



# **Social Media / Digital Communications and Civic Engagement**

*Cal Cities' New Mayors and Council Members Academy*

*January 2026*

# 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 19, 2025, "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...**



**186**

**...times per day!**

Source: Reviews.org, January 1, 2025,, "Cell Phone  
Usage Stats 2026: Americans Check Their Phones 186  
Times a Day."

# Attention Span & Digital Media



Source: [SQ Magazine, December 4, 2025, "How declining attention spans impact your social media."](#)

# Gen Z's Attention Span...

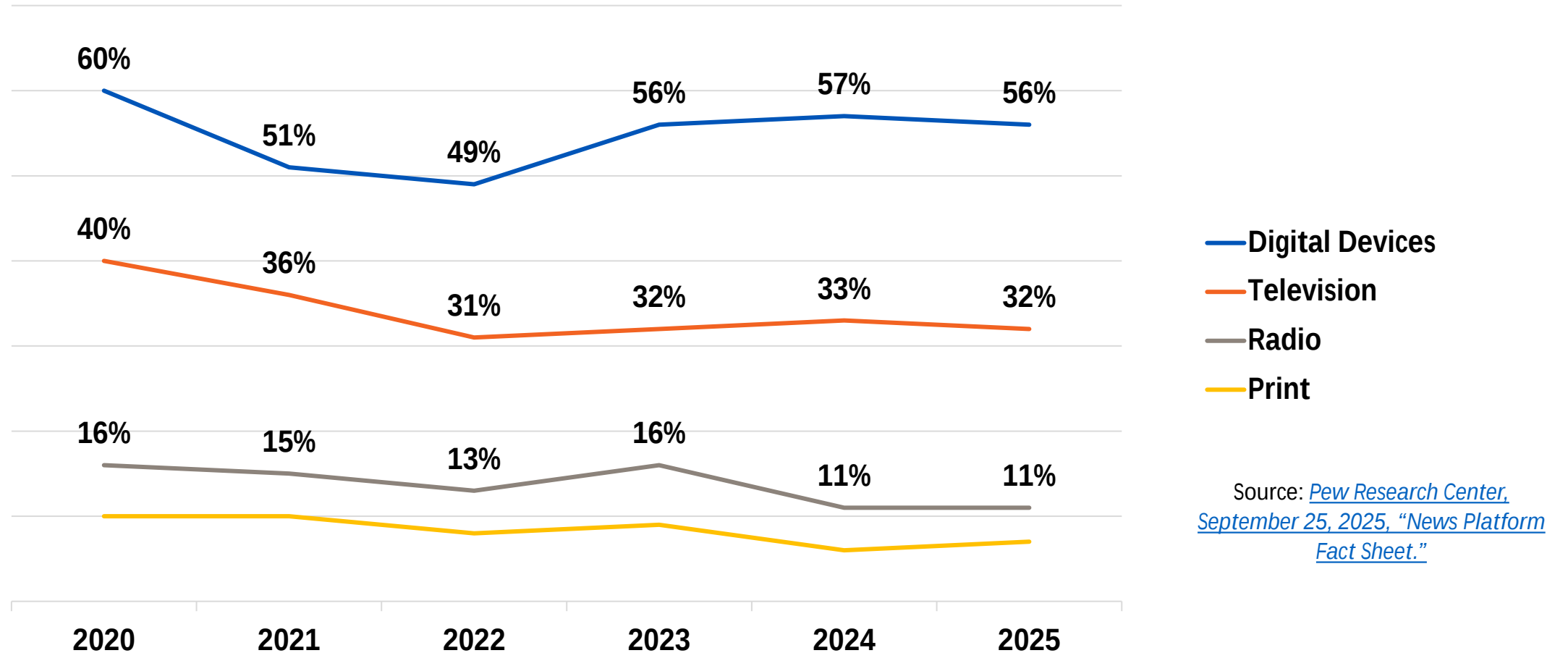
**Members of Generation Z lose active  
attention for ads after...**

**1.3 Seconds!**

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

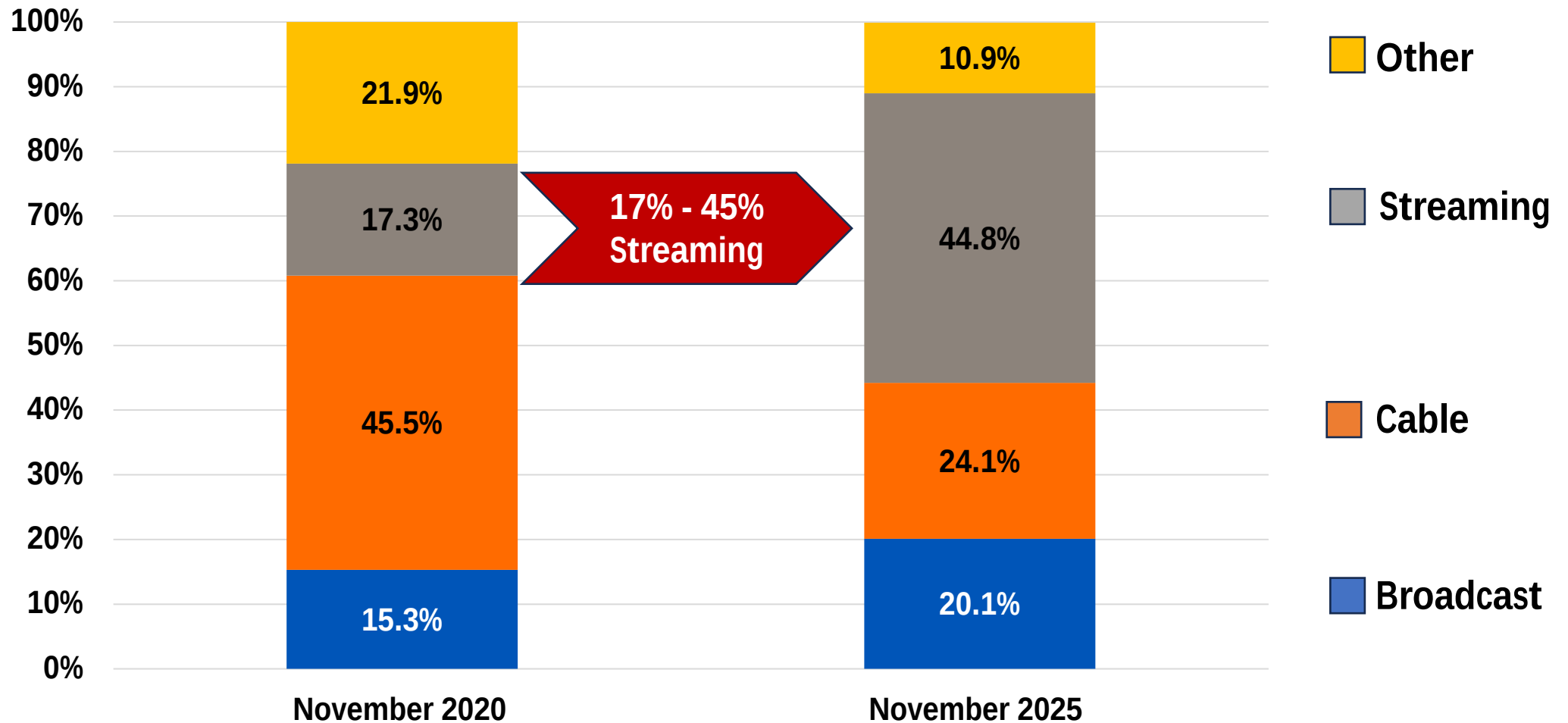
# Digital Devices: #1 Way to Consume News

*Total % of U.S. adults who say they often get their news from...*



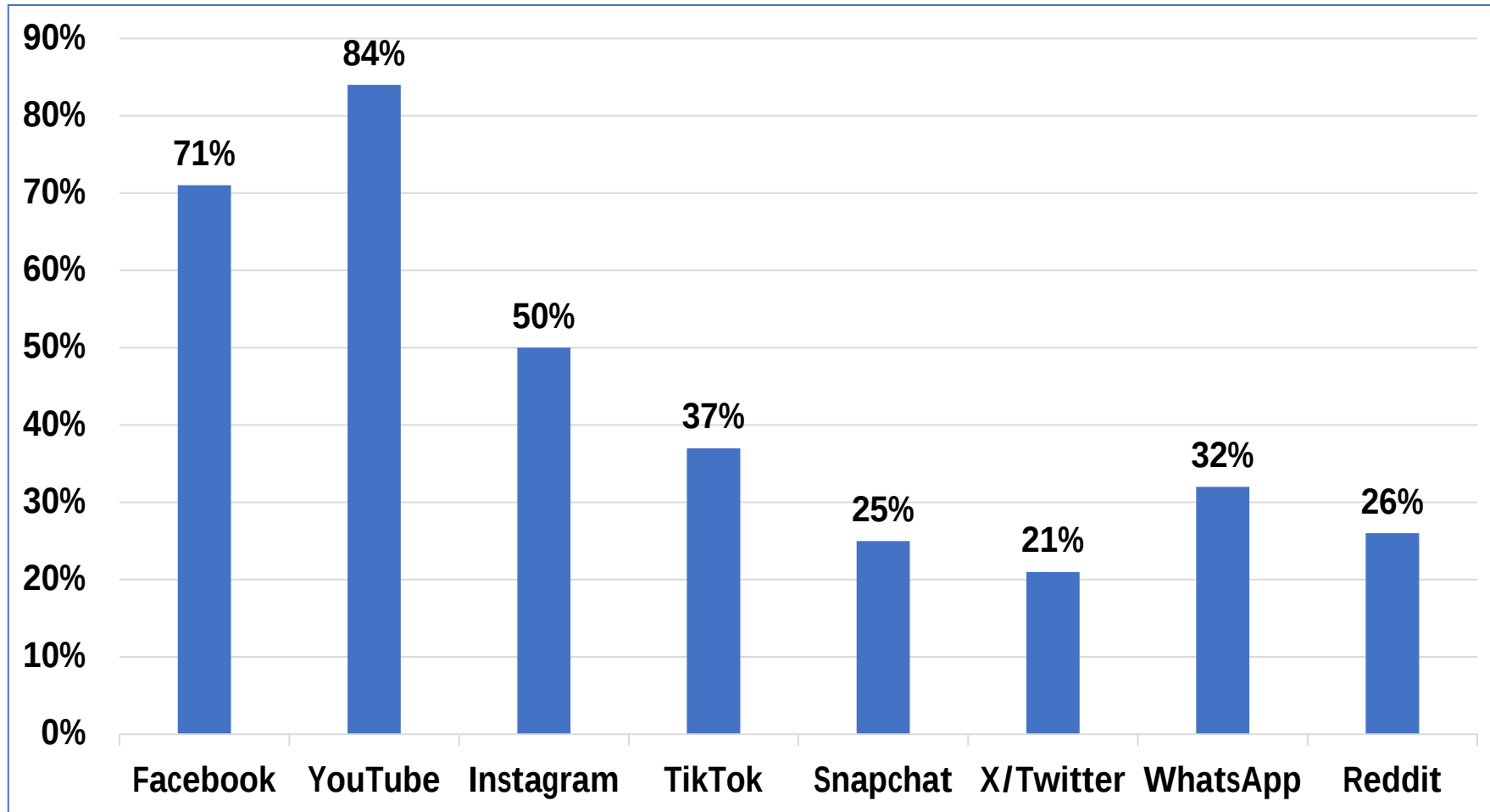
Source: [Pew Research Center, September 25, 2025, "News Platform Fact Sheet."](#)

# Television: Streaming Increasing in Popularity



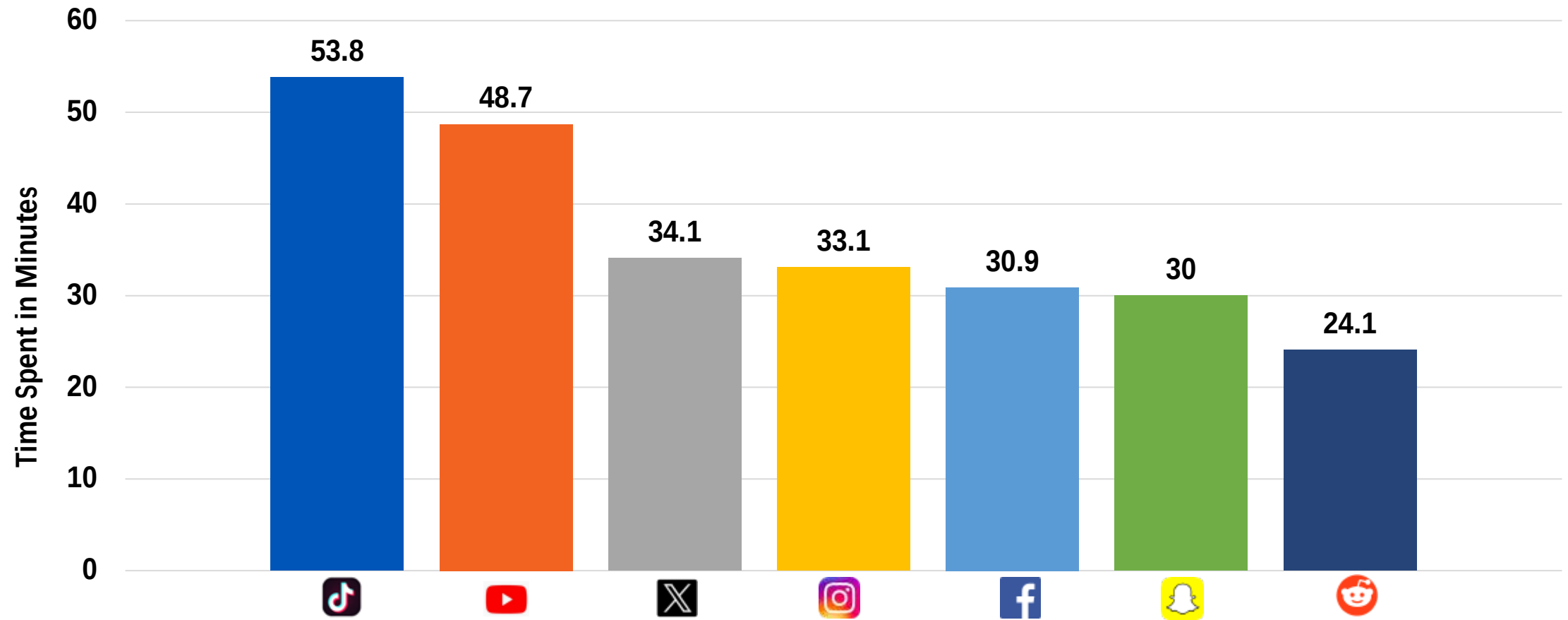
Source: [Nielsen, December 2025, "The Gauge™."](#)

# YouTube is the Most Used Platform



Source: [Pew Research Center, November 2025, "Americans' Social Media Use 2025."](#)

# Average Time Spent Per Day on Social Platforms



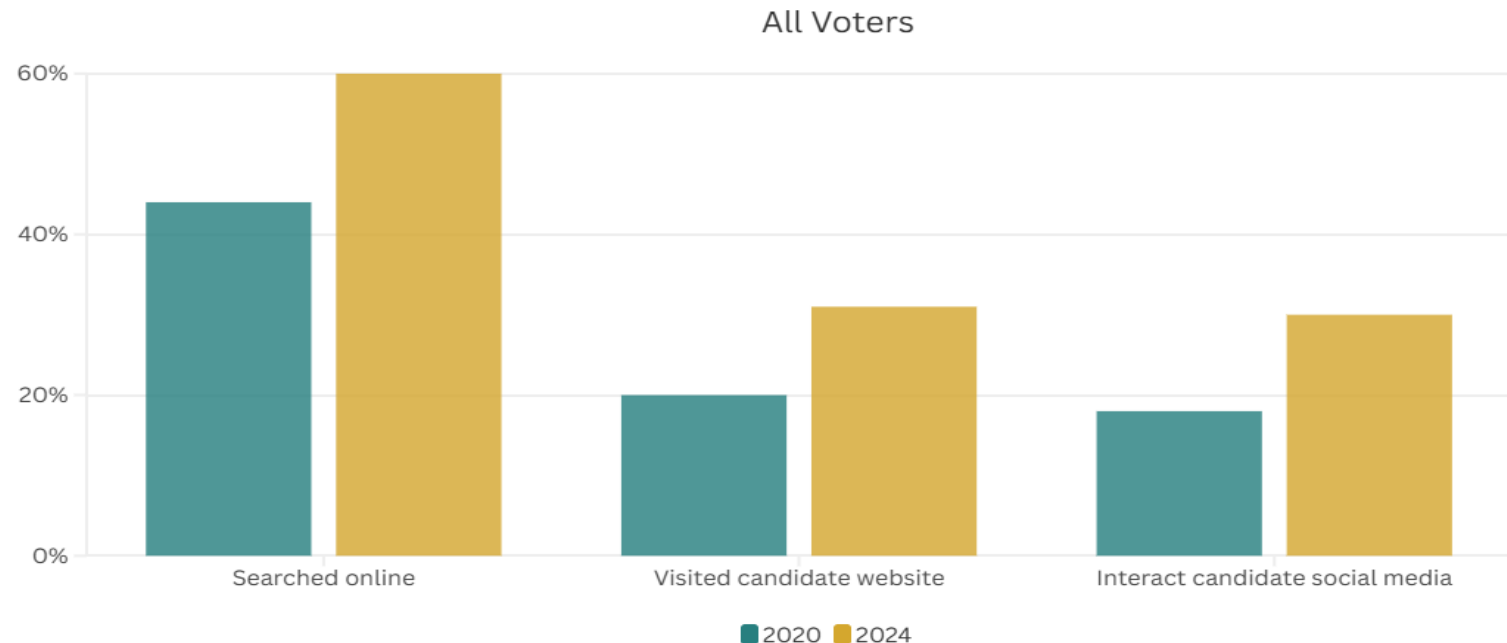
Source: [Statista, September 12, 2023, "Average time spent per day on select social media platforms in the United States in 2023."](#)

# Voters Increasingly Going Online to Research Candidates & Causes

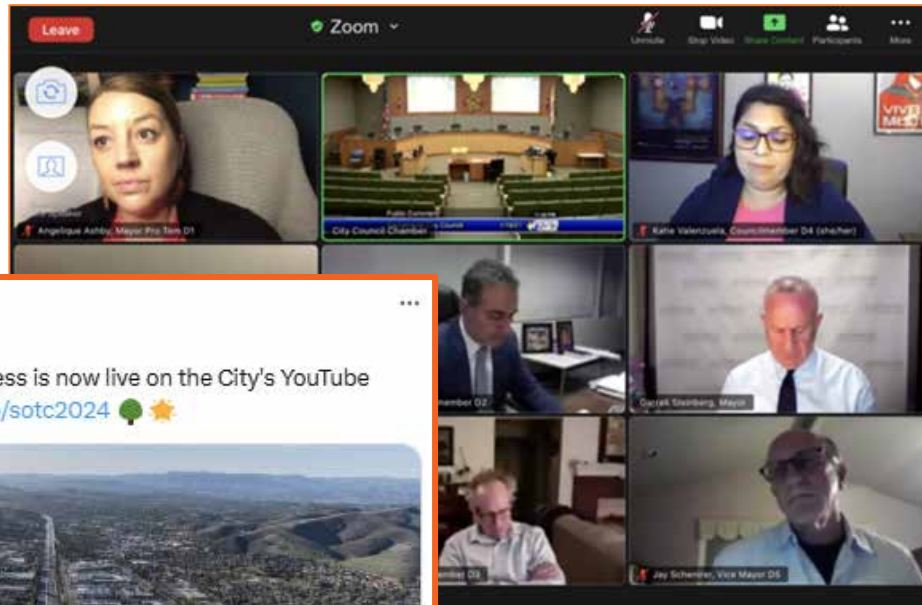
- 52% of U.S. voters sought out information about elections and candidates online
- 31% visited a candidate's website
- 30% used social media

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

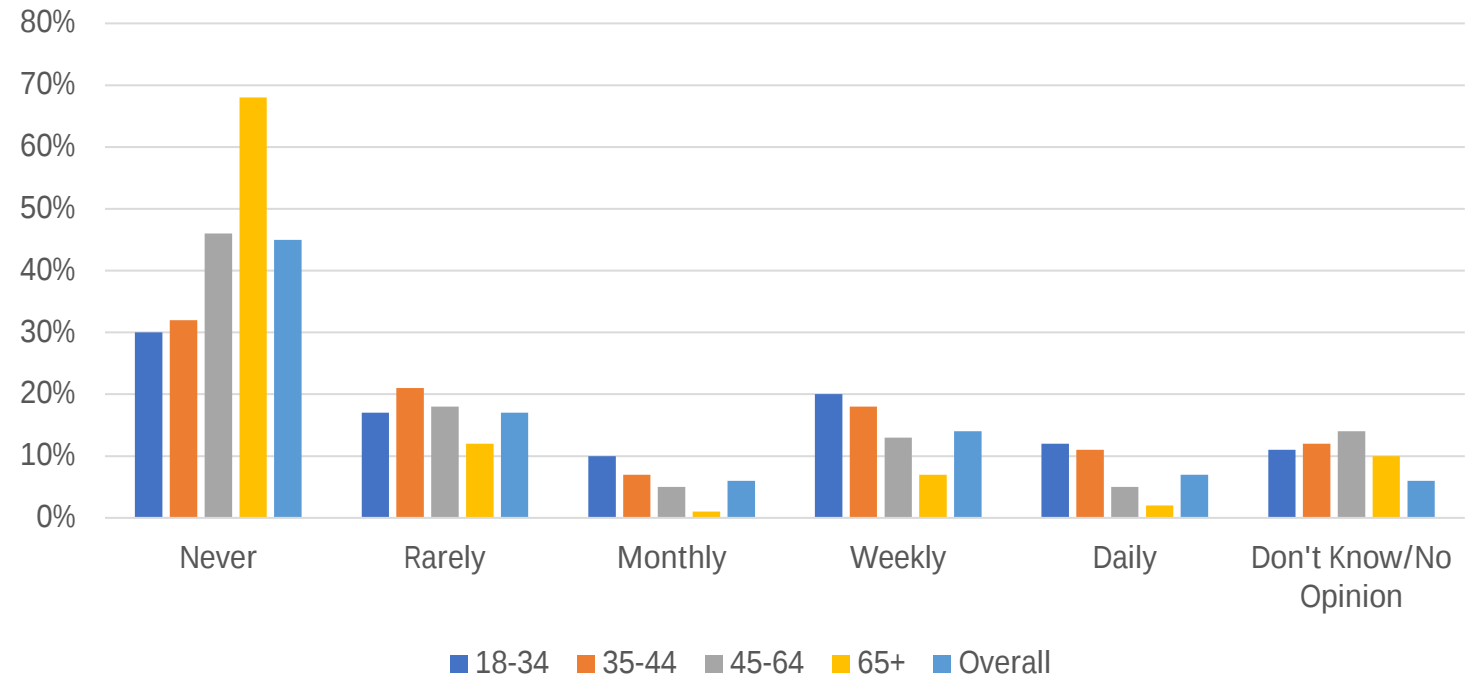


# Voters and Governments Increasingly Use AI

- 27% of voters used AI tools to ask questions about 2024 elections at least once a month
- Two-thirds of local governments are exploring using AI

## AI Use for Election information

*How frequently do you use AI tools to ask questions about elections or get information about elections?*

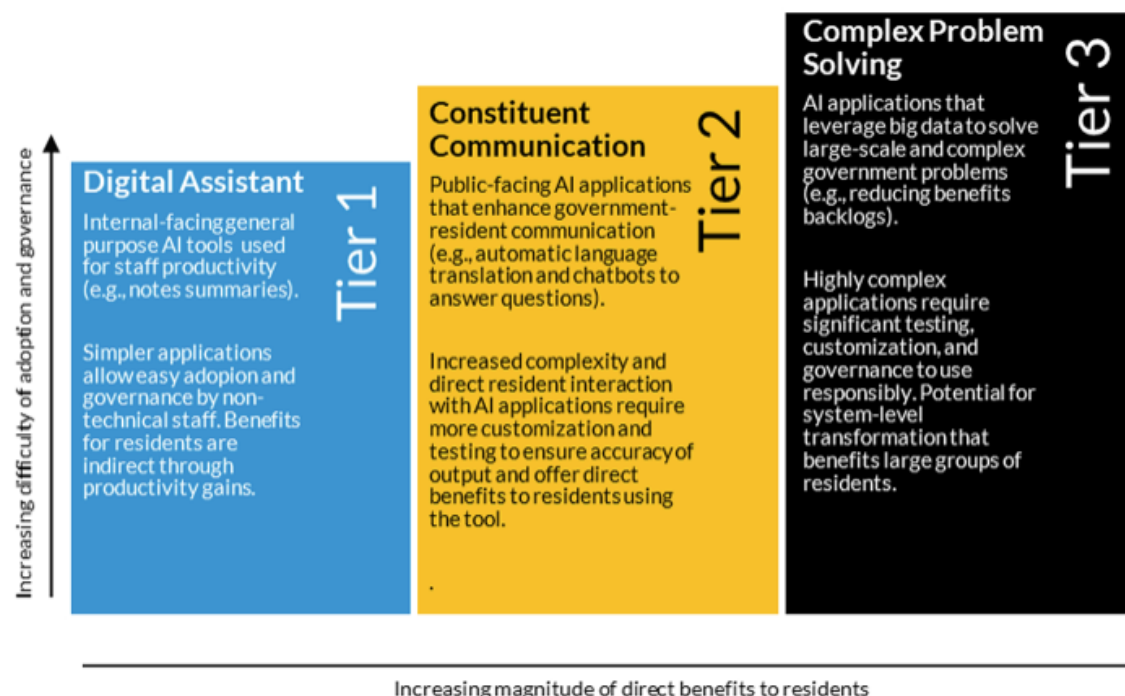


Source: [Bipartisan Policy Center, October, 2024, "Where Voters Look for Information Ahead of the 2024 Election."](#) and [App Maisters, July 2025, "Local Government's Use of AI and Its Role."](#)

# Best Practices for Using AI in Local Government

- Look for opportunities to learn from others through regional organizations, policy networks, and other peer cohorts
- Engage the community – how do your constituents want to see AI used by their city government?
- Start small and simple, test rigorously, and iterate

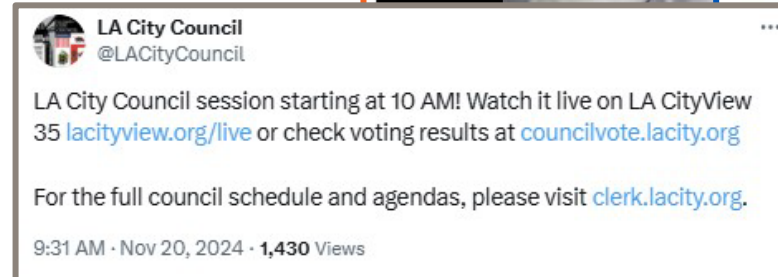
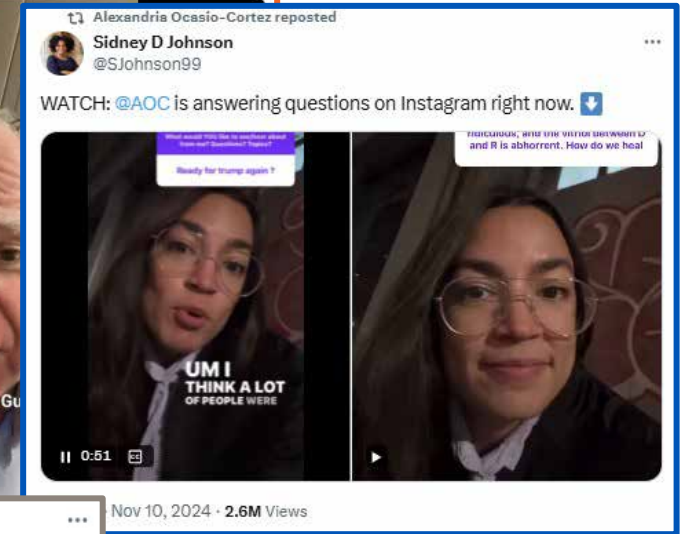
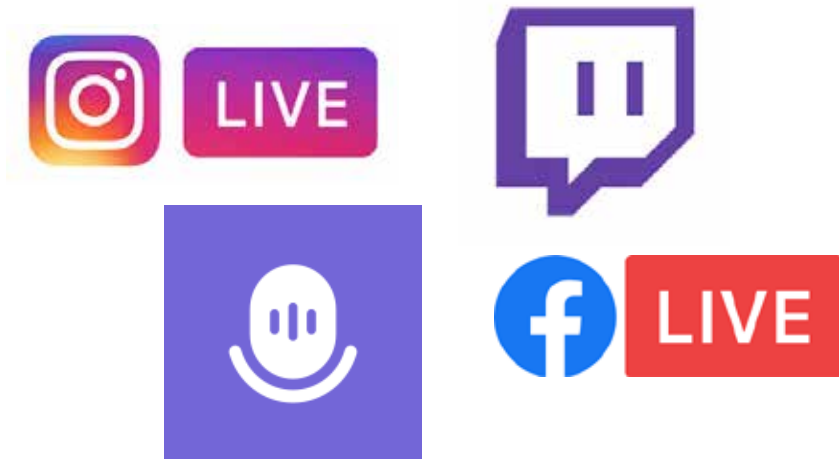
## Local Governments' Use of GenAI Falls into Three Tiers That Increase in Complexity



Source: [Urban Institute, June 2025, "A New Approach to Helping Local Governments Navigate Generative AI."](#)

# 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



# 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
  - o Videos
  - o Photos
  - o Current Events
  - o 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**



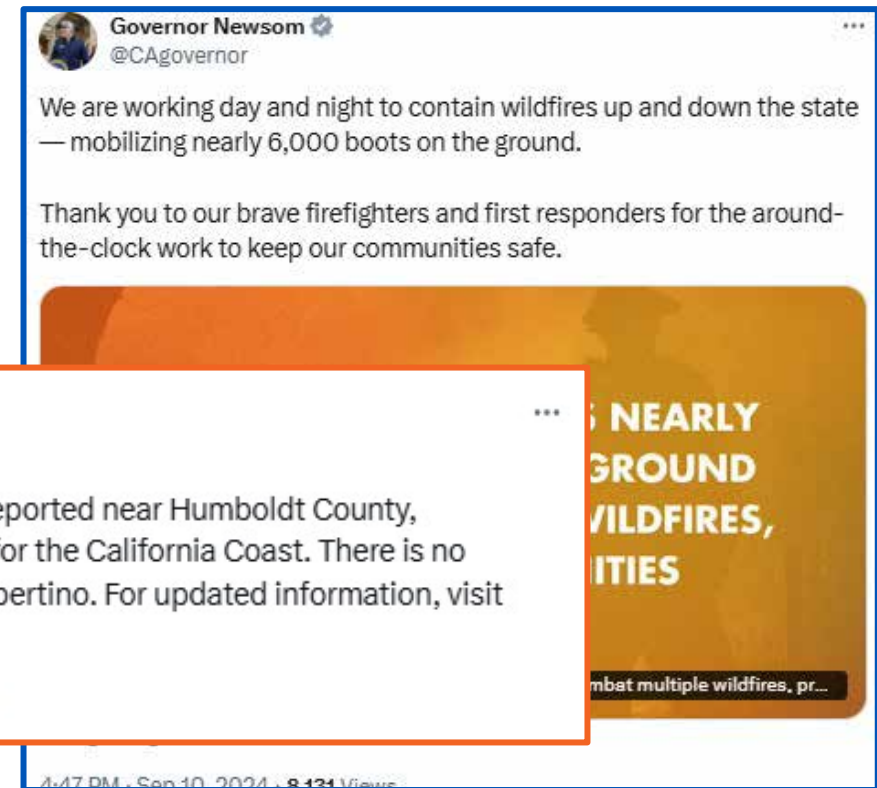
# Be Proactive



- 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

Gena B. Burns, Esq.

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## 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 fifteen years. She has a passion for the preventive side of the practice of law and is a trusted advisor to public agencies throughout California.



# Privacy and the Internet

# SOCIAL MEDIA USERS LOVE TO SHARE!

- Birthdate
- Place of Employment
- Relationship Status
- Family Members
- Places Visited
- Home, Email Addresses, Phone Numbers
- Photos
- Schools Attended



# SOCIAL MEDIA USERS LOVE TO SHARE!



- 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

Who ordered the rain lol it's been down pouring since 6 am

3 Comments

 Like  Comment  Send in Messenger



  
It was raining when I went into work yesterday at 7



  
 I've been in isolation since yesterday I have scabies



Yesterday at 11:13 PM • 



Thunderstorms are great until your joints start to scream

 8

3 Comments

 Like  Comment  Send



Have you had two hairline fractures on your spine? I thought not. Sack up

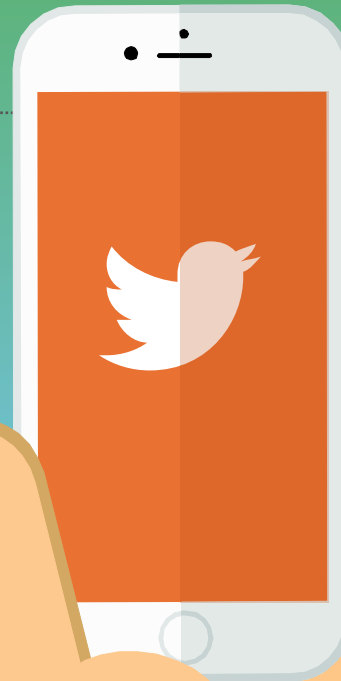
# But, I Have Privacy Settings!

## **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.



## **United States v. Meregildo (SCOTUS 2020)**

Sharing of content on Facebook only with “Friends” does not protect the information.



## **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](http://pic.twitter.com/mE2c3oSmm6)

♡ 210 9:55 AM - Apr 22, 2014



💬 579 people are talking about this



**Molly Crabapple** ✓

@mollycrabapple

Follow

Why yes I do. [@NYPDnews](#): Do you have a photo w/ a member of the NYPD? Tweet us & tag it [#myNYPD](#)

1:32 PM - 22 Apr 2014

793 RETWEETS 754 FAVORITES





# **First Amendment**

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

# **FIRST AMENDMENT - LEGAL CONCERNS**



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

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

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

```
graph TD; A[Did the Government fine, censor, or imprison you for something you said?] --> B[No. But, I was banned by Facebook or people made fun of me!]; A --> C[Yes.]; B --> D[First Amendment rights were not violated.]; C --> E[First Amendment rights may have been violated.];
```

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

**Yes.**

**First Amendment  
rights were not  
violated.**

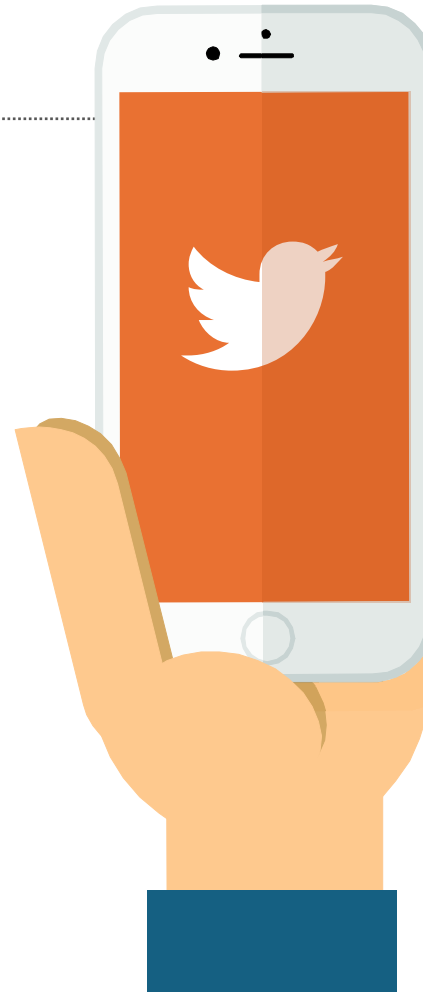
**First Amendment  
rights may have been  
violated.**

# Speech Restrictions

## PUBLIC FORUMS



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



## LIMITED PUBLIC FORUMS



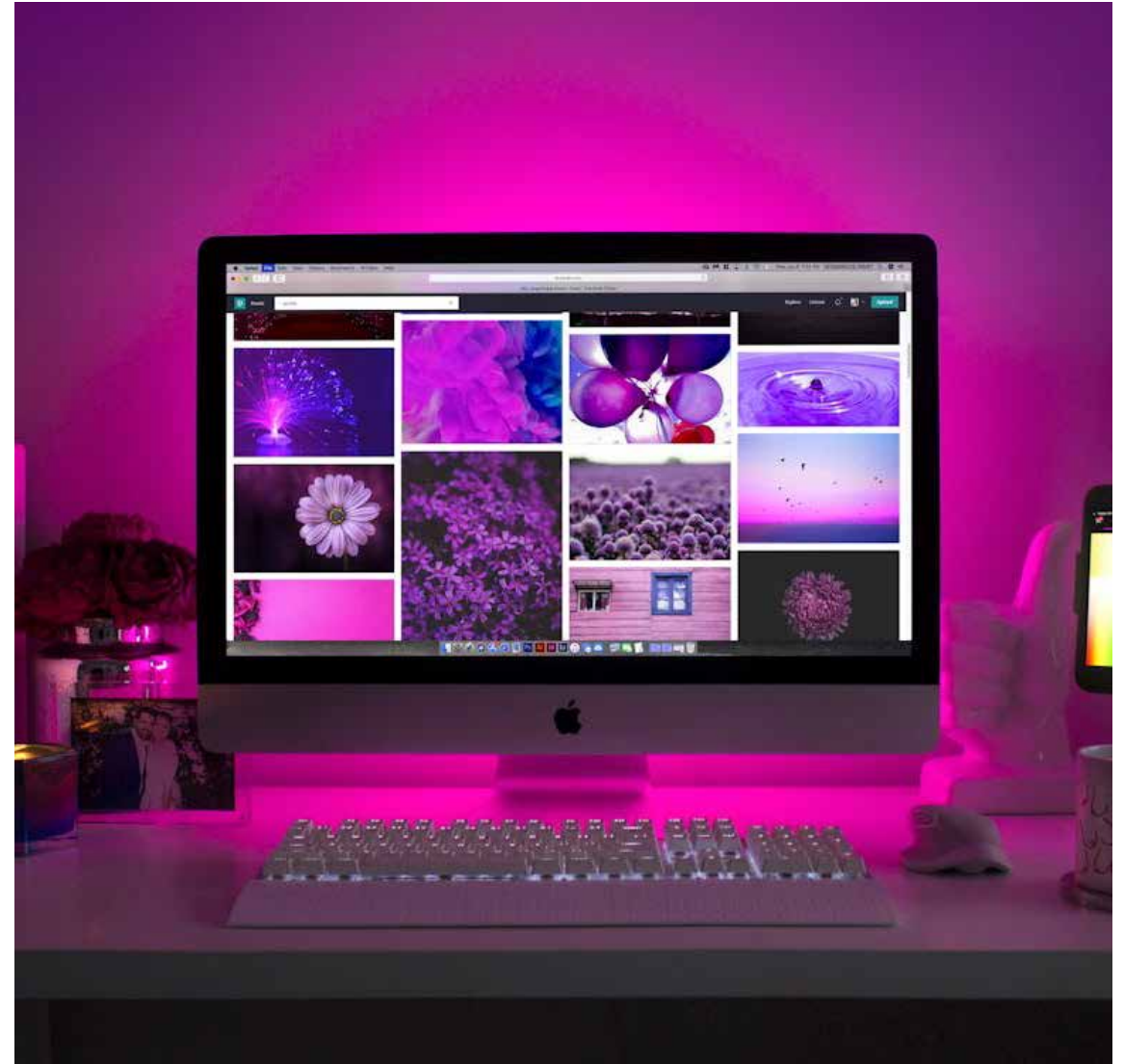
- Moderate level of scrutiny
- Restrictions must be reasonable and viewpoint neutral

# Social Media vs. Traditional Website

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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.

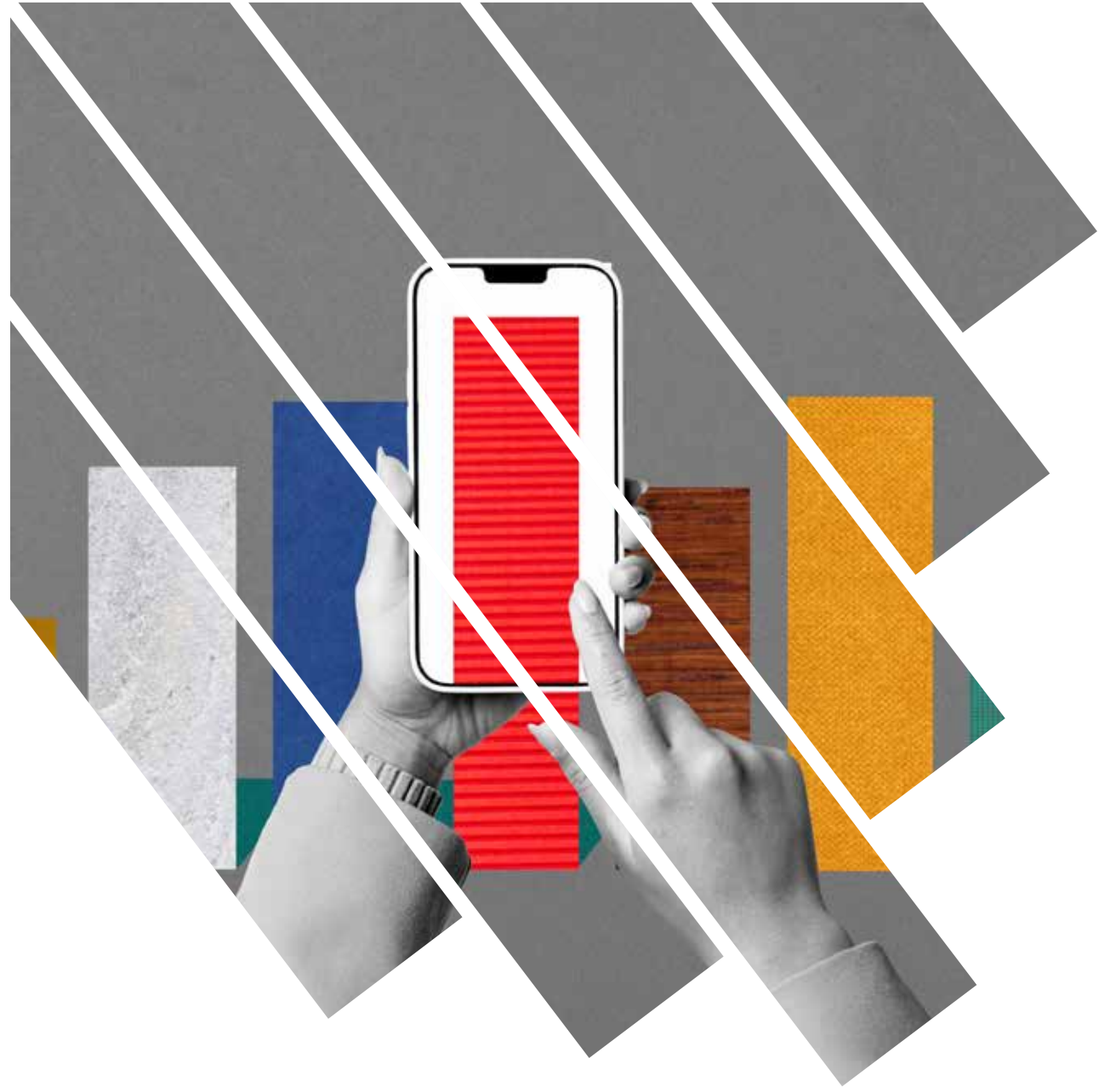
- *Vargas v. City of Salinas* (2009) 46 Cal.4th 1



# 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.

A close-up photograph of a pedestrian crossing signal. The signal is a black, dome-shaped housing with a green LED display showing a walking figure. It is mounted on a grey metal pole. The background is slightly blurred, showing other parts of the pole and some foliage.

## GOVERNMENT CANNOT PROHIBIT

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- **Comments based on the viewpoint expressed**
- **Comments critical of the Official or Agency based on policy, management, and other political issues**

## GRAY AREAS OF PROHIBITED CONTENT

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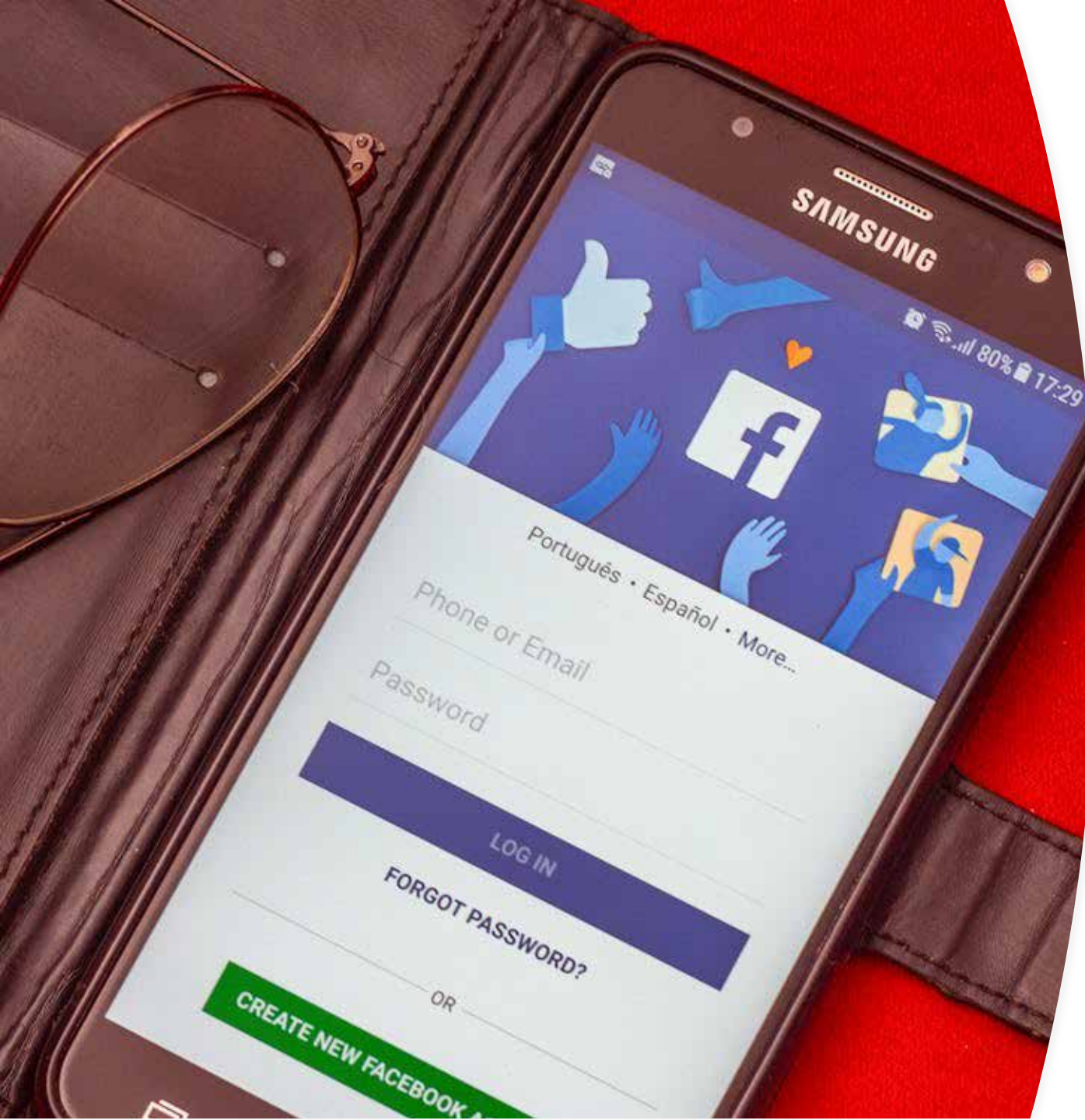
- Profanity
- “Defamatory” Statements
- Personal attacks
- “Offensive” statements
- Implied threats
- Off-topic comments





## **GOVERNMENT CAN LIKELY PROHIBIT**

- **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**

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



## ***Lindke v. Freed***

- City Manager maintained a Facebook page
- Mix of “official” and “private” posts and uses



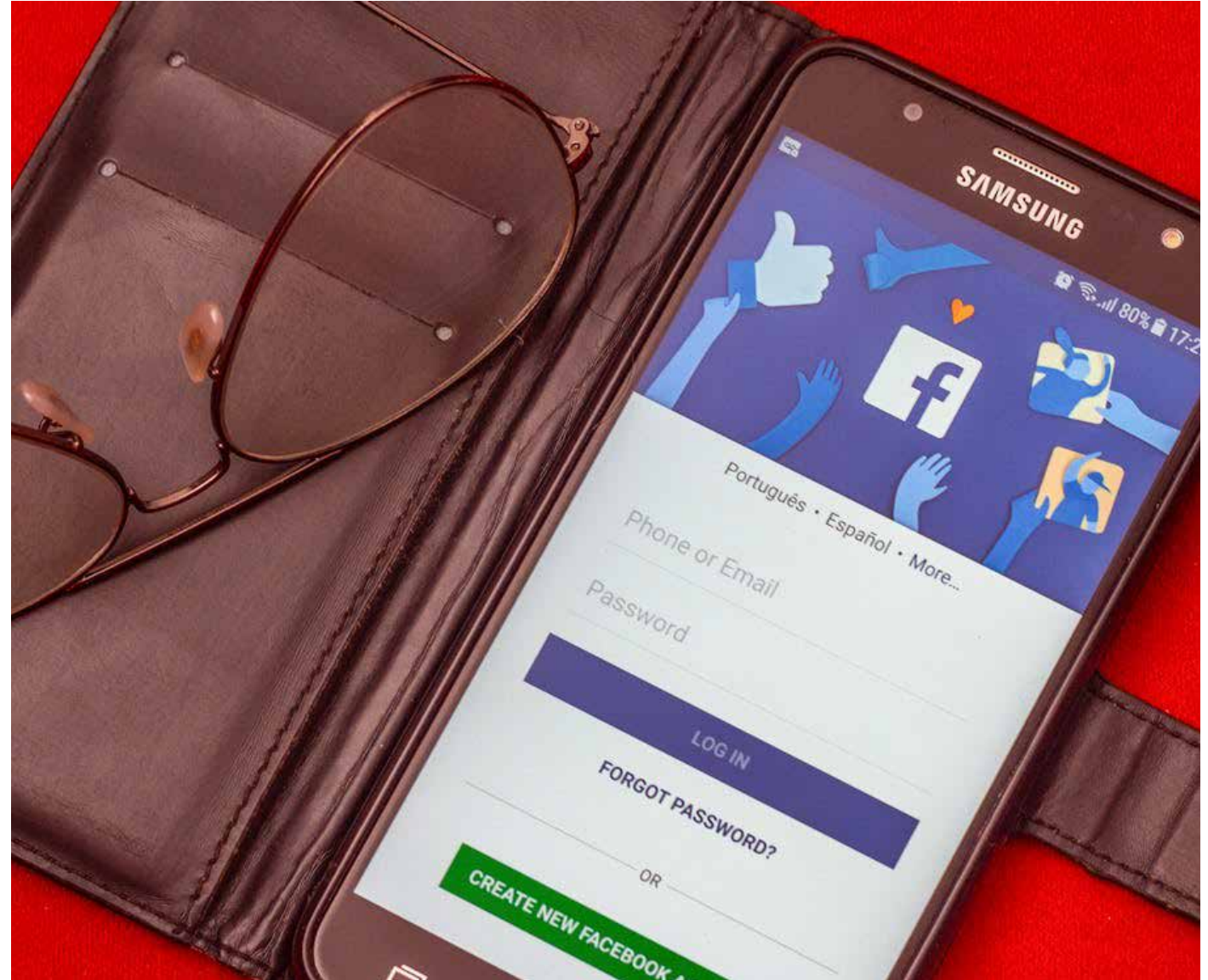
## ***O'Connor-Ratcliff v. Poway Unified***

- Trustees blocked critics of their decisions from making comments on social media pages

# New 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.

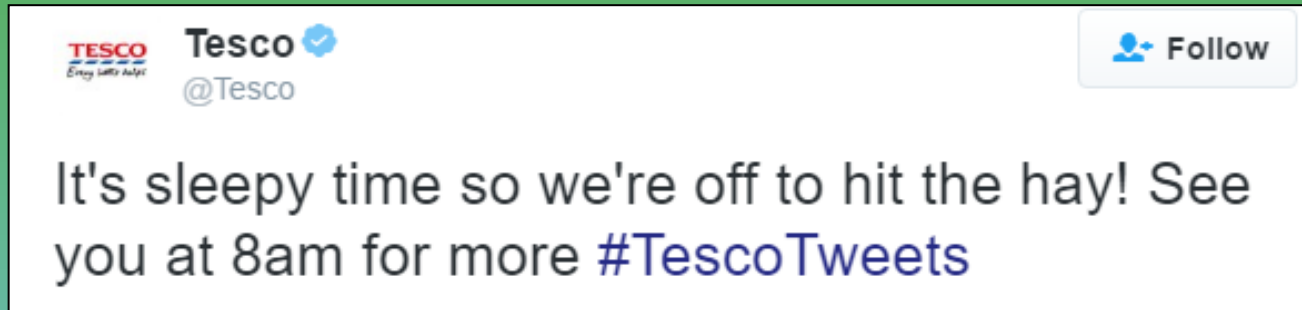




## ***Garnier v. O'Connor-Ratcliff*** **(2025)**

- Applying the Test:
  - The trustee, as president of the board of trustees of the district, had actual authority to speak on the school district's behalf.
  - The trustee was purporting to exercise official authority.
    - Page indicated official use
    - Discussed District activities
    - Official email

# Read the Room!





# Content Moderation

# ***Murthy v. Missouri*** **(2025)**

- During COVID-19, federal officials communicated with social media platforms regarding misinformation, election integrity, public health
- Plaintiffs lacked standing as they failed to show harm



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# **PUBLIC RECORDS & BROWN ACT**

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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.

# 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.



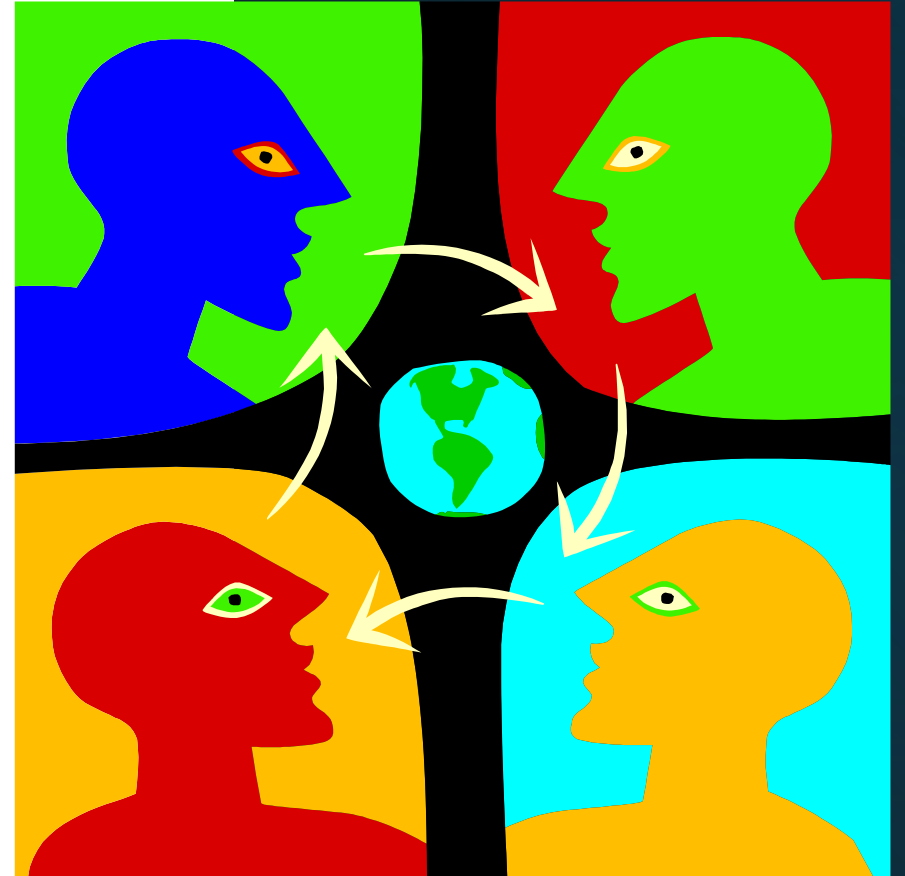
# **Government Code Section 54952.2(b)(3)**

**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(b)(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**



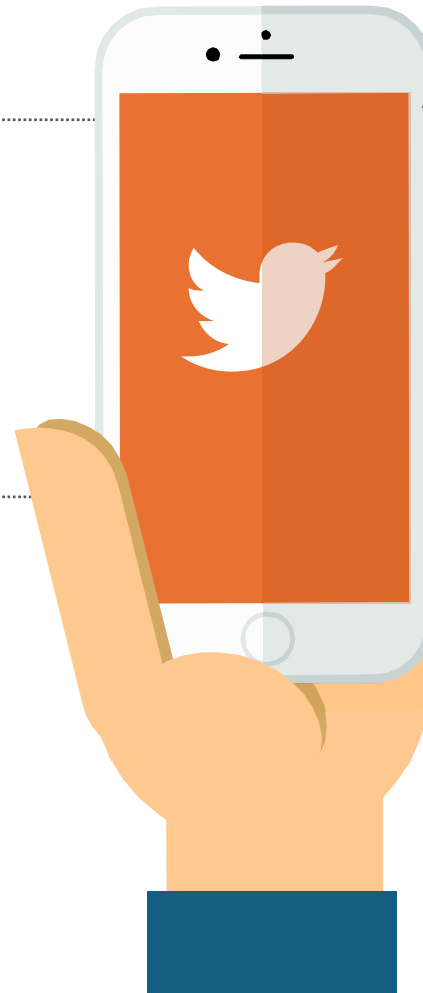
**A member may not respond directly to any communication posted or shared by another member regarding agency business on an internet-based social media platform.**



**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 the City's renovations of a historic property. 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?





**EMOJI SPEECH**

## ***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.





**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

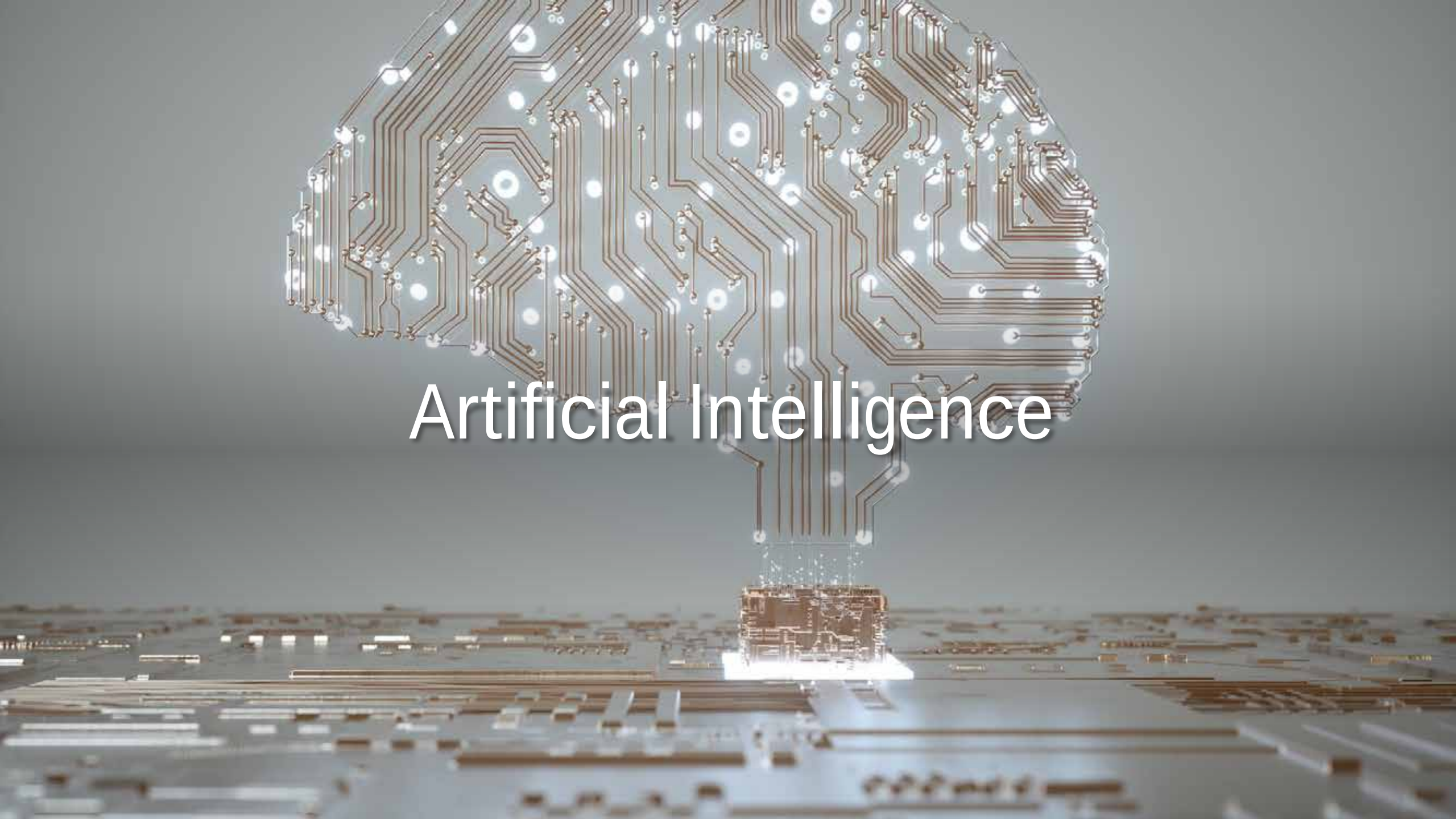


***In Re Bed Bath & Beyond Corporation  
Securities Litigation (D.D.C. 2023)***

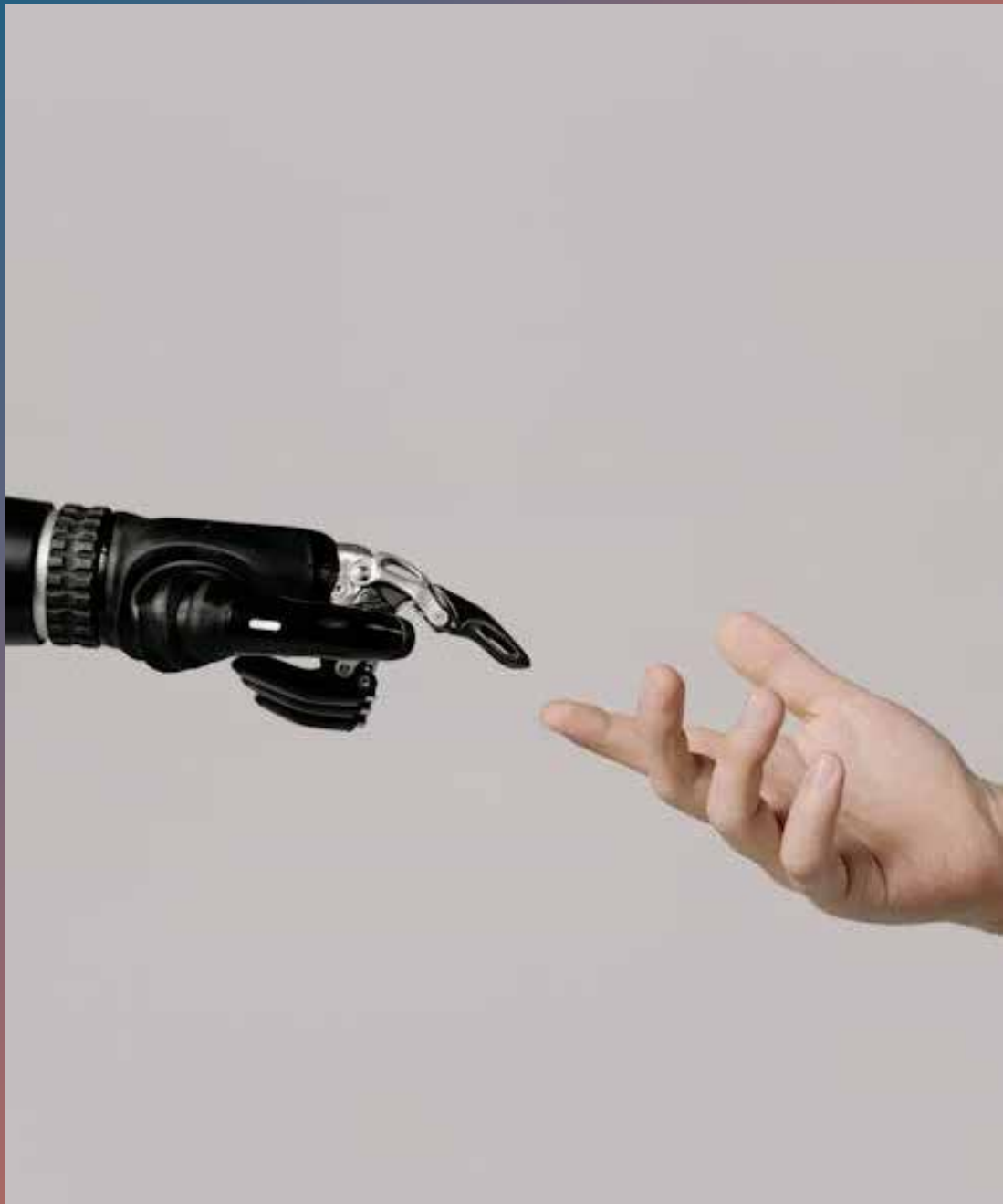


## ***US v. Robert Menendez (2024)***

- Evidence of bribery included:
  - Egyptian official sending “Thumbs Up” emoji when Senator offered sensitive weapons information.
  - “Congratulations mon amour de la vie, we are the proud owners of a 2019 Mercedes,” along with a heart emoji.

The image features a conceptual representation of artificial intelligence. A large, stylized brain shape is formed by a complex network of glowing blue circuit traces and circular nodes. This brain-like structure is positioned above a detailed microchip, which is itself mounted on a larger circuit board. The background is a soft, out-of-focus gradient of light blue and white, suggesting a clean, technological environment. The overall composition links the abstract concept of a brain to the physical hardware of a computer chip.

# Artificial Intelligence



# Legal Implications – Artificial Intelligence

- Accuracy
- Bias / offensive outputs
- Public Records
- Proprietary Information
- Privacy



# 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
  - Policy on Artificial Intelligence
-



**Thank you!**

**Gena Burns**  
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