



Board of Directors Meeting

# Social Media Briefing: Brown Act and First Amendment

General Counsel's Report  
Item 5D  
April 11, 2023

## Brown Act: Social Media

### Government Code 54952.2

- Prohibits communication between Directors on social media using:
  - Non-textual, symbolic communications like “reactions” or emoticons on other director’s posts
  - Communications to the public are allowed
  - Effective Jan. 1, 2021 - Sunsets Jan. 1, 2026

## Brown Act: Social Media

# Communications on Social Media

- Social Media Platforms include:
- Online service that is open and accessible to the public, free of charge
- Prohibited Communications include:
- Commenting
- Using digital icons to express reactions



- Reposting directly or by screen capture agency posts



## Brown Act: Social Media

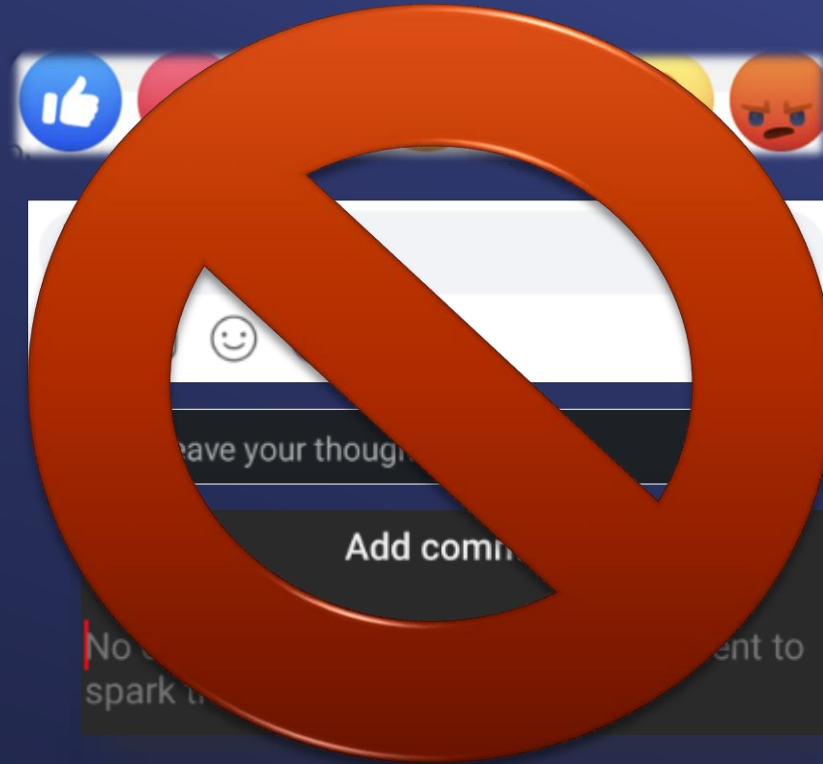
### Allows Communications with the Public

- Directors can engage with public on social media to:
  - Answer questions
  - Provide information
  - Solicit information

## Brown Act: Social Media

### Does Not Allow

- Communications with other Directors
  - Made, posted or shared by another Director



## Brown Act: Social Media

### Reminder on Serial Communications

- ☐ Prohibited:
  - A majority of Directors shall not outside of a Brown Act noticed meeting use a series of communications to discuss, deliberate or take action on any item of business
- ☒ Allowed:
  - Communications to staff to answer questions and provide information

## First Amendment: Social Media

### *Garnier v. O'Connor-Ratcliff – Case Study*

- Facts:
- Used personal campaign social media accounts after being elected
- Blocked individuals on pages – they could not comment or react to posts
- Court Found:
- Acted under “color of state law”
- Social media pages constitute a public forum
- Blocking amounted to a violation of the First Amendment protection on free speech

## First Amendment: Social Media

### *Garnier v. O'Connor-Ratcliff – Case Study*

- “Color of state law”
- Close **nexus** between the use of the page and their official positions
  - Self-identified as government officials
  - Used official titles/e-mail addresses
  - Used “badge” feature



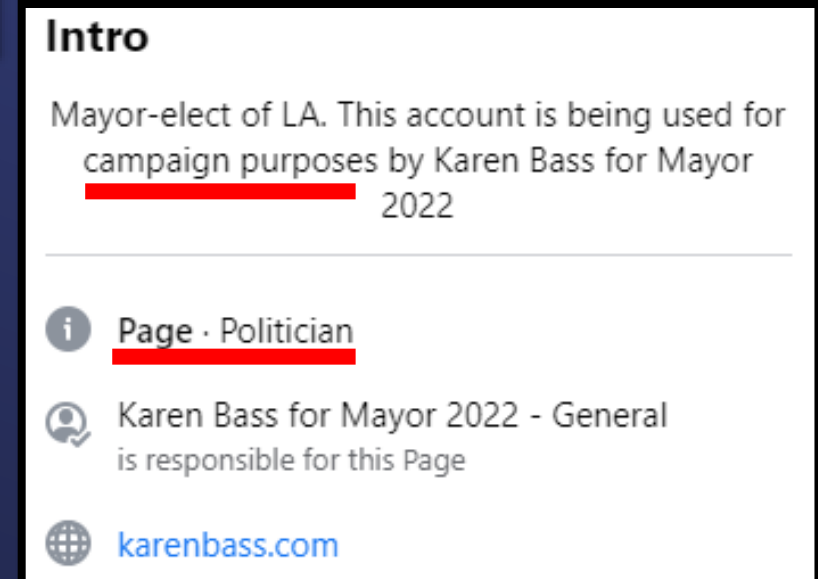
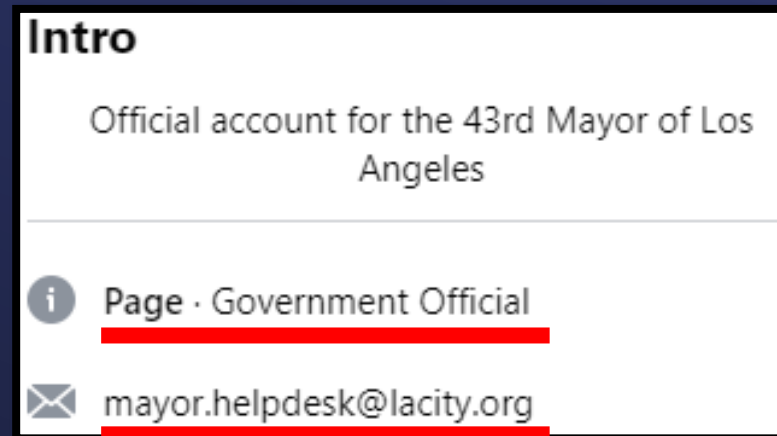
## First Amendment: Social Media

### *Garnier v. O'Connor-Ratcliff – Case Study*

- Posted about school board business:
  - Board meetings
  - Hiring processes
  - Budget planning
  - Public safety issues
- Directly related to duties
- Solicited input
- Fact specific

## First Amendment: Social Media

### Garnier v. O'Connor-Ratcliff – Example



# Garnier v. O'Connor-Ratcliff – Implications

## First Amendment: Social Media

