

Pitfalls of the Public Forum: Public Agencies' Social Media Rules May Breach First Amendment

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Public entities such as cities, counties, special districts, and law enforcement agencies have long operated websites as a means of communicating with the public. For many years, this worked well: 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*, 46 Cal. 4th 1, 37 n. 18 (2009).)

Enter Facebook, Twitter, and other social media platforms. Public entities and agencies have joined the revolution and now regularly use social media to interact with and provide information to community members and constituents. Two hallmarks of social media platforms, of course, are their interactivity and the ability of the public to comment on official posts. When a public entity creates a social media presence that invites public commentary, it arguably has established a public forum protected by the First Amendment.

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