used Platform



Source: [Statista, October 24, 2024, "Social network usage by brand in the U.S. as of September 2024."](#)

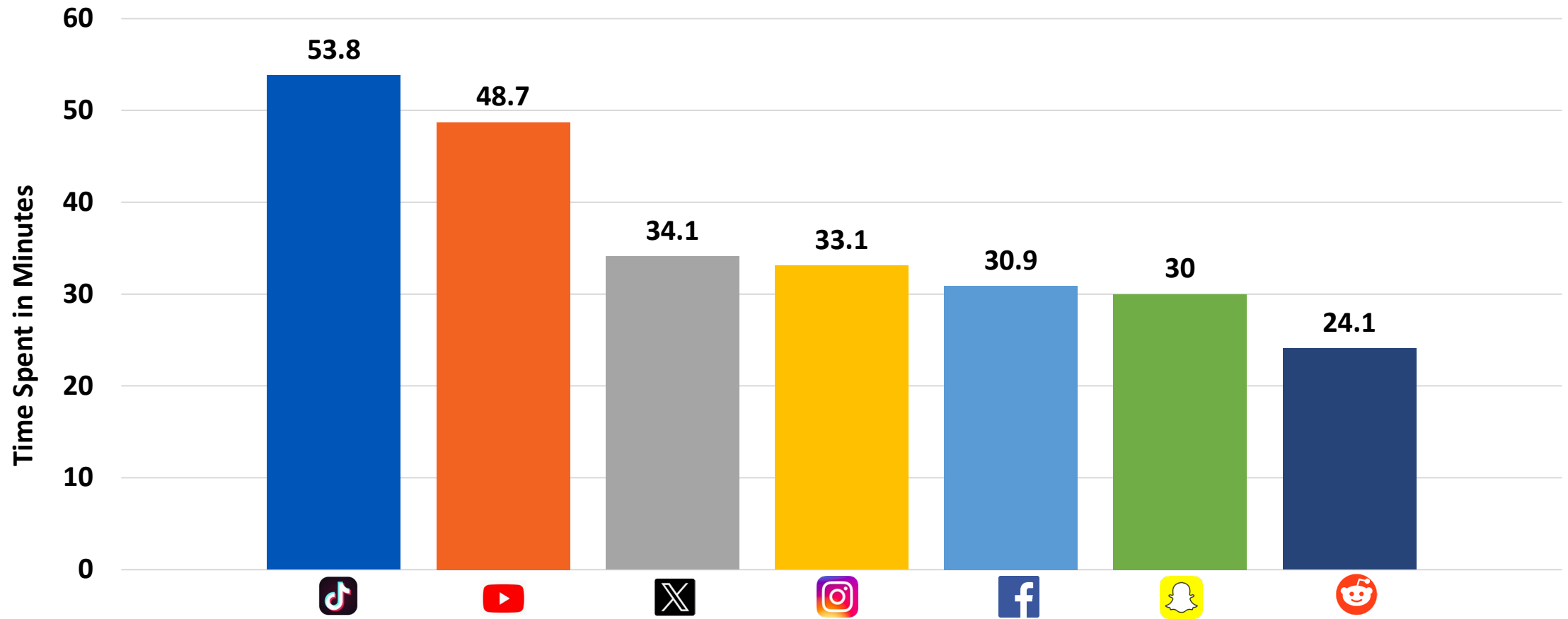
News Intake Across Social Platforms

% of U.S. adults who get news on each social media site...

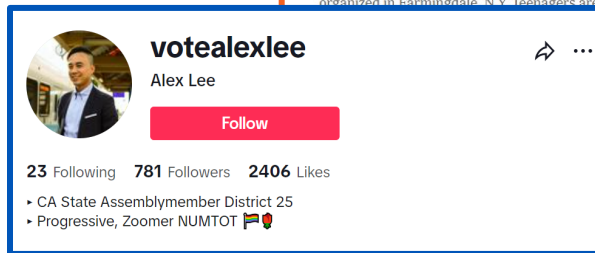


Source: [Pew Research Center, September 17, 2024 "Social Media and News Fact Sheet."](#)

Average Time Spent Per Day on Social Platforms



Source: [Statista, September 12, 2023, "Average time spent per day on select social media platforms in the United States in 2023."](#)



TikTok Boom

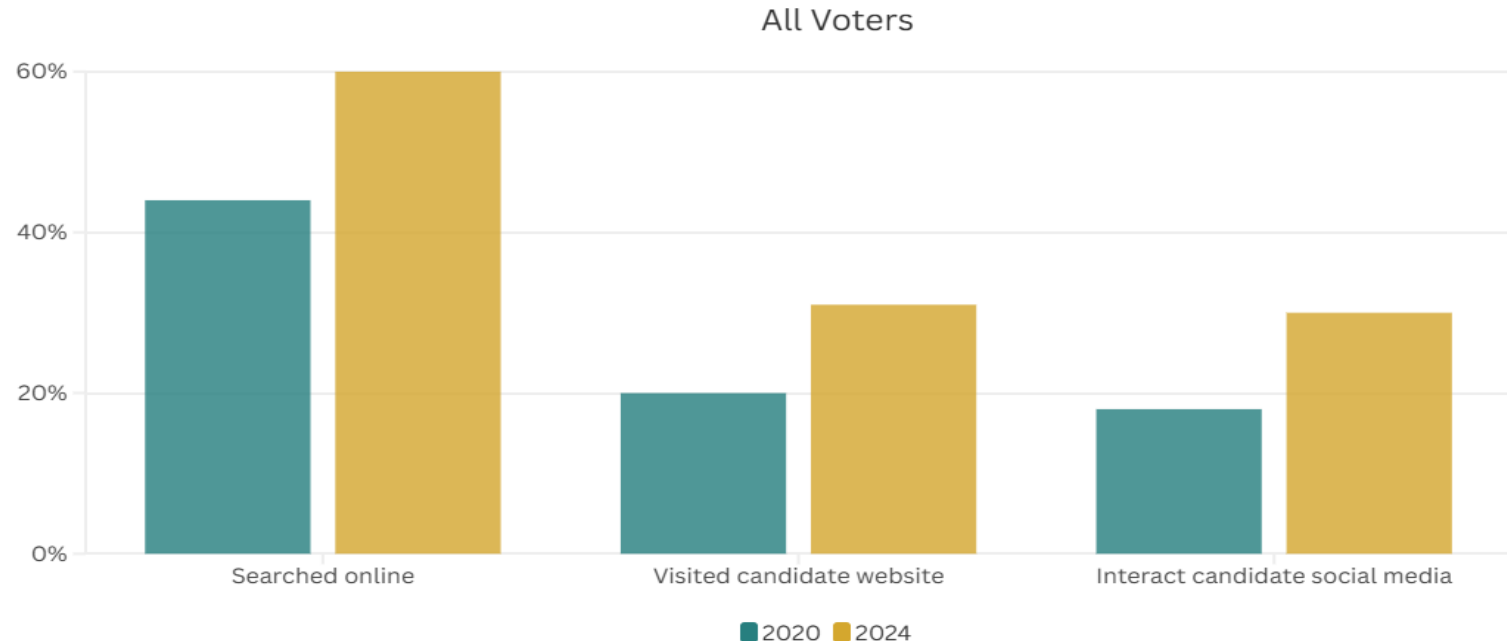
- One of the most popular social platforms among Gen Z
- 150 million monthly active users in the U.S.
- Platform is increasingly being used as a news source
 - 39% of U.S. adults aged 18-29 reported using the app regularly as a news source

Voters Increasingly Going Online to Research Candidates & Causes

- 52% of U.S. voters sought out information about elections and candidates online
- 31% visited a candidate's website
- 30% used social media

Source: [Center for Campaign Innovation, December 12, 2024, "10 Key Takeaways From Our 2024 National Post-Election Survey."](#)

Did you take any of these actions over the past two years to find out information about the election and candidates running for office?



Elected Officials & Government Shifting Online



Engaging Constituents Live & Through Video

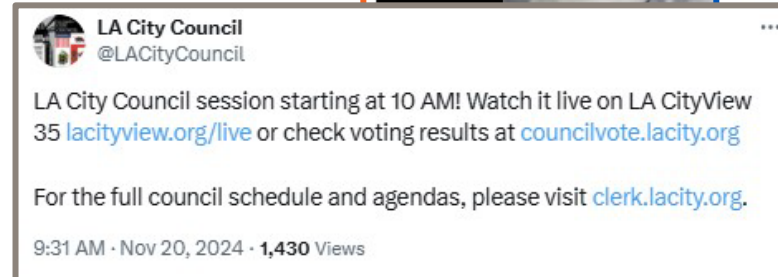
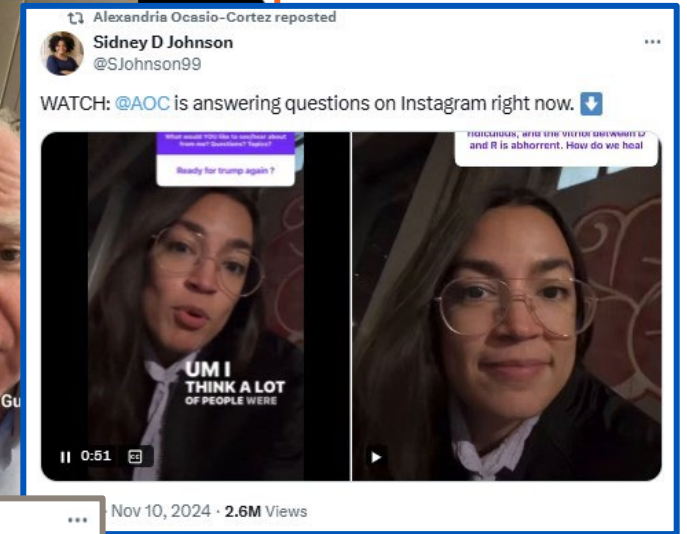
- Elected officials are increasingly using live, online platforms to engage constituents
- Officials are also using video to post statements, make announcements and activate voters



LIVE



LIVE



What This Means for Elected Officials

- **Conversation is largely online** – meet your constituents where they are
- **Use social media to have ‘public conversations’ with your constituents** – and treat them like everyone is listening
- Develop engaging content focused on issues people care about
 - Videos
 - Photos
 - Current Events
 - Relevant Content



What This Means for Elected Officials

- **Build an audience** gradually over time
 - Paid Strategies
 - Organic
- **You're always “on the record”**
- Privacy does not exist – *even on personal pages*
- **Be transparent and open** – all the time
- Remember that **everything online lives forever**



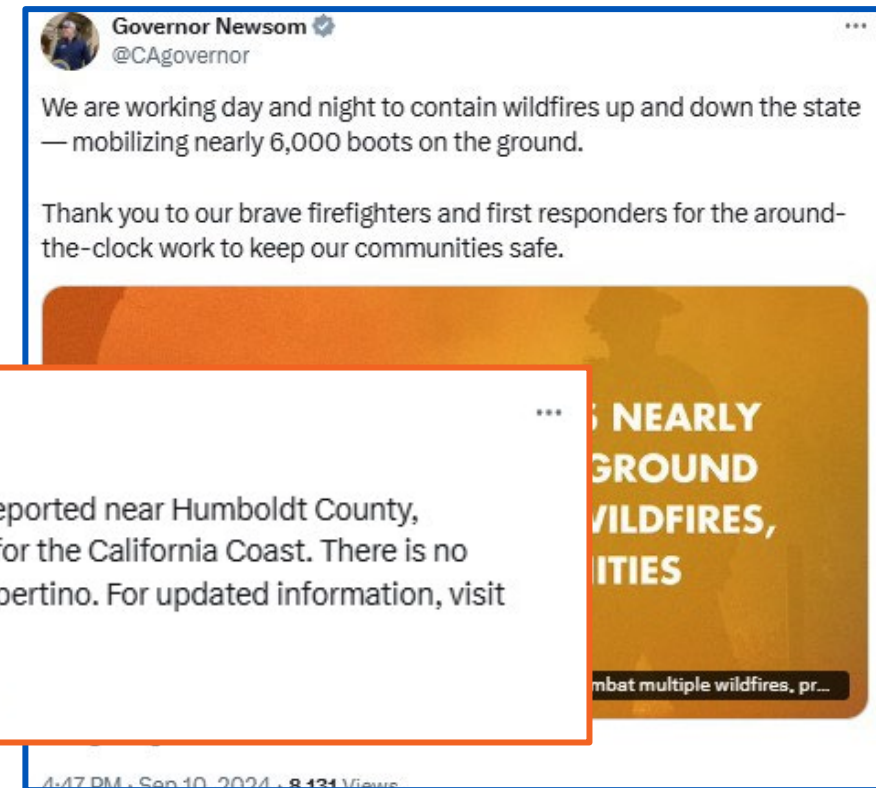
Be Proactive



- Share news articles, **be a source for important city information**
- Feature positive community work
- Show how you're helping your community and constituents
- Constructively interact in the comments with your residents
- **Follow and engage with other local and state leaders**

Be Prepared

- **Have an established social media policy** for elected officials, department heads and staff
- **Be prepared and have a plan** for when news breaks about you or your city



Social Media Don'ts

- Avoid arguing, provoking or responding to 'trolls' trying to start a fight
- Remove comments you don't like, because you don't like them
- Post when angry, impaired or not in a good frame of mind
- Post over-informing, long press releases
- Weigh in on everything





Legal Guidance on Social Media For Local Agency Officials



About the Presenter

- Gena is a partner with Burke, Williams & Sorensen, LLP. She is a public law and labor and employment attorney.
- She has worked as an advisor, trainer, negotiator, and investigator for public agencies for over a decade. She has a passion for the preventive side of the practice of law and is a trusted advisor to public agencies throughout California.



PRIVACY & THE INTERNET

(not really a thing)



Social Media Users Love to Share

- Birthdate
- Place of Employment
- Relationship Status
- Family Members
- Places Visited
- Home, Email Addresses, Phone Numbers
- Photos
- Schools Attended
- Political, Religious, Social Viewpoints and Causes
- Clubs, Civic Activities, Networking Groups
- Life Events
- How Much they Hate Their Boss
- Offensive Costumes and Remarks
- What They Did on the Day They Called in Sick
- How Much They Drank Over the Weekend
- Their Plans to Overthrow the Government

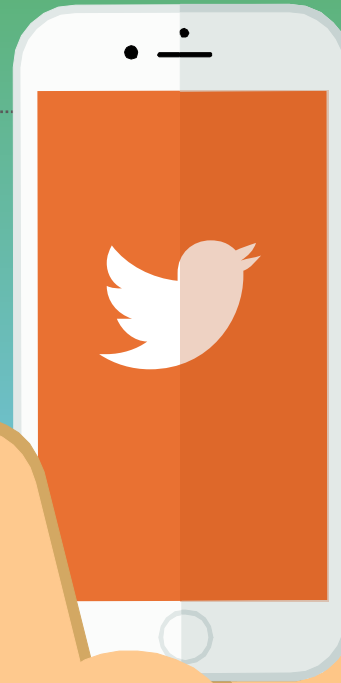
But, I Have Privacy Settings!

Moreno v. Hanford Sentinel, Inc. (CA 2009)

No reasonable person who takes the affirmative act of posting information on a social media website has an expectation of privacy.

State v. Harris (NY 2012)

One has no reasonable expectation of privacy in information intentionally broadcasted to the world on Twitter.



Romano v. Steelcase, Inc. (NY 2010)

The sharing of personal information is the very nature and purpose of social networking sites, else they would cease to exist.

Vasquez Santos v. Matthew (NY 2019)

“Tagged” photos posted by others are discoverable in litigation if relevant to claims in lawsuit, even if user has privacy settings.

Review Your Posts Carefully



Governor Jay Nixon @GovJayNixon · 16m

Voting in [#JCMO](#) this morning. Make sure to cast your ballot & make your voice heard [#Election2014](#)



102



44

[View more photos and videos](#)

...

Conflicts & Bias



Conflicts and Bias

Duty to make decisions motivated by the public good, not personal interests

Due Process

Duty to treat all members of the public in a fair & unbiased manner

Disclosure of “ex parte” communications when item is on Agenda for discussion or action

CAREFUL WHAT YOU ASK FOR



NYPD NEWS ✓

@NYPDnews



Do you have a photo w/ a member of the NYPD? Tweet us & tag it #myNYPD. It may be featured on our Facebook.

pic.twitter.com/mE2c3oSmm6

♡ 210 9:55 AM - Apr 22, 2014



💬 579 people are talking about this



Crabapple ✓

lycrabapple

Follow

I do. @NYPDnews: Do you have a photo w/ a member of
NYPD? Tweet us & tag it #myNYPD

Apr 2014

793 RETWEETS 754 FAVORITES





First Amendment

- **Free Speech and**
- **Public Forums**



LEGAL CONCERNS

Social media in the public sector raises numerous First Amendment issues:

- Establishment of a public forum**
- Limiting Speech**

First Amendment

Did the Government
fine, censor, or
imprison you for
something you said?

Yes. First Amendment
rights may have been
violated.

No. But, I was banned by
Facebook or people
made fun of me!

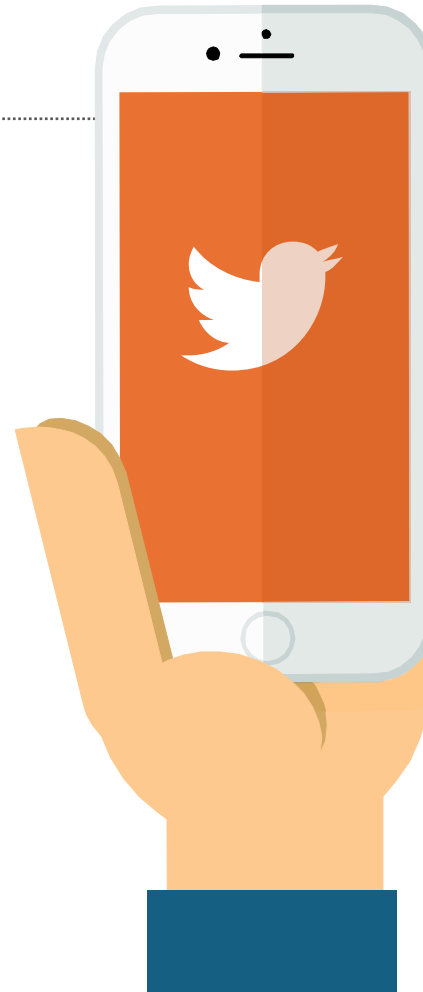
First Amendment rights
were not violated.

Speech Restrictions

PUBLIC FORUMS



- Highest level of scrutiny
- Restrictions must be narrowly tailored to achieve compelling government interest.



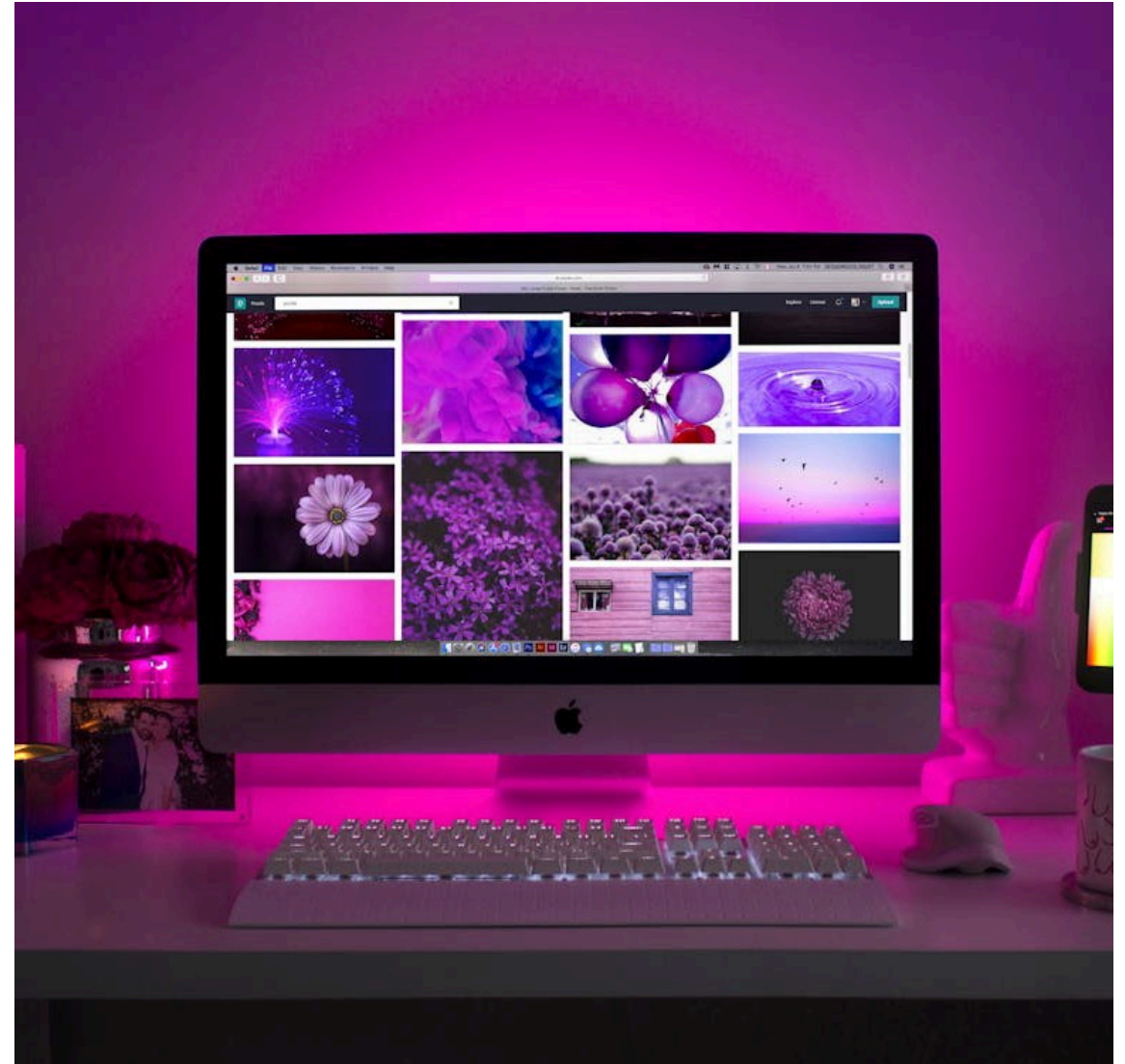
LIMITED PUBLIC FORUMS



- Moderate level of scrutiny
- Restrictions must be reasonable and viewpoint neutral

Social Media vs. Traditional Website

- A traditional website pushing out information in one direction—to the public—does not establish a public forum, and that means the entity does not risk violating First Amendment rights when it excludes content.
- **Vargas v. City of Salinas**
(Cal. 2009) 46 Cal.4th 1





SOCIAL MEDIA AS A PUBLIC FORUM

Social media has become a vital platform for speech of all kinds. Social media may now be “the most important” modern forum “for the exchange of views.”

***Packingham v. North Carolina,*
137 S. Ct. 1730 (2017)**

Speech By The Public On the Government's Social Media



- Political speech and advocacy are at the core of the First Amendment
- Online speech is the same as the town square
- Offensive, obnoxious and even hateful speech and hyperbole are protected
- Anonymous speech is protected
- Criticism of government and public officials is protected
- Prior restraints are not permitted

Criticizing Government



Thomas Jefferson
@ThomasJefferson

Follow



A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

***Knight First
Amendment
Institute v. Trump
(2nd Cir. 2019)***

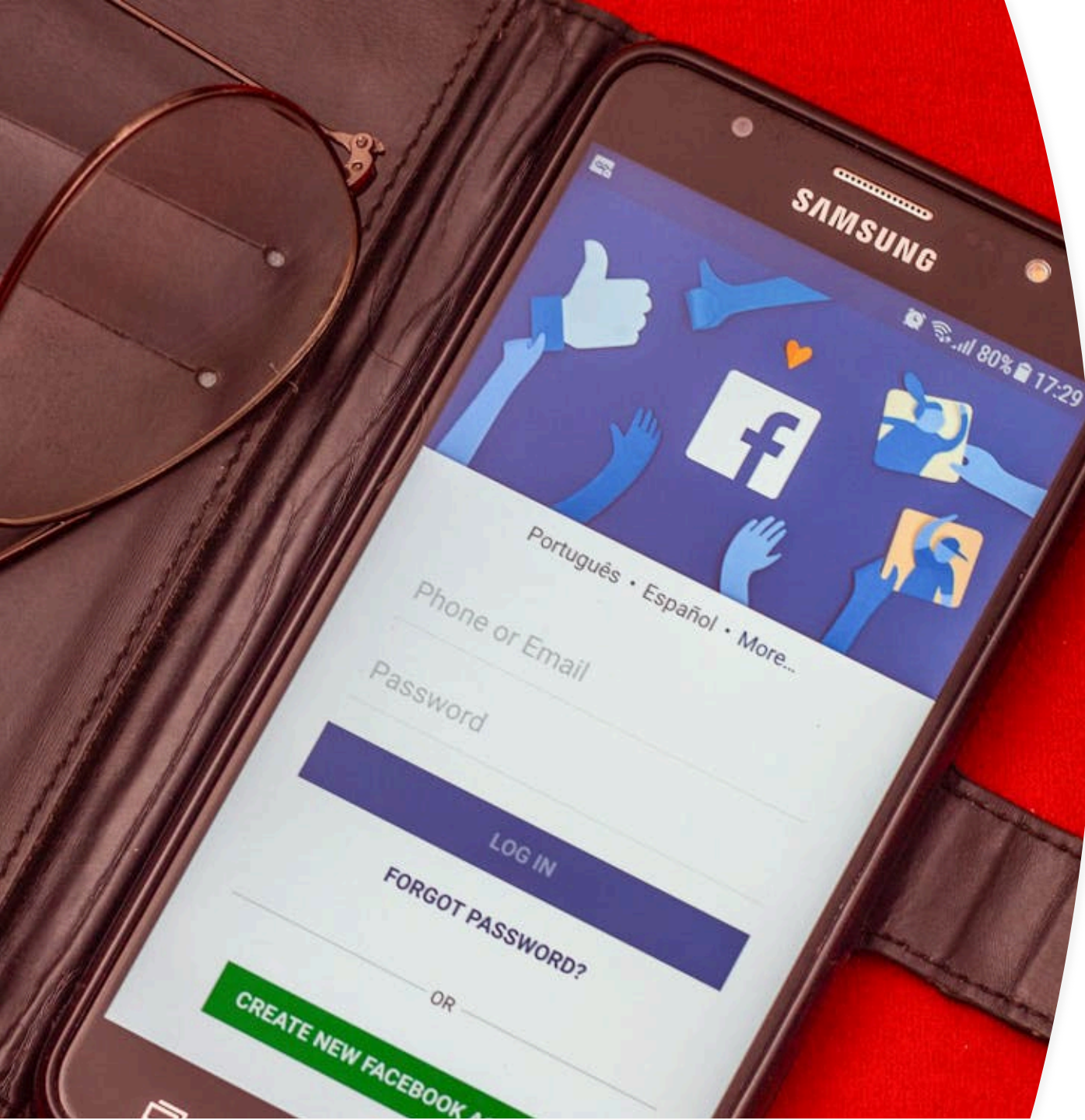


Gray Areas of Prohibited Content

- 
- Profanity
 - “Defamatory” Statements
 - Personal attacks
 - “Offensive” statements
 - Implied threats
 - Off-topic comments

What Government Can Likely Prohibit

- 
- A globe is shown, partially obscured by a semi-transparent dark grey rectangle. The globe's surface is covered with numerous small, light-colored icons and symbols. These include mathematical symbols like pi (π) and infinity (∞), geometric shapes like a cross and a triangle, a camera, a location pin, a dollar sign, a GM logo, a heart, a leaf, a flower, a fish, a number 1, and various other abstract shapes. The globe is tilted, and the icons are scattered across its surface, some appearing to be on the top and others on the sides.
- Obscenity
 - Pornography
 - True threats
 - Public safety
 - Incitement of violence
 - Commercial speech
 - Confidential information
 - Encouragement of illegal activity



Blurred Lines: May a Government Official Censure on Social Media?

- **#SPOILERALERT: IT DEPENDS**



Garnier v. O'Connor-Ratcliff

- Ninth Circuit Issues Binding Decision Relating to Blocking Constituents' Comments
- First time in Ninth Circuit we there was a clear holding that:
 - Trustees of School District blocked critics of their decisions from making comments on social media pages
 - Trustees acted under color of state law by using their social media pages as public fora in carrying out their official duties. The panel further held that, applying First Amendment public forum criteria, the restrictions imposed on the plaintiffs' expression were not appropriately tailored to serve a significant governmental interest and so were invalid.

Lindke v. Freed

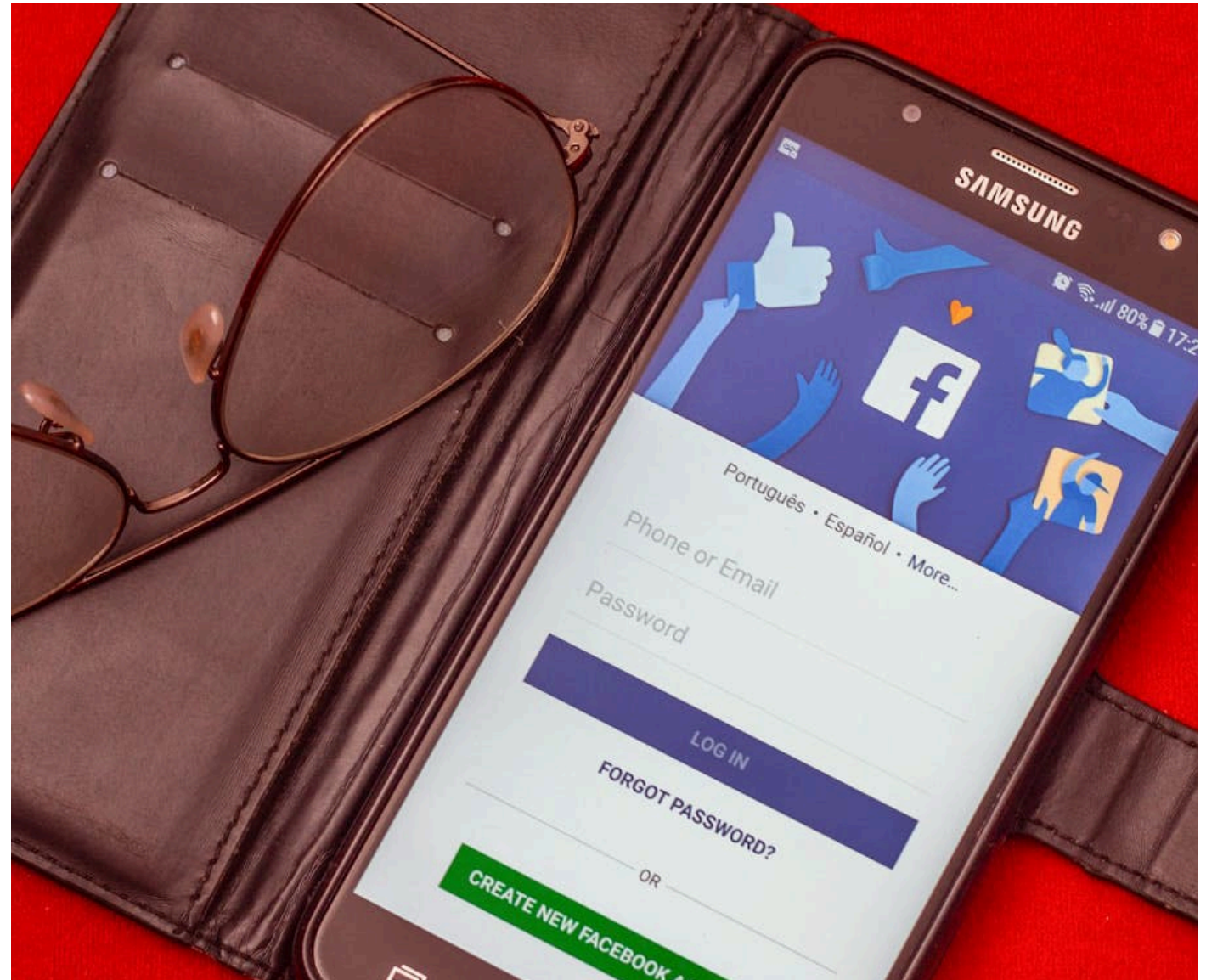
- City Manager maintained a Facebook page
- “Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Officer for the citizens of Port Huron, MI.”
- Designated the Port Huron official website as his page’s website
- The city’s general email address for “City Administration and Staff ” as his page’s contact information, and the city hall address as his page’s address.
- Pictures of his daughter’s birthday party
- Family picnics
- Visits to community events
- City’s policy relating to the pandemic



New *Linke* / *Garnier* Test

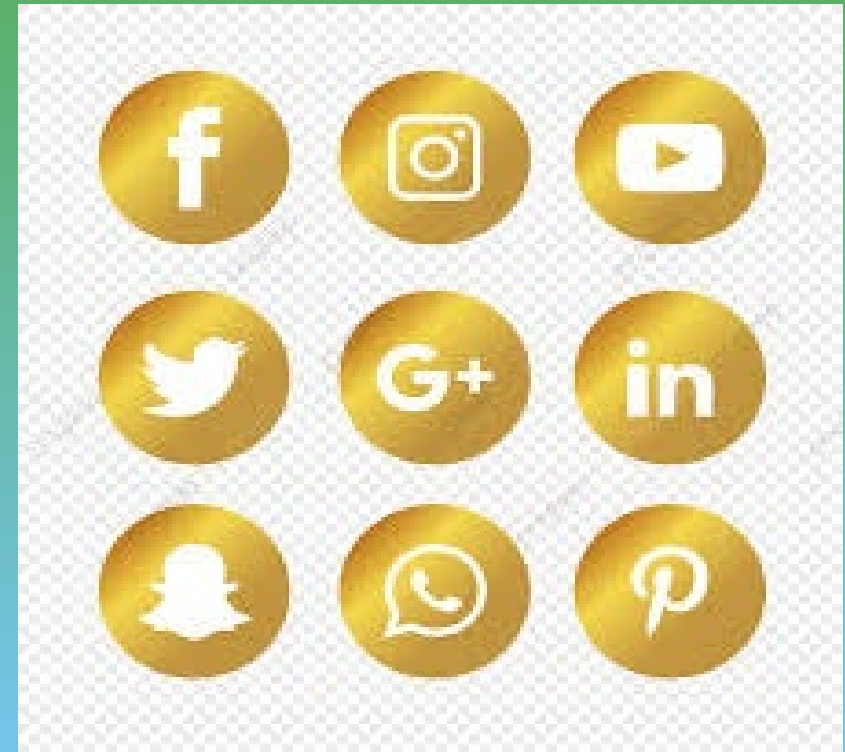
A public official is liable for First Amendment violations only if the official both:

- Possessed actual authority to speak on behalf of the government on a particular matter; and
- Tried to exercise that authority in their social media.



IS MY “PERSONAL” PAGE A PUBLIC FORUM?

The Supreme Court made it clear that public officials who label their social media accounts as personal are entitled to a strong presumption that their posts to that account are personal. Purely personal social media accounts are not subject to the First Amendment constraints and thus, third party comments may be blocked or deleted.



Read the Room!





PUBLIC RECORDS & BROWN ACT

Access to public
records is a
Constitutional
right.





Public Records and Social Media

- “**Records**” include:
 - Any writing
 - Containing information relating to the conduct of the public’s business
 - Prepared, owned, used or retained by any state or local agency,
 - Regardless of physical form or characteristic.

Is My Agency's Social Media Covered?



Content that has to be produced includes anything that relates to the conduct of government



Polls, surveys, data collection



Metadata, which shows how and when a document was created or revised and by whom may also have to be produced



Retention guidelines are based on content, not medium

WHAT ABOUT RECORDS ON PRIVATE DEVICES?

EMAILS & TEXTS

Emails and text messages are subject to the CPRA regardless of location, including personal accounts and devices



PRIMARY FOCUS

Primary focus is whether the message is related to public business, based upon context, content, purpose, audience, and role of individual when message was written or received



City of San Jose v. Superior Court



EMPLOYEES + OFFICIALS

May now be required to search personal emails or phones for responsive records if account or phone is used to communicate with others concerning public business, and to provide such responsive records



COMPLIANCE

Claiming that the records are not on entity email accounts, computers or servers is NOT enough for compliance now

Is My Personal Social Media Covered?

Were public resources used?

Is there a definable, well-publicized use for the site, i.e., acting as a candidate, purely personal use, or a separate business use?

Do users visit the site based on personal or official contacts?

Is it being used for any official purpose?

Brown Act Basics

- The Brown Act prohibits a majority of members of a legislative body from engaging in a “series of communications,” directly or through intermediaries, to “discuss, deliberate, or take action on an item” that is within the legislative body’s subject matter jurisdiction.



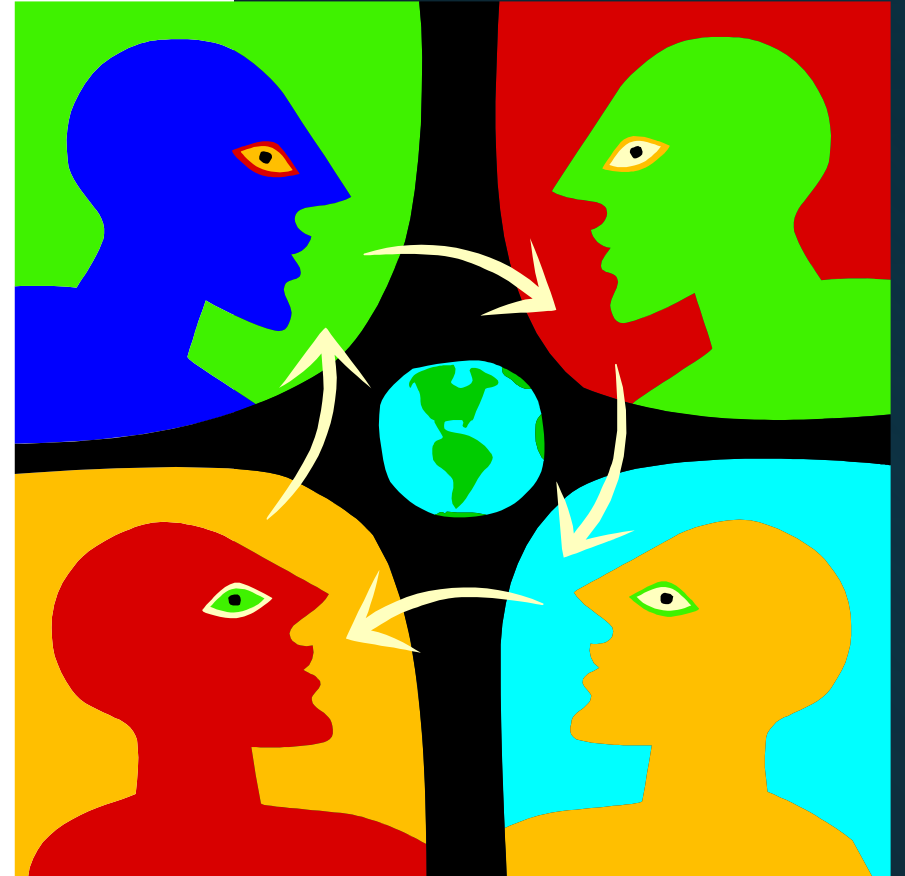
Government Code Section 54952.2(a)(3)

A public official may communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction. However, the latter types of communications are only allowed as long as a majority of the members of the legislative body do not use any social media platform to “discuss among themselves” official business.

Government Code Section 54952.2(a)(3)

It prohibits a member of a legislative body from responding “directly to any communication on an Internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.”

“Discuss among themselves” means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.



Social Media & The Brown Act

Cannot meet to discuss official business unless meeting complies with Brown Act



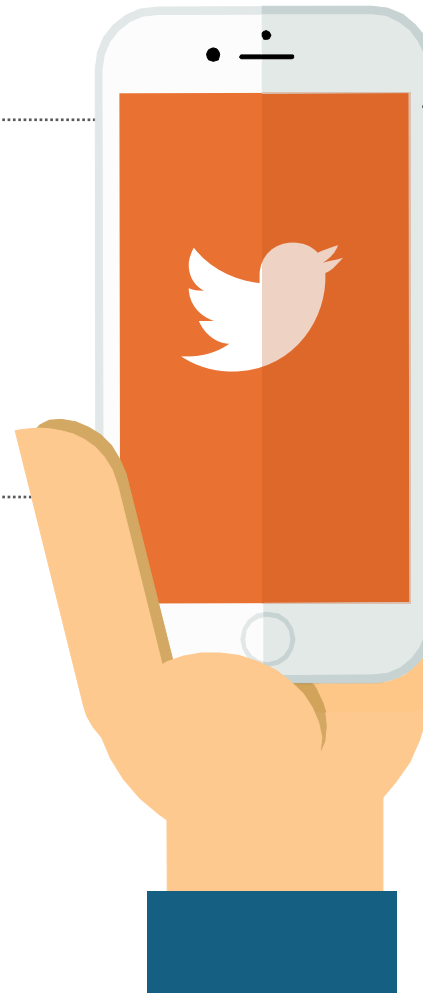
A member may not respond directly to any communication posted or shared by another member regarding agency business on an internet-based social media platform.



Must have public notice and access to the meeting



Does not prevent individual members from publishing their own comments and opinions



Prohibited Communications Via Social Media

- A local newspaper writes an online article critical of your City's proposal to build a new community center. Dozens of comments by members of the community are posted online in response to the article. One Council Member reads the article and posts her own comment about the issue.
- A second Council Member also posts a comment. A third Council Member "Likes" the comments of the first two Council Members.
- Has the Brown Act been violated?



Speech by Emoji

***Bland v. Roberts* (4th Cir. 2013)**



“Liking” is pure speech and symbolic expression fully protected by the First Amendment.

United States v. Elonis (3rd Cir. 2016)

The use of emojis can establish a party's intent or context and can be used as evidence in litigation and other proceedings.



In Re Bed Bath & Beyond Corporation Securities Litigation (D.D.C. 2023)



Ryan Cohen ✓
@ryancohen

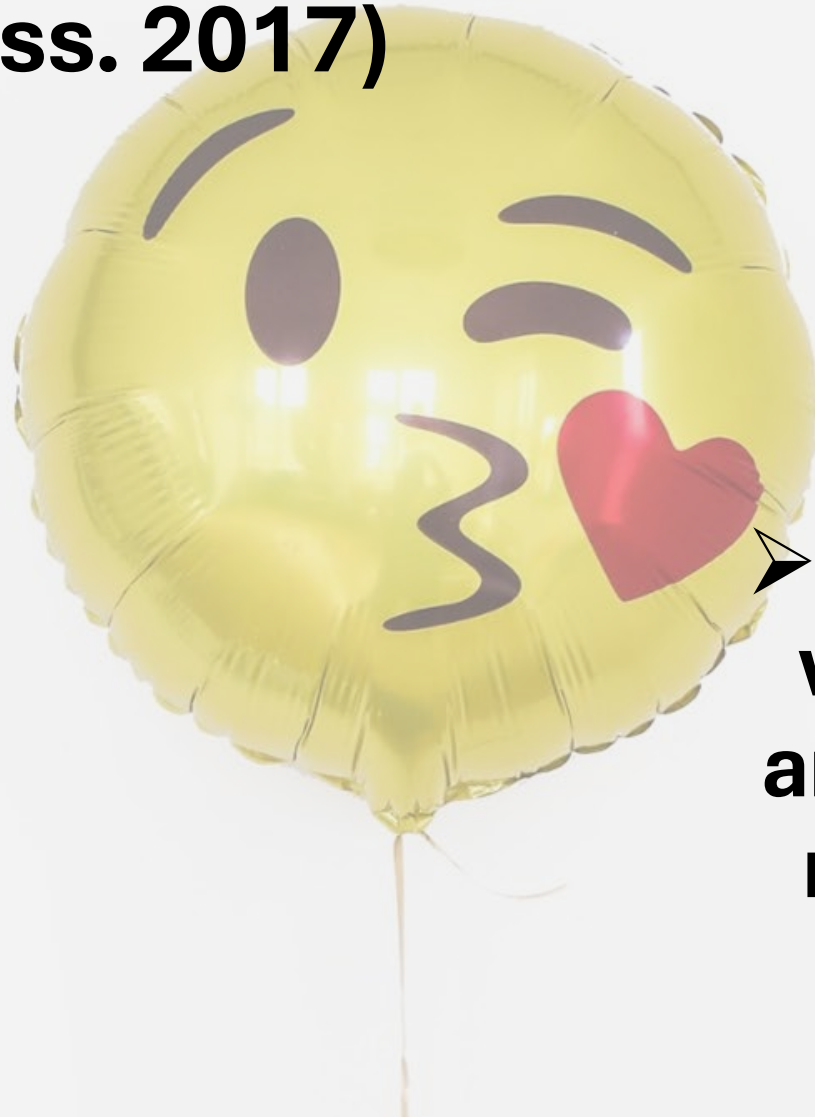
At least her cart is full 🧡

10:42 AM · 8/12/22 · [Twitter for iPhone](#)

1,537 Retweets **101** Quote Tweets **12.5K** Likes



***Stewart v. Durham*, 2017 U.S.
Dist. LEXIS 88656
(D.S.D. Miss. 2017)**



➤ **Applicant who replied
with sexual innuendos
and kissing emoji could
not establish claim for
emotional distress**



Know Your Policies



Policy Considerations

- Comply with Brown Act & PRA
 - Terms of Proper Use
 - Public, Limited, or Non-Public Forums
 - Retention and Archiving Procedures
 - Appropriate Take Down Policy
-

Thank you!

Gena B. Burns

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