



## Memorandum

**To:** Truckee Tahoe Airport District  
**From:** Best Best & Krieger LLP  
**Date:** June 19, 2025  
**Re:** Legal Report

### **Recent Developments in Case Law**

#### **Liability Waivers**

The California Supreme Court recently ruled in *Whitehead v. City of Oakland* (California Supreme Court Case No. S284303) that public entities cannot rely on liability waivers to avoid responsibility for dangerous road conditions. The case involved a cyclist who suffered a traumatic brain injury during a charity training ride after hitting a pothole in the City of Oakland. Many associations, including the League of California Cities, filed an amicus brief urging the court to uphold the waiver citing public policy considerations. However the court held that signing a waiver did not shield the city from liability for injuries allegedly caused by dangerous street conditions and concluded that the waiver was unenforceable, as it relieved the city of liability for violating statutory duties related to public safety. Specifically, the court ruled that the waiver was unenforceable as it was “against the policy of the law” under Civil Code section 1668, to the extent it relieved the city of liability for “negligently violating a statutory duty relating to public safety” in Government Code section 835.

#### **First Amendment Regulation of Social Media Use By Public Officials**

The Ninth Circuit recently clarified in *Garnier v. O’Connor-Ratcliff* (Ninth Circuit Case Nos. 21-55118/21-55157) when public officials’ social media use constitutes “state action.” The case involved a Poway Unified School District trustee who blocked parents from the trustee’s Facebook and Twitter pages. The Ninth Circuit examined the nature of those accounts and concluded that the accounts triggered the First Amendment because they were official government accounts.

First, the Ninth Circuit found that the trustee, as president of the board of trustees of the district, had actual authority to speak on the school district’s behalf. This authority was explicitly granted by California law and the district’s bylaws, which encouraged electronic communication of district business and delegated communication authority to the board president.

Second, the Ninth Circuit determined that the trustee was purporting to exercise official authority on the trustee’s Facebook and Twitter pages. In particular, the appearance and

function of the trustee's social media pages indicated they were for official use. The trustee used the pages to inform constituents about district activities, board actions, and meeting times and even made announcements about district personnel before official public releases. The accounts were public pages that identified the trustee as the board president and included the trustee's official district email. These pages included no disclaimers that the views expressed were intended to be personal. Taken together, the court ruled that the pages exercised the trustee's official authority to speak on the district's behalf.

As a result, the trustee's use of the Facebook and Twitter pages constituted "state action," and the First Amendment limited when the trustee was able to delete comments or block persons from accessing those accounts.

To avoid unintentionally creating official accounts, public officials should:

- Determine which officials are authorized by specific local policies or State laws to speak on behalf of the locality.
- Consider creating separate official and personal accounts, and clearly distinguish them.
- If an account is intended to be a personal account, officials should include a disclaimer ("This is the personal page of \_\_\_\_\_, the views expressed are strictly my own.")
- The nature of the content shared and how the account is used (e.g., does it make official announcements, or solicit public feedback on government matters?) are crucial in determining whether state action is present. When using a personal account, it is better that the official avoid discussing issues within the jurisdiction of their agency to avoid making the nature of that personal account ambiguous.