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Client Alert

Social Media Isn't All ♥'s for School Board Members

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Imagine receiving 226 identical critical comments on your social media page in a 10-minute time period and not being able to delete the comments or block the poster! That is what happened to two school board members who invited the public to engage on their social media pages on school district matters.

Specifically, the Ninth Circuit Court of Appeal recently held in *Garnier v. O'Connor-Ratcliff*, that two school board members violated the First Amendment rights of two individual parents when they deleted and hid their comments and blocked them from further posting on their social media pages. (*Garnier v. O'Connor-Ratcliff*, 513 F.Supp.3rd 1229 (9th Cir. 2022).) The court found that it did not matter that the blocked comments and individual posts were repetitive and highly critical of the board, the school district, and the superintendent. In short, the court stated that when a school board member has a social media page discussing matters concerning district business and invites the public to comment, they are creating a Constitutionally-protected free speech forum from which they cannot necessarily block or remove comments or posters they disagree with.

The facts of the case are not particularly unique in this day and age where social media is often used as a particularly powerful tool in reaching a candidate's community during school board election campaigns. Specifically, in *Garnier*, two school board members created public Facebook and Twitter pages to promote their campaigns for school board. After being elected, they continued to use their Facebook pages to post content related to school activities such as school achievements, open positions, LCAP, online surveys, and recaps of school board meetings. Two parents critical of the school board and district operations, however, routinely posted repetitive, lengthy comments. In one instance, a parent posted 226 identical and critical replies to a school board member's Twitter account in 10 minutes. In another instance, a parent posted 42 identical posts on the board member's Facebook page. (The parents never made threats or used profanity in their posts.)

Frustrated with the repetitive nature of the comments, the school board members simply began deleting or hiding the comments and when they became tired of monitoring and deleting comments, they just blocked the two parents altogether.

As a result, the parents sued the school board members personally alleging that they had violated their First Amendment rights and the federal Court of Appeal agreed with them, finding that because the board members represent a public entity and had invited the public to engage on school board matters on their social media accounts, they had created Constitutionally-protected public forums.

To be clear, the *Garnier* case does ***not*** prohibit school board members from having social media pages. It just means that in creating a public forum to discuss school business, a school board member may not have the latitude to delete posts or block people whose comments they disagree with, without infringing on their free speech rights. Accordingly, elected officials should exercise a level of caution and good judgment when maintaining a public social media presence.

To this end, some suggested considerations to help avoid the creation of a public forum with free speech protections on social media are below. These same considerations may apply to school district-run social media sites as well.

- Turn off any site comments features altogether
- Avoid engaging the public in discussions on matters concerning district business;
- Set explicit decorum standards and expectations on the social media page, including a prohibition on profanity or threats
- For board members, include a disclaimer that they are not posting on behalf of the district and not intending to create a public forum for school board business

Relatedly, school board member social media engagement can have consequences for a school district as well. It is important to remember that school board members should not be interacting with one another on social media on matters concerning school district business as the Brown Act was specifically amended in 2020 to prohibit a school board member's ability to comment or "like" another school board member's social media post or comment if the matter concerned school district business. (Government Code section 54952.2.)

Navigating the nuances of social media as a public official can be challenging. Accordingly, should you have any questions concerning this decision or how it may affect your agency, please do not hesitate to contact one of our six offices.

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