

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

*Cal Cities' Mayors and Council Members Academy*

*January 2024*

# Information Sources 20 Years Ago



# Today's Information Diet

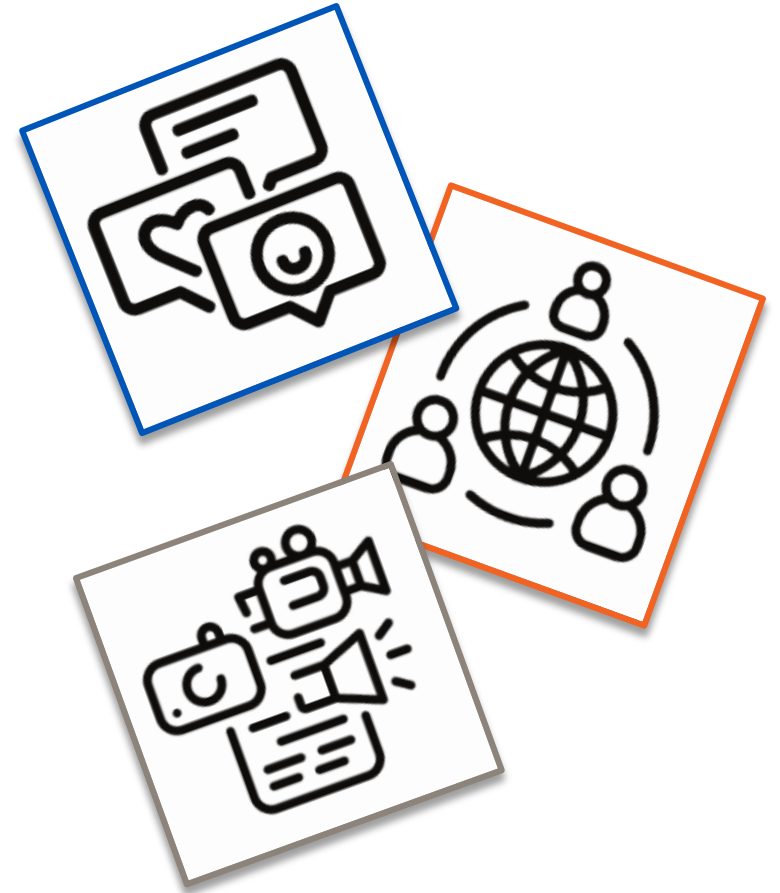


# We're Addicted to Media!



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

*Source: Insider Intelligence, December 22, 2023,  
"US Time Spent With Media Forecast 2023."*



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

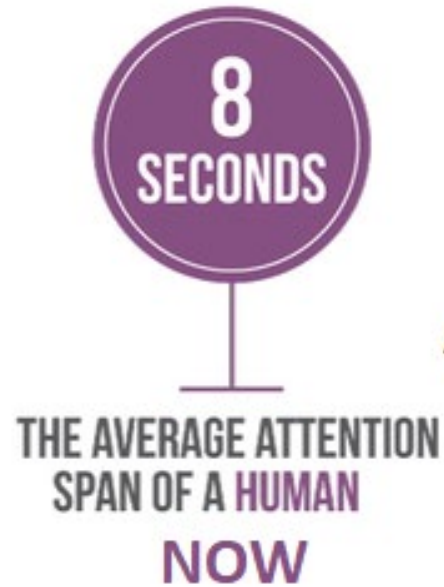
**Americans check  
their phones...**



**...times per day!**

*[Source: Fortune, July 19, 2023, "Americans check their phones 144 times a day. Here's how to cut back."](#)*

# Attention Span & Digital Media



AND...



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

# Gen Z's Attention Span...

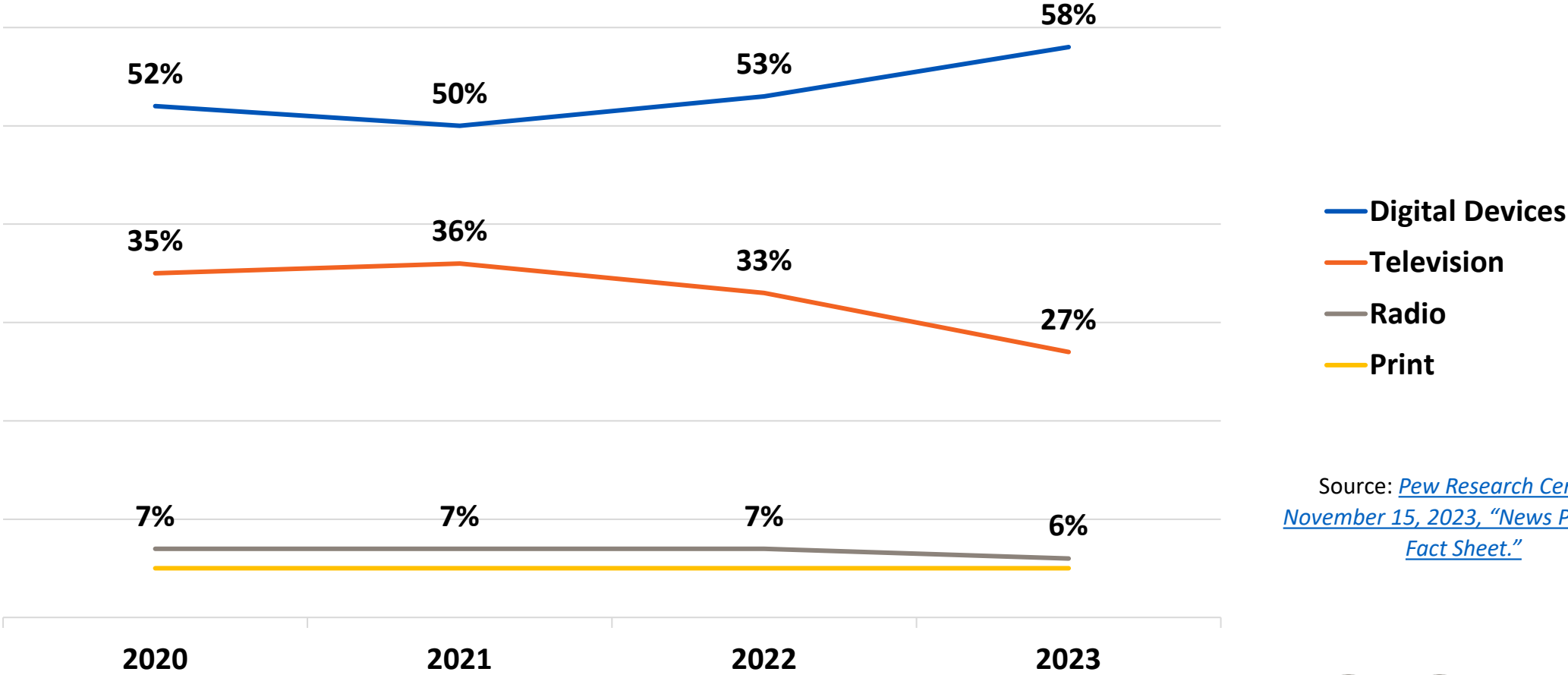
**Members of Generation Z lose active attention for ads after...**

**1.3 Seconds!**

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

# Digital Devices: #1 Way to Consume News

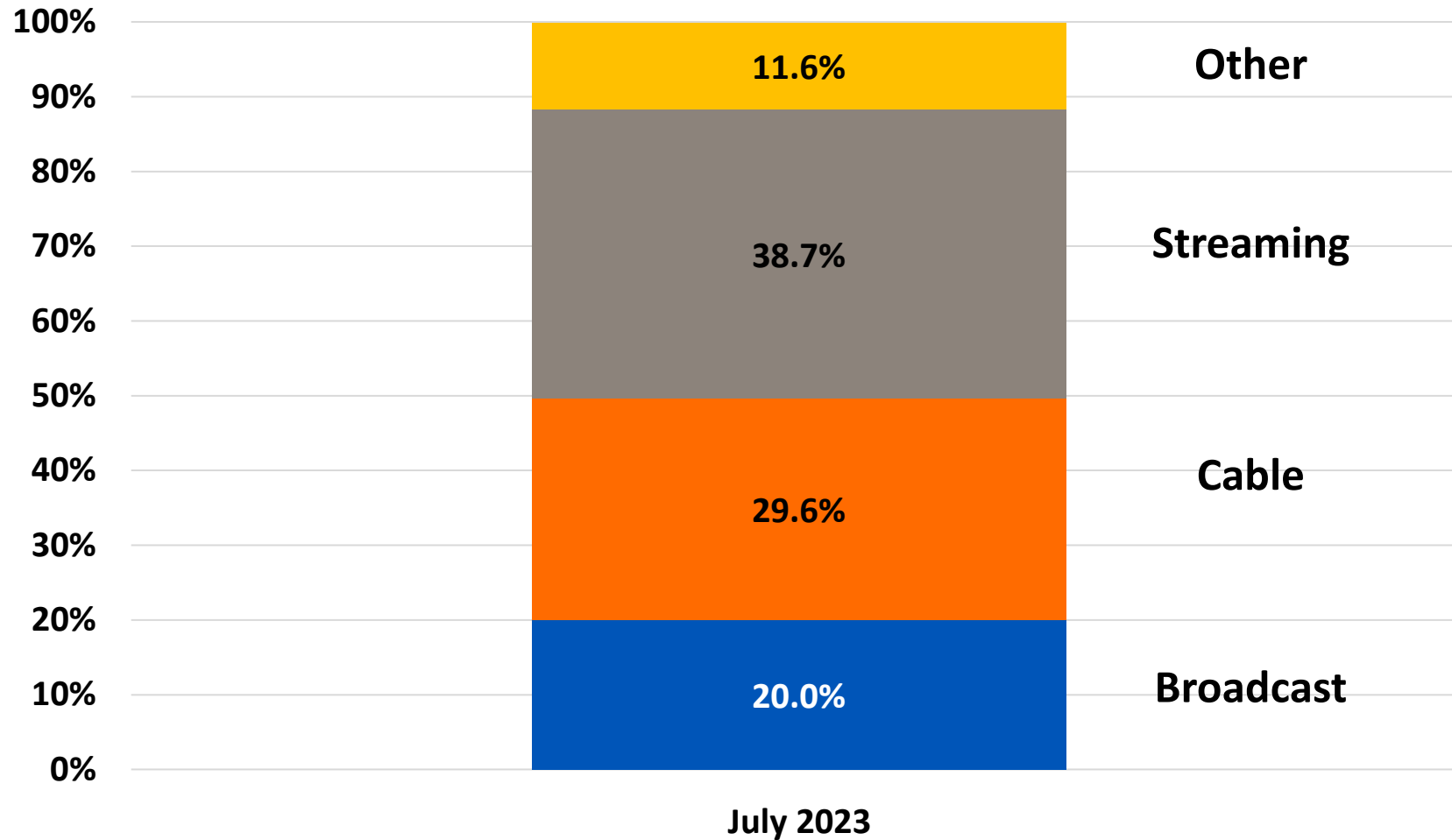
Total % of U.S. adults who say they prefer \_\_\_ for getting news...



Source: [Pew Research Center, November 15, 2023, "News Platform Fact Sheet."](#)

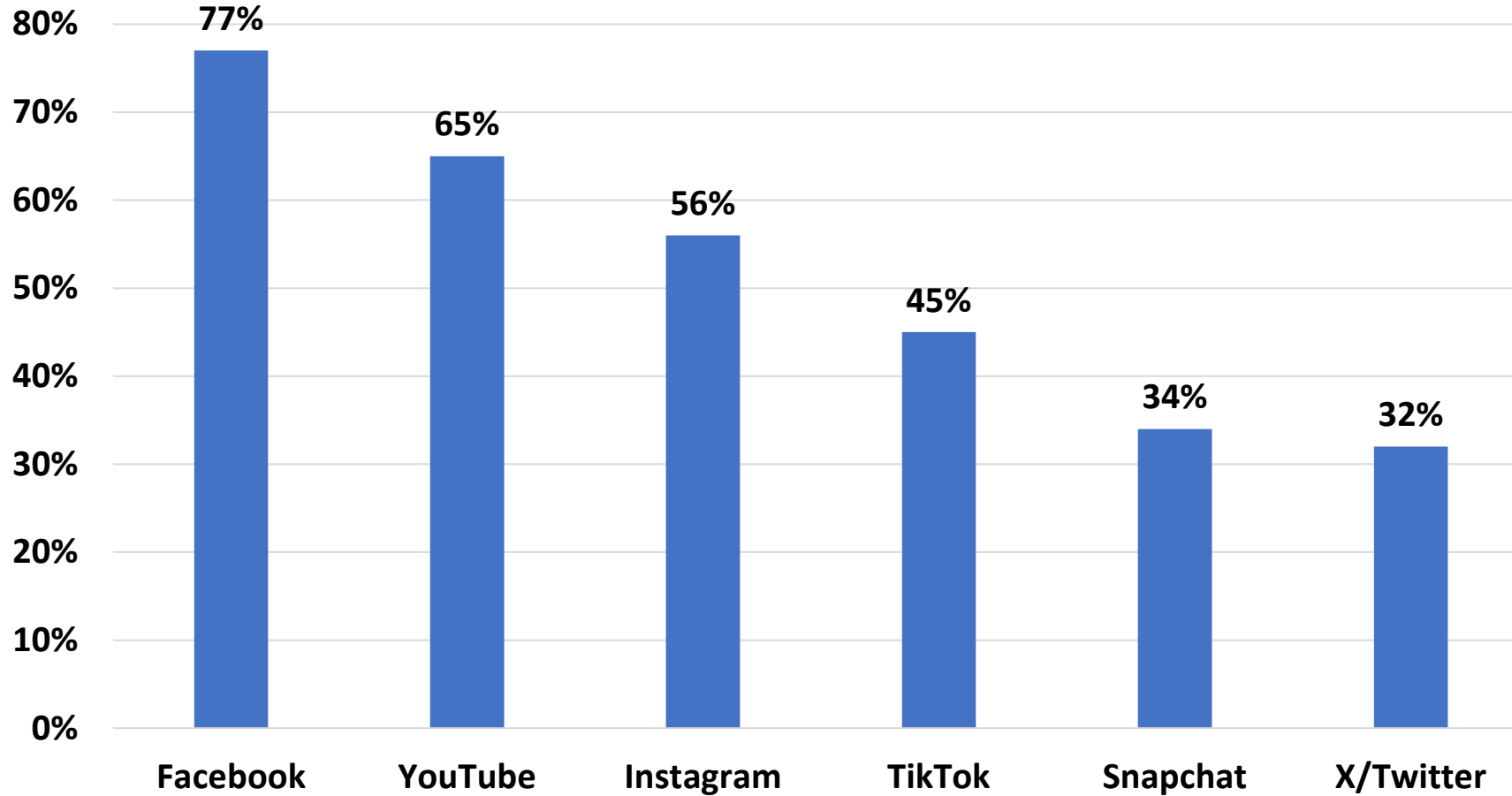


# Television: Streaming Increasing in Popularity



Source: [Nielsen, August 2023, "Streaming grabs a record 38.7% of total TV usage in July, with acquired titles outpacing new originals."](#)

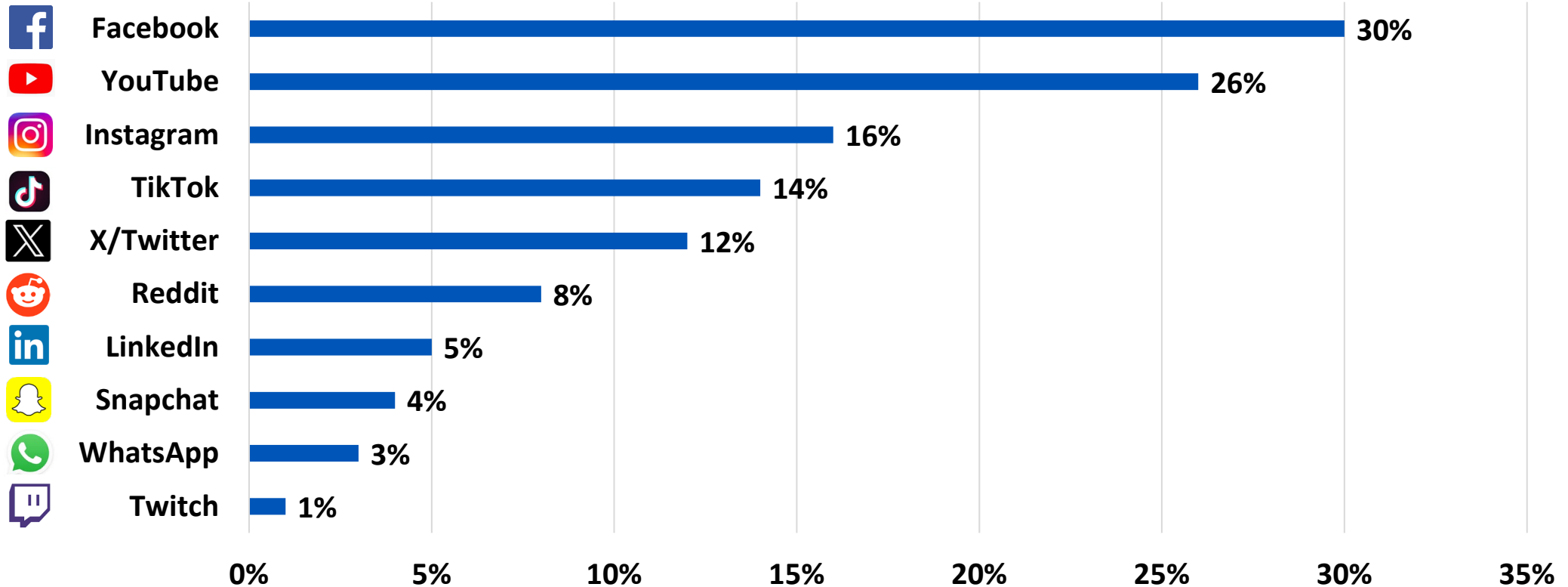
# Facebook is Still the Most Used Platform



Source: [Statista, November 23, 2023, "Social network usage by brand in the U.S. as of September 2023."](#)

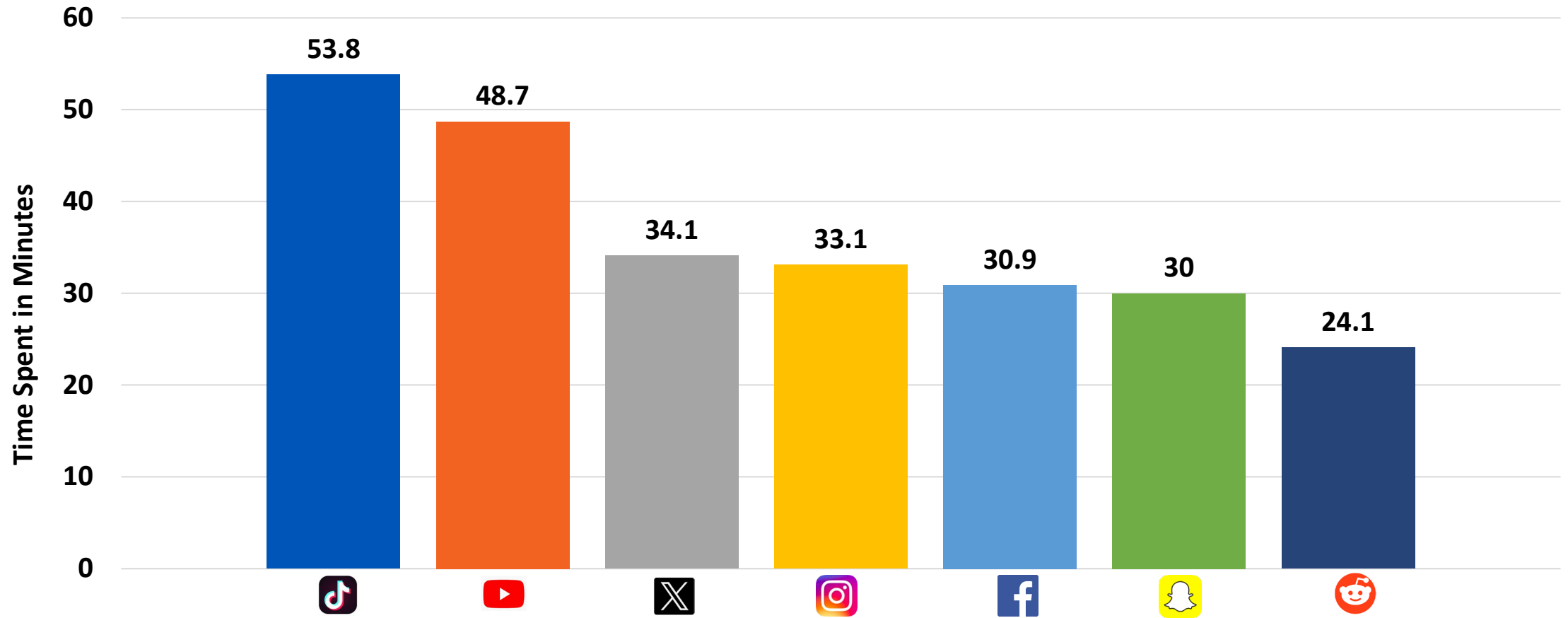
# News Intake Across Social Platforms

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



Source: [Pew Research Center, November 15, 2023, "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 News Boom

**aimhighgetlow**  
Evan Low

Follow

1 Following 14 Followers 9 Likes

State Legislator representing Silicon Valley

California Governor

@cagovernor

**votealexlee**  
Alex Lee

Follow

23 Following 781 Followers 2406 Likes

CA State Assemblymember District 25  
Progressive, Zoomer NUMTOT

The New York Times

## TikTok Is Shaping Politics. But How?

Two researchers have studied political expression on the app since the Musical.ly era. Here's what they found.

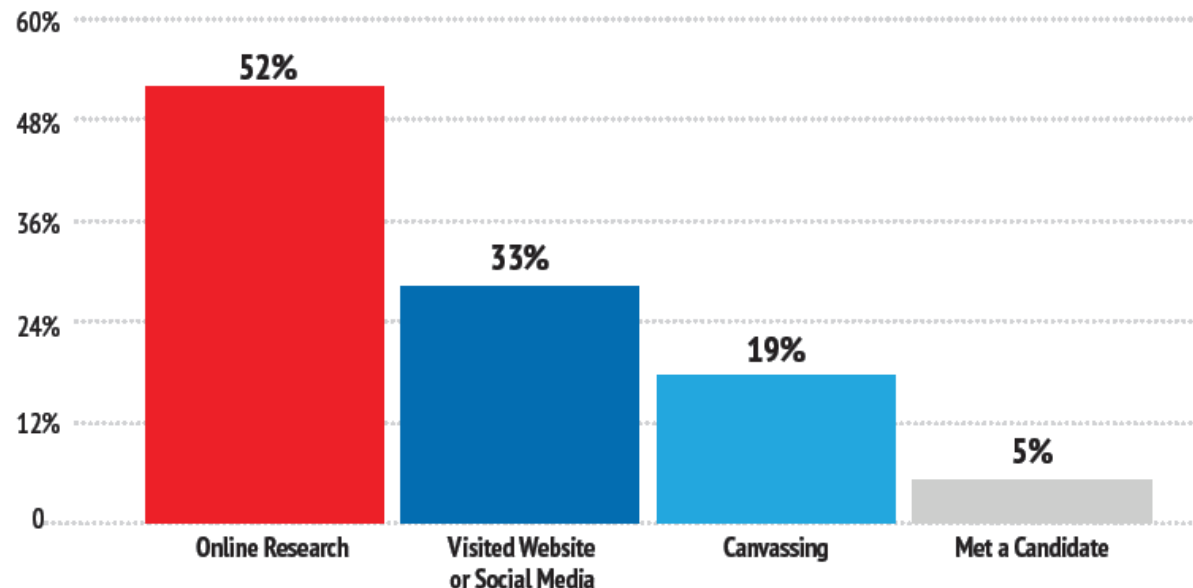
Madison Outing, 17, center left, and Michael Haggerty, 17, center right, at a protest they organized in Farmingdale, N.Y. Teenagers are also using TikTok to express their social and political beliefs. Daysi Calavia-Robertson/Newsday RM, via Getty Images

- One of the most popular social platforms among Gen Z
- 143 million monthly active users in the U.S.
- Platform is increasingly being used as a news source
  - 32% 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
- 33% visited a candidate's website or social media

**Digital Outreach Gives Campaigns More Scale**



Source: Center for Campaign Innovation, January 12, 2021, "2020 Post-Election National Campaign Survey."

# Elected Officials & Government Shifting Online



**City of Los Angeles** @LACity

You can watch your @LACityCouncil session starting at 10 AM.

Tune in to: [lacityview.org/live](http://lacityview.org/live)  
Facebook: [facebook.com/CityofLosAngel...](https://facebook.com/CityofLosAngel...)  
Website: [clerk.lacity.org/calendar](http://clerk.lacity.org/calendar)

Let your voice be heard. Submit written comments at: [LACouncilComment.com](http://LACouncilComment.com) or call in.

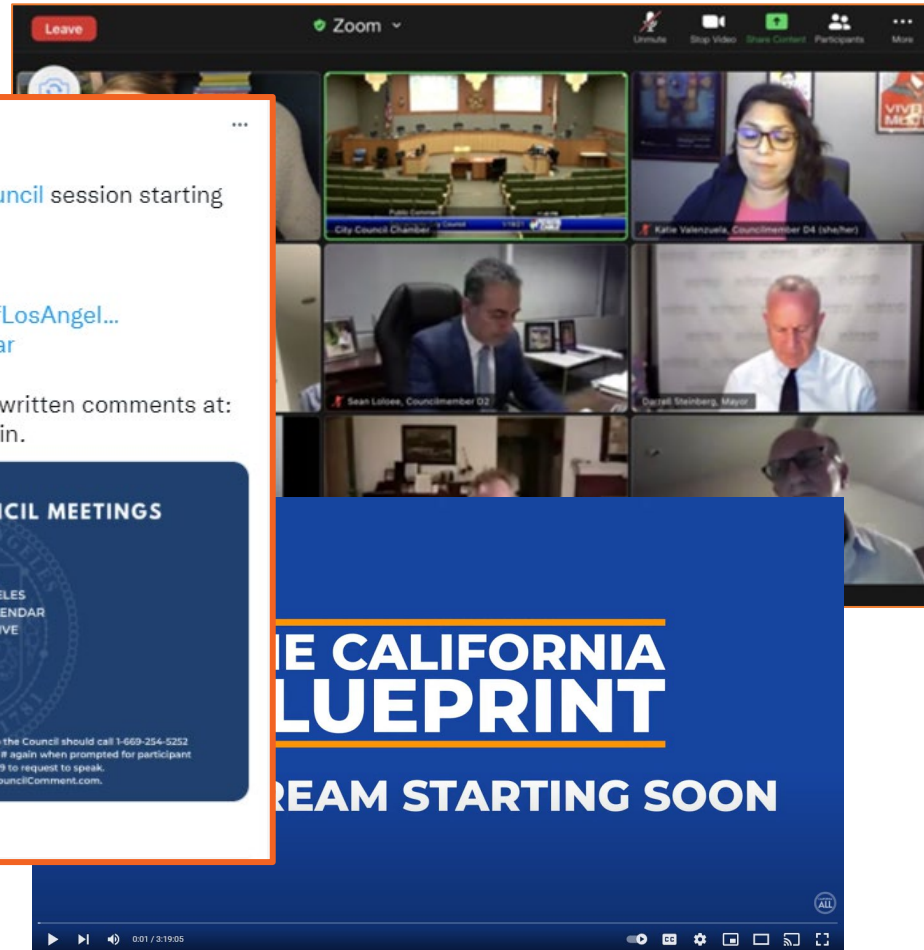
**LOS ANGELES CITY COUNCIL MEETINGS**

WATCH LIVE ON  
FB: CITYOFLOSANGELES  
CLERK.LACITY.ORG/CALENDAR  
LACITYVIEW.ORG/LIVE

LISTEN AT  
(213) 621-CITY

**PUBLIC COMMENT:**  
Members of the public who wish to offer public comment to the Council should call 1-669-254-6252 and use Meeting ID No. 360 535 8466 and then press #. Press # again when prompted for participant ID. Once admitted into the meeting, press # to request to speak.  
You can submit written comments at [LACouncilComment.com](http://LACouncilComment.com).

9:30 AM · Jan 19, 2022 · Hootsuite Inc.



Zoom

City Council Chamber

Karla Valencia, Councilmember D4 (she/her)

Sean Latta, Councilmember D2

Carroll Steinberg, Mayor

**THE CALIFORNIA BLUEPRINT**

**STREAM STARTING SOON**



# 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



Mayor Steinberg to propose 24/7 respite & navigation facility to serve...  
27 weeks ago · 489 views  
👍❤️👎 32





# 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



# 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**

The image shows a screenshot of a Twitter thread and a news article snippet. The top part of the screenshot shows a tweet from @mayor\_Steinberg with the text: "Free transit to and from locations provided by @ stepping up and helping!". Below this is a tweet from London Breed (@LondonBreed) that says: "Thank you to our brave @SFFDPIO rescue swimmers!". The tweet from London Breed includes a retweet from SAN FRANCISCO FIRE DEPARTMENT MEDIA (@SFFDPIO) dated Jan 15, which contains a photo of five rescue swimmers in wetsuits standing in front of a fire truck. The photo caption reads: "Here is a photo of our rescue swimmers performing the VERY dangerous rescues today. We are sharing this photo so you can meet them here, and not in the water. Please stay out of the water. @NWSBayArea @GGNRANPSAlerts @SF\_emergency". Below the tweet is a news article snippet from the City of Sacramento (@TheCityOfSacramento) with the text: "With another storm system coming weather-respite operations at both North Fifth Street Shelter lobby for morning (Jan. 7). Read more: wp.me/p3ZwPQ-6pq". At the bottom of the screenshot, there is a blue banner with the text "WEATHER R Open th" and a white box with the text "Outreach & E (3615 Auburn Blvd.) Open 24 hours".

# 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**

**burke**

BURKE, WILLIAMS & SORENSEN, LLP

# About the Presenter



**Gena B. Burns**

Partner

619.814.5820

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.

**burke**  
BURKE, WILLIAMS & SORENSEN, LLP

# 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.



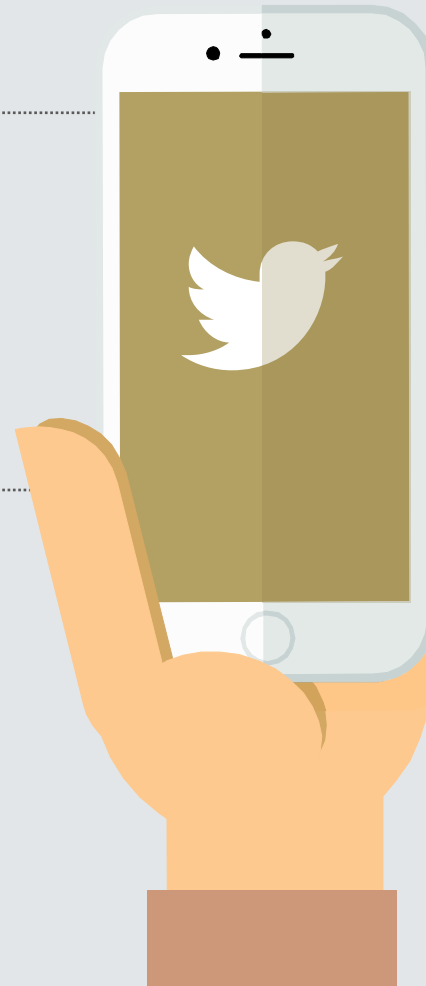
## Romano v. Steelcase, Inc. (NY 2010)

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)

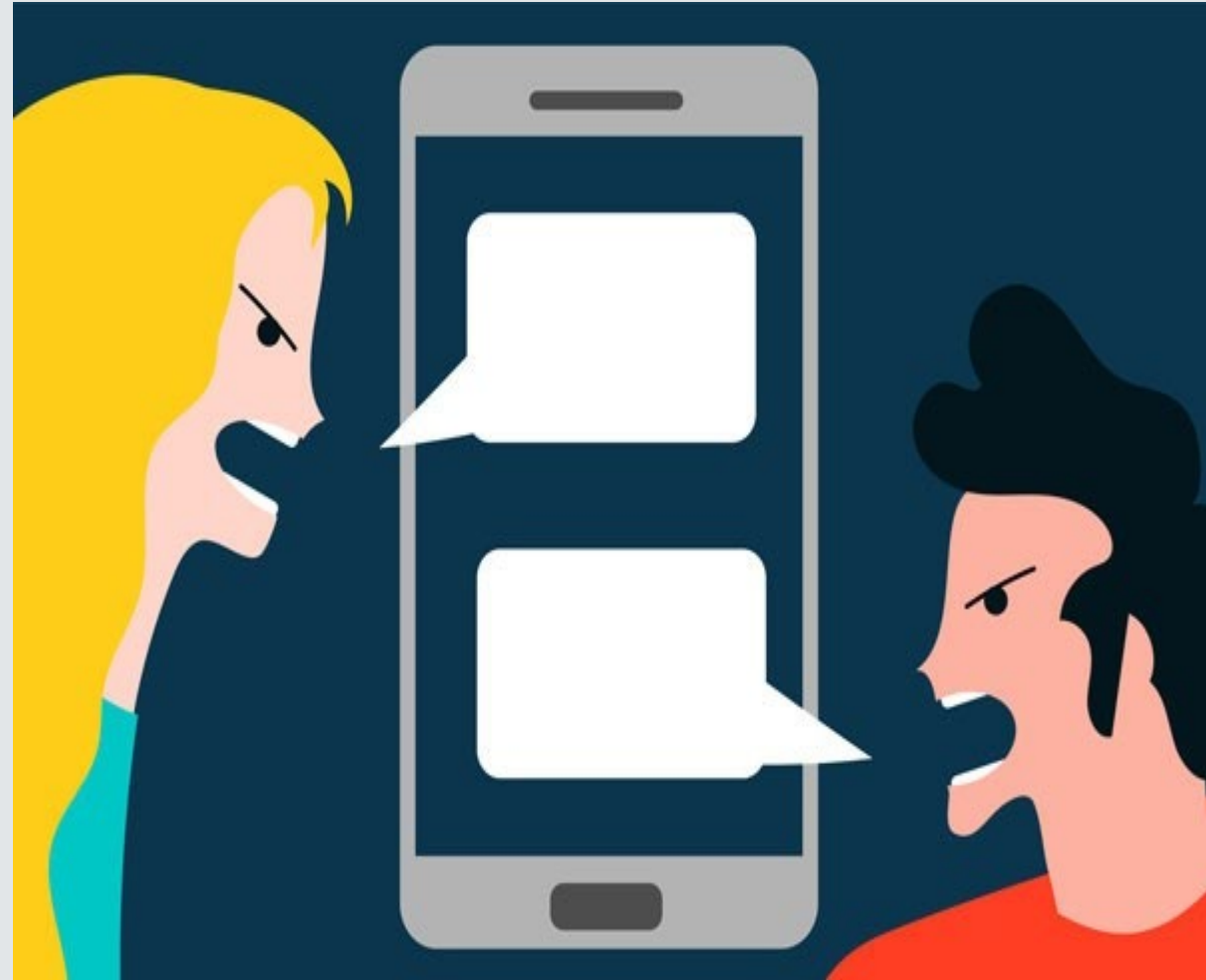
“Tagged” photos posted by others are discoverable in litigation if relevant to claims in lawsuit, even if user has privacy settings.



# What About My “Private” Chats?

Some platforms have end-to-end encryption (*if you choose that setting*), BUT:

- Messages can be forwarded, screen-grabbed, or otherwise distributed by another user to a larger audience
- Messages are discoverable in litigation if relevant to the claims



# 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](#)



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# Conflicts & Bias



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# 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

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# CAREFUL WHAT YOU ASK FOR



**DefendedInTheStreets**

@KimaniFilm

Sure thing! MT @NYPDnews: Do you have a photo w/ a member of the NYPD? Tweet us & tag it #myNYPD  
[pic.twitter.com/mdWqoHij5](http://pic.twitter.com/mdWqoHij5)

♡ 387 11:22 AM - Apr 22, 2014



**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



💬 1,048 people are talking about this





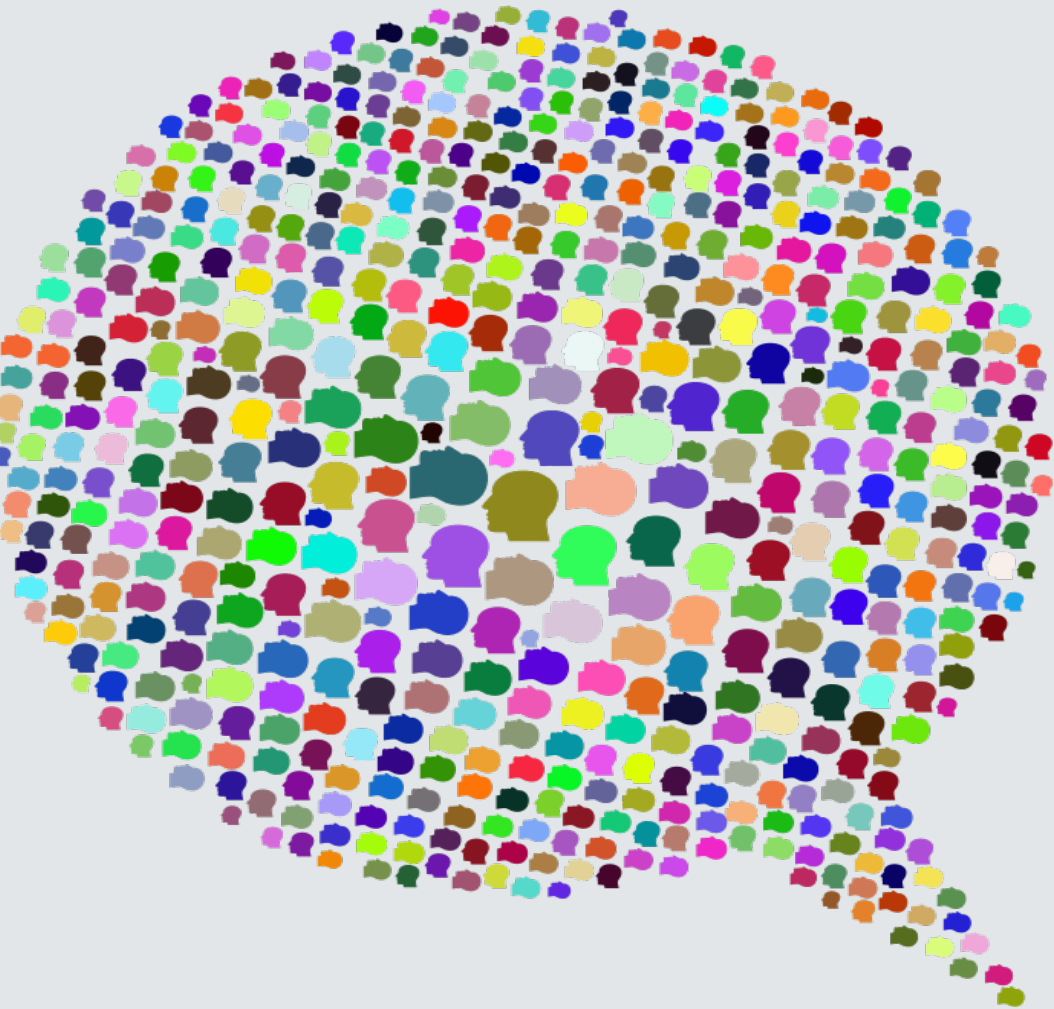
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# **First Amendment**

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**

# FREEDOM OF SPEECH

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!**



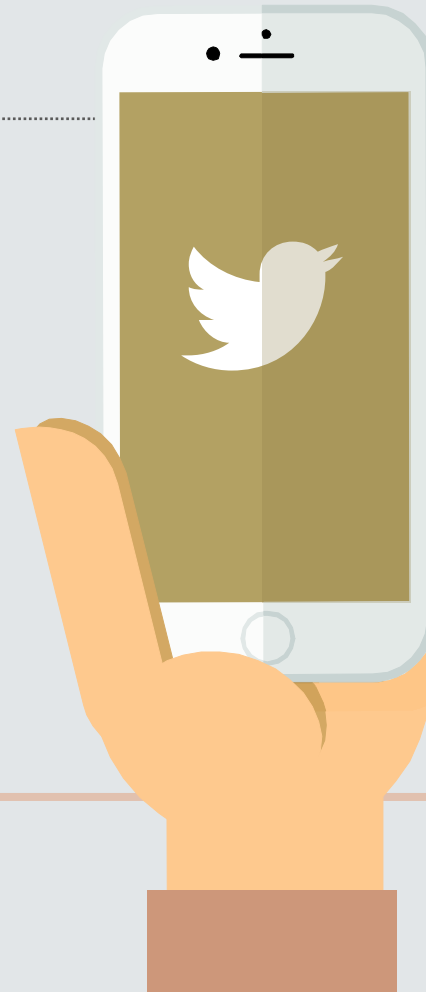
**First Amendment rights were not violated.**

# 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 v. 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**

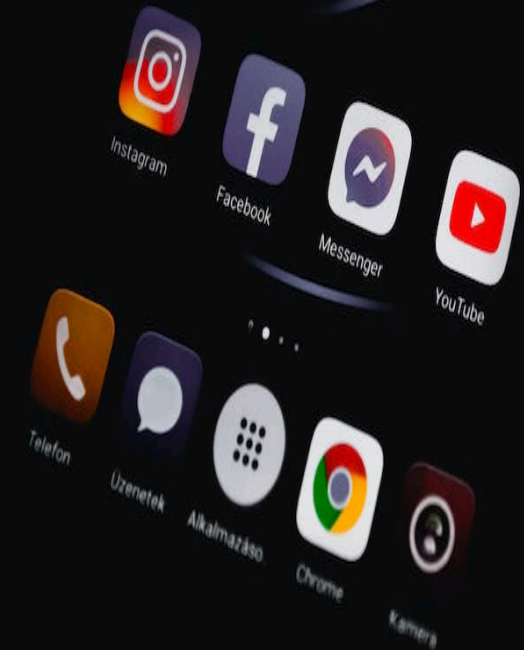
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# **SOCIAL MEDIA AS A PUBLIC FORUM**

**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)

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# IS MY “PERSONAL” PAGE A PUBLIC FORUM?

Do you...

- ... identify as a government official?
- ... use it to address constituents?
- ... use it to share information of importance to the community?
- ... post photos of community events?
- ... use it to acknowledge your colleagues or Agency employees?
- ... use it to discuss your work as an official?
- ... use any Agency resources?
- ... link to the Agency’s website or social media pages?
- ... provide access to constituents?



# Speech By The Public On Your Page



- 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.



# Agency Officials Cannot Prohibit

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



# What Agency Officials Can Likely Prohibit

A globe is shown from a low angle, appearing to rise from the bottom. The globe is covered in numerous small, semi-transparent icons representing various concepts such as technology (a smartphone, a laptop, a camera), commerce (a dollar sign, a credit card), communication (a speech bubble, a location pin), and general symbols (a plus sign, a minus sign, a number 1). The globe is set against a light blue background that fades into white at the top.

- **Obscenity**
- **Pornography**
- **True threats**
- **Public safety**
- **Incitement of violence**
- **Commercial speech**
- **Confidential information**
- **Encouragement of illegal activity**



kristencbush If you are not willing or able to call this holiday Abraham Lincoln's Bday, please don't take a paid holiday on the taxpayer's dime. Republican who fought to end slavery, among other accomplishments

5w 3 likes Reply



**ALL COUNTY OFFICES WILL BE CLOSED  
MONDAY, FEBRUARY 13, 2023 IN  
OBSERVANCE OF THE HOLIDAY.**

**NORMAL OPERATION HOURS WILL  
RESUME TUESDAY, FEBRUARY 14, 2023.**



condition\_yellow\_68 @ocgov refuses to acknowledge Washington's Birthday. Notice that they won't utter the name of one of our Founding Fathers. California is truly Disgusting.

5w 4 likes Reply

— Hide replies



cstephens85 It's for Lincoln's birthday

5w Reply



orangecountymemess It's disgusting how the founders of the United States upheld slavery and genocide. F██ them.

4w Reply



condition\_yellow\_68 @orangecountymemess pronouns in bio = f'ing crazy. Enough said. Goodbye.



ocgov • Follow



ocgov County Holiday Closure Notice:

All county offices will be closed Monday, February 13, 2023, in observance of the holiday. Normal operation hours will resume Tuesday, February 14, 2023.

-

#CountyofOrangeCA #OfficeClosure

5w



j.brewer\_66 Holiday for what ? It should be called the day after the Super Bowl holiday or the hangovers holiday!!!

5w 2 likes Reply



kristencbush If you are not willing or able to call this holiday Abraham Lincoln's Bday, please don't take a paid holiday on the taxpayer's dime. Republican who fought to end slavery, among other accomplishments

5w 3 likes Reply



ace318106 Are they going to be hungover from the Super Bowl?

5w Reply



condition\_yellow\_68 What holiday?

5w 6 likes Reply

— View replies (1)



delaniag What holiday???

5w Reply



jonicole08 Anybody? What's the holiday?

5w 5 likes Reply



148 likes

FEBRUARY 10



Add a comment...

Post

---

# The Right to Free Tweet



# Garnier v. O'Connor-Ratcliff



- Ninth Circuit Issues Binding Decision Relating to Blocking Constituents' Comments
- First time in Ninth Circuit we now have a clear holding that:
  - Trustees of School District blocked critics of their decisions from making comments on social media pages
  - In a designated public forum “the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions” are “narrowly tailored to serve a significant governmental interest” and “leave open ample alternative channels for communication of the information.”

# Lindke v. Freed

- City Manager maintained a Facebook page
- “Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Office 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



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**PUBLIC RECORDS &  
BROWN ACT**

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# PUBLIC RECORDS ACT AND SOCIAL MEDIA



**“Records”** include all communications related to public business “regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper...magnetic or other media.”

# 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

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# Is My Personal Social Media Page 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?

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# 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)**

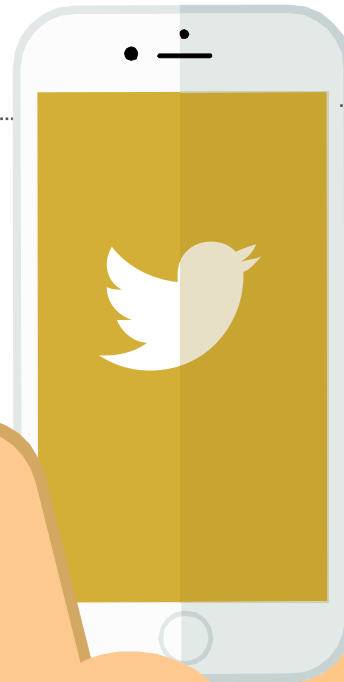
**A public official may communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction. However, the latter types of communications are only allowed as 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.”**

# 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



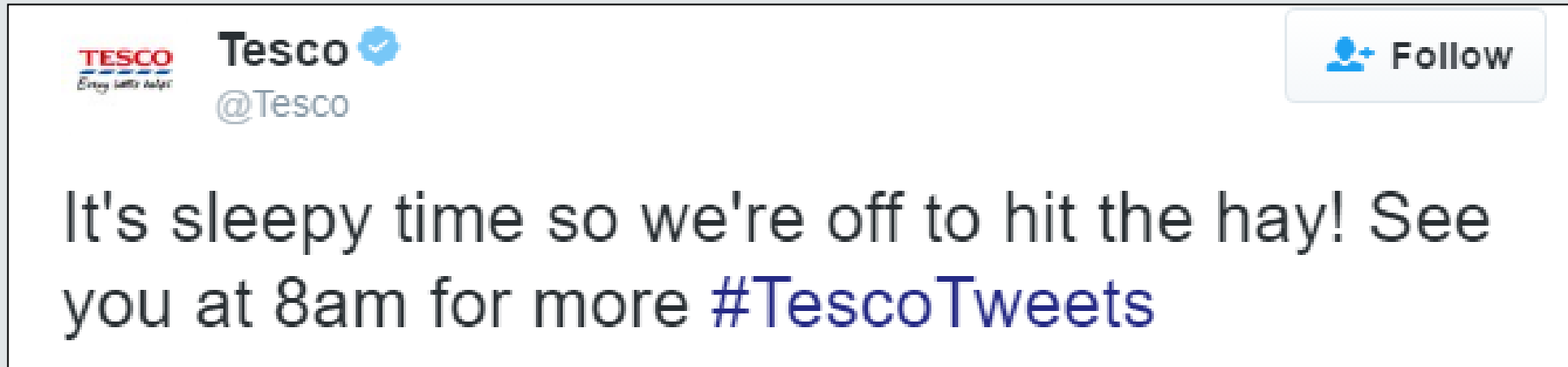


# Prohibited Communications Via Social Media



- 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 on-line 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?

# Read The Room Before You Post



The image shows a screenshot of a tweet from the official Tesco Twitter account. The tweet is enclosed in a white rectangular box with a thin black border. In the top left corner of the box is the Tesco logo, which includes the word "TESCO" in red and blue, the tagline "Every little helps" in small grey text, and the name "Tesco" in bold black text with a blue verified account checkmark. Below the name is the handle "@Tesco". In the top right corner of the box is a "Follow" button with a blue person icon and a plus sign. The main text of the tweet reads: "It's sleepy time so we're off to hit the hay! See you at 8am for more #TescoTweets". The text is in a clean, sans-serif font, with the hashtag "#TescoTweets" in blue.

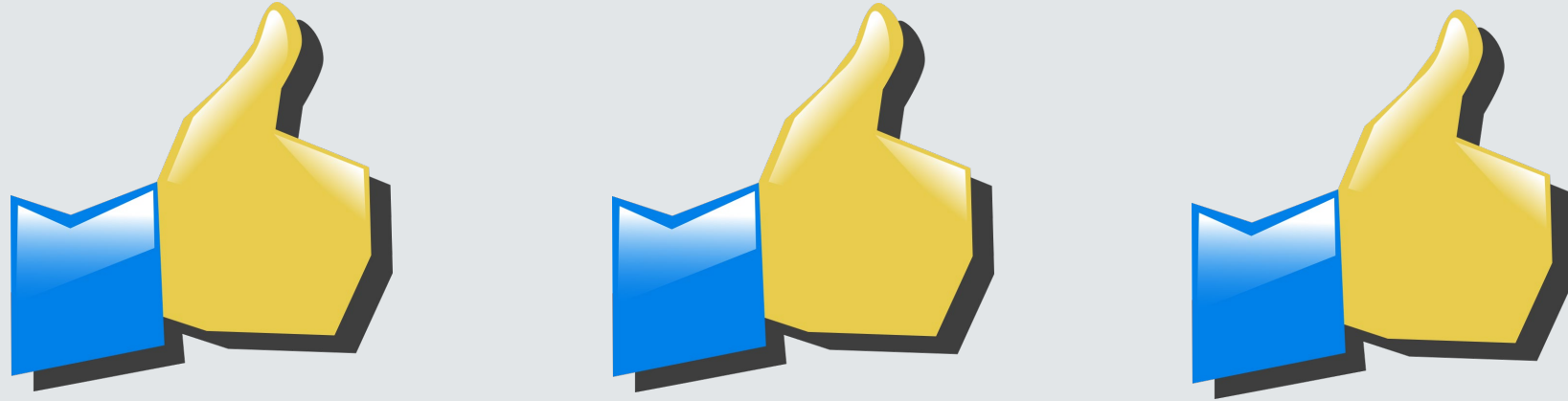
**TESCO**  
Every little helps

**Tesco** ✓  
@Tesco

Follow

It's sleepy time so we're off to hit the hay! See you at 8am for more [#TescoTweets](#)





## ***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.





***Ganham v.  
Does (Mich.  
2014)***

They are only getting more  
garbage trucks because  
Gus needs more tires to sell  
to get more money for his  
pockets!

***South West Terminal Ltd. v  
Achter Land & Cattle Ltd.  
(2023 SKKB 116)***

**Contract Acceptance by Emoji**



***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



# Thank you!

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Burke, Williams & Sorensen, LLP

**Gena B. Burns**

619.814.5820

gburns@bwslaw.com

