The RISK CONNECTION

Summer/Fall 2020

LGRMS RISK CONTROL ACCG | GMA

A Service Organization of the Georgia Municipal Association and the Association County Commissioners of Georgia

ACCG Advancing Georgia's Counties.

GEORGIA MUNICIPAL ASSOCIATION

The Risk Connection is a publication of Local Government Risk Management Services, Inc., a service organization of the Association County Commissioners of Georgia and the Georgia Municipal Association, whose purpose is to educate and inform cities and counties about loss control methods and risk management. *Any questions or comments should be directed to Dennis Watts, Editor, 3500 Parkway Lane, Suite 110, Norcross, Georgia 30092, 678.686.6284, dwatts@gmanet.com.*

Please Route to the Following People:

- ☐ Administration
- ☐ Law Enforcement
- ☐ Fire/EMS
- ☐ Public Works
- ☐ Sanitation
- ☐ Attorney
- ☐ Recreation
- ☐ Water/Sewer
- ☐ Other

_____

Attwood v. Clemons

Attwood v. Clemons, --- Fed.Appx. ---- (2020)

2020 WL 3096325

Only the Westlaw citation is currently available.

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007.

See also U.S. Ct. of App. 11th Cir. Rule 36-2.

United States Court of Appeals, Eleventh Circuit.

Peter Morgan ATTWOOD, Plaintiff – Appellee,
v.
Charles W. CLEMONS, Sr., Defendant – Appellant.

No. 18-12172 |(June 11, 2020)

Attorneys and Law Firms

Eric Jacob Lindstrom, Egan Lev & Siwica, PA, Gainesville, FL, Daniel Boaz Tilley, ACLU Foundation of Florida, Inc., Miami, FL, for Plaintiff-Appellee

Jonathan L. Williams, Lash & Goldberg, LLP, Miami, FL, for Defendant-Appellant

Appeal from the United States District Court for the Northern District of Florida, D.C. Docket No. 1:18-cv-00038-MWGRJ

Before JORDAN, GRANT, and DUBINA, Circuit Judges.

Opinion

JORDAN, Circuit Judge:

*1 Peter Attwood sued Florida Representative Charles W. Clemons, Sr. for blocking him on Twitter and Facebook. In response, Representative Clemons asserted Eleventh Amendment immunity and absolute legislative immunity and moved to dismiss the complaint. The district court denied those assertions of immunity and Representative Clemons now appeals. Because Representative Clemons is not entitled to either type of immunity at this stage of the litigation, we affirm

I

The facts alleged in the complaint, which we accept as true, see *Hernandez v. Mesa,* 137 S. Ct. 2003, 2005 (2017), are as follows.

Mr. Attwood is a resident of Gainesville, Florida. He lives in District 21 of the Florida House of Representatives, where he is represented by Representative Clemons. Representative Clemons maintains Twitter and Facebook accounts which "make official statements, share information about legislative activities and other government functions, and [are used] to communicate with the public." D.E. 4 at 5.

On February 20, 2019, Mr. Attwood used his personal Twitter account to retweet a statement by a gun control activist. He linked the retweet to Representative Clemons' Twitter handle, asking the Representative to explain his vote on a recent motion to debate a bill concerning gun control. Representative Clemons then blocked Mr. Attwood on Twitter. Mr. Attwood also posted a comment on Representative Clemons' Facebook page, and Representative Clemons blocked him there too.

Mr. Attwood sued Representative Clemons in his official and individual capacities for declaratory and injunctive relief. He asserted a federal claim under 42 U.S.C. § 1983 for violations of the First and Fourteenth Amendments, and two state-law claims under Article I, §§ 4 and 5, of the Florida Constitution. The complaint alleged that Representative Clemons

unconstitutionally blocked Mr. Attwood from participating in public fora—Representative Clemons' public Twitter and Facebook accounts—based on his views. And that restriction, according to Mr. Attwood, also hindered his ability to petition his government for a redress of grievances. As noted, Representative Clemons moved to dismiss Mr. Attwood's claims. As relevant here, he argued that he was entitled to Eleventh Amendment immunity and absolute legislative immunity.

The district court denied the motion to dismiss. It ruled that the exception to Eleventh Amendment immunity set out in Ex parte Young, 209 U.S. 123 (1908), is not limited to suits against those who implement or enforce state laws or policies, and extends to state officials who act unconstitutionally in their official capacities. "[Representative] Clemons controlled his Facebook and Twitter accounts," and so "he was responsible for the challenged action[s]." D.E. 30 at 4. And because the challenged actions were not legislative activities, Representative Clemons was not entitled to absolute legislative immunity. See id. at 5–6.

II

In this interlocutory appeal, we review the denial of Eleventh Amendment immunity and absolute legislative immunity de novo. *See Summit Medical Associates, P.C. v. Pryor,* 180 F.3d 1326, 1334 (11th Cir. 1999) (Eleventh Amendment immunity); *Woods v. Gamel,* 132 F.3d 1417, 1419 (11th Cir. 1998) (legislative immunity). Eleventh Amendment immunity is an affirmative defense, and so is absolute legislative immunity. See, e.g., *Higgins v. Mississippi,* 217 F.3d 951, 953 (7th Cir. 2000) (Eleventh Amendment immunity); *Jackson v. City of Atlanta,* 73 F.3d 60, 63 (5th Cir. 1996) (absolute legislative immunity). As the "party claiming immunity from suit[,]" Representative Clemons "bears the burden of proof." *Weissman v. Nat'l Ass'n of Sec. Dealers, Inc.,* 500 F.3d 1293, 1296 (11th Cir. 2007) (en banc) (addressing an assertion of immunity at the motion-to-dismiss stage).

III

*2 The Eleventh Amendment states that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State." Const. amend. XI. As interpreted by the Supreme Court, this language bars a citizen from suing his state (or another state)—under federal or state law—unless the state waives its sovereign immunity or Congress abrogates that immunity under § 5 of the Fourteenth Amendment. See *Hans v. Louisiana,* 134 U.S. 1, 10–15 (1890); *Kimel v. Florida Bd. of Regents,* 528 U.S. 62, 72–73 (2000). [1]

The doctrine of Ex parte Young, however, is one exception to that bar. Ex parte Young, 209 U.S. at 155–56, holds that "a suit alleging a violation of the federal constitution against a state official in his official capacity for injunctive relief on a prospective basis is not a suit against the state, and, accordingly, does not violate the Eleventh Amendment." *Grizzle v. Kemp,* 634 F.3d 1314, 1319 (11th Cir. 2011). See also *Virginia Office for Protection and Advocacy v. Stewart,* 563 U.S. 247, 255 (1011) ("[W]hen a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the state for sovereign immunity purposes.").

To determine whether Ex parte Young permits a suit against a state official, we "need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.,* 535 U.S. 635, 645 (2002). See also *Stewart,* 563 U.S. at 255 (conducting the same "straight-forward inquiry"). Mr. Attwood's complaint satisfies this inquiry.

First, Mr. Attwood alleges an ongoing violation of the First Amendment. According to the complaint, Representative Clemons adorns his social media accounts with all the trappings of his state office. He uses the accounts to make official statements, to share information about legislative activities and government functions, and to communicate with the general public. See D.E. 4 at 5. He directs his Facebook followers to connect with him further through his official Florida House of Representatives contact information. See id. The posts and comments, moreover, are maintained according to the state's public records laws and are made available for public inspection. See id. at 6.

These allegations, taken as true and viewed in the light most favorable to Mr. Attwood, see *Weissman,* 500 F.3d at 1295, indicate that Representative Clemons is acting in his official capacity when he operates these social media accounts as an extension of his role in state office. As such, the social media accounts he operates may be a type of public forum under the First Amendment, and if so, Representative Clemons may not be allowed to exclude others based on their views. See *Manhattan Cmty. Access Corp. v. Halleck,* 139 S. Ct. 1921, 1930 (2019) ("When the government provides a forum for speech (known as a public forum), the government may be constrained by the First Amendment, meaning that the government ordinarily may not exclude speech or speakers from the forum on the basis of viewpoint, or sometimes even on the basis of content."). Although we do not pass on the merits of Mr.

Attwood's First Amendment claim in this interlocutory appeal, see *Verizon Md.,* 535 U.S. at 646, we note that two circuits have recently held that government officials can act in their official capacities when blocking persons from certain social media accounts related to their offices. See *Knight First Amendment Inst. at Columbia Univ. v. Trump,* 928 F.3d 226 (2d Cir. 2019) (concluding that President Trump acts in his official capacity when he tweets, and therefore violates the First Amendment when he blocks individuals from his Twitter account based on their views); *Davison v. Randall,* 912 F.3d 666, 680 (4th Cir. 2019) (holding that the chair of a county board of supervisors acted in her official capacity as a municipal official when she created and administered the chair's Facebook page and thus "acted under color of state law" when she banned an individual from that page).

Second, Mr. Attwood requests relief properly characterized as prospective. The complaint seeks a declaration that the Twitter and Facebook accounts are public fora and that Representative Clemons engaged in unconstitutional viewpoint discrimination by blocking him from those accounts. Mr. Attwood also seeks an injunction requiring Representative Clemons to unblock him. An injunction is necessarily prospective, and the Supreme Court has held that declaratory relief is treated the same when it exposes the defendant to no more liability than an injunction. See *Verizon Md.,* 535 U.S. at 646 (noting that declaratory relief "seeks a declaration of the past, as well as the future," but is permitted under Ex parte Young because "[i]nsofar as the exposure to the State is concerned, the prayer for declaratory relief adds nothing to the prayer for injunction").

Representative Clemons nevertheless contends that he is entitled to Eleventh Amendment sovereign immunity. He argues that the suit is really against the Florida House of Representatives, that Ex parte Young only applies to those officials who are responsible for implementing and enforcing state laws and policies, and that he is "not a state officer who has authority to enforce or implement a law." See Appellant's Br. at 10-11, 14–16.

At this stage of the proceeding, Representative Clemons has not carried his burden of demonstrating that he is entitled to Eleventh Amendment immunity. As the district court correctly recognized, Ex parte Young is not as narrow as Representative Clemons maintains. "[I]t has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law," *Hafer,* 502 U.S. at 30 (quoting *Scheuer v. Rhodes,* 416 U.S. 232, 237 (1974)), and Representative Clemons cites no cases limiting Ex parte Young in the way he proposes. Our own precedent indicates that the constitutional deprivation need not be pursuant to the enforcement of a state law or policy; any act by a state official—as long as it is performed under color of state law —is sufficient. See *Luckey v. Harris,* 860 F.2d 1012, 1015 (11th Cir. 1988) ("All that is required is that the official be responsible for the challenged action."). Indeed, in *Armstead v. Coler,* 914 F.2d 1464, 1467–68 (11th Cir. 1990), we held that Ex parte Young permitted injunctive relief against Florida officials who had denied appropriate care and habitation to mentally disabled patients at a state hospital.

Mr. Attwood has alleged that Representative Clemons controls and maintains the Twitter and Facebook accounts at issue, made the (allegedly unconstitutional) decision to block him, and has the power to unblock him. Representative Clemons, who does not deny that he has control over the social media accounts and the power to unblock Mr. Attwood, is therefore a proper defendant under Ex parte Young for Mr. Attwood's § 1983 claim.

The concurrence argues that we should affirm the denial of Eleventh Amendment immunity on a different ground—that Mr. Attwood does not allege official capacity claims at all and seeks relief against Representative Clemons in only his individual capacity. We take no position on the concurrence's view. That issue has not been raised or briefed. Representative Clemons has never argued that the complaint states only individual as opposed to official capacity claims. In fact, Mr. Attwood and Representative Clemons argued both in the district court and on appeal that the complaint states official capacity claims. We take the case as it come to us and as framed by the parties. See *United States v. Sineneng-Smith,* 140 S. Ct. 1575, 1579 (2020) ("In our adversarial system of adjudication, we follow the principle of party presentation."). And there are no "extraordinary circumstances" requiring us to take up the issue sua sponte. See id. at 1581. The parties and the district court so far have agreed that the claims are against Representative Clemons in his official capacity, and Representative Clemons is free to raise different arguments on remand. [2]

IV

*4 Representative Clemons also asserts that he is entitled to absolute legislative immunity. See Appellant's Br. at 24–26. We are not persuaded.

As a state legislator, Representative Clemons may assert absolute legislative immunity. See *Tenney v. Brandhove,* 341 U.S. 367, 373 (1951). But asserting such absolute legislative immunity and proving it are different things, because that immunity is confined to the activities that further an elected official's legislative duties. See *Brown v. Crawford Cty., Ga.,* 960 F.2d 1002, 1012 (11th Cir. 1992)

("Absolute legislative immunity extends only to actions taken within the sphere of legitimate legislative activity.") (quotations omitted). "The position of the individual claiming legislative immunity, then, is not dispositive. It is the nature of the act which determines whether legislative immunity shields the individual from suit." *Yeldell v. Cooper Green Hosp., Inc.,* 956 F.2d 1056, 1062 (11th Cir. 1992). We have distinguished between acts that are legislative in nature and thus shielded (like voting, speechmaking on the legislative floor, committee reports, committee investigations and proceedings), and those that are not (like public distribution of press releases and newsletters, administration of penal facilities, and personnel decisions). See id. (collecting cases).

Representative Clemons' official Twitter and Facebook accounts are not legislative in nature; they are not "an integral part of the deliberative and communicative processes by which [elected officials] participate in committee and House proceedings." *Gravel v. United States,* 408 U.S. 606, 625 (1972). We agree with the district court that, based on the allegations in the complaint, the official Twitter and Facebook accounts are much more like the public distribution of a press release than a speech made on the floor of the assembly. See *Hutchinson v. Proxmire,* 443 U.S. 111, 133 (1979) (holding that a congressman's newsletters and press releases "are not entitled to the protection of the Speech or Debate Clause"). Representative Clemons concedes that he "would not be entitled to immunity for the statements he makes on his social media pages," Appellant's Br. at 27, and if he is not entitled to immunity for what he says on Twitter and Facebook it is difficult to see how he is entitled to immunity for excluding persons from those same social media accounts. Because Representative Clemons' alleged conduct with respect to his Twitter and Facebook accounts was not legislative in nature, he is not entitled to absolute legislative immunity at this stage of the case.

Representative Clemons also says that his Twitter and Facebook accounts are private social media akin to a campaign website, and it would therefore violate his own First Amendment rights for a court to regulate his own speech. See id. at 24–26. We decline to address this argument because it goes to the merits of Mr. Attwood's First Amendment claim and not to Representative Clemons' assertion of absolute legislative immunity.

IV

The district court did not err in rejecting, at this stage of the case, Representative Clemons' claims of Eleventh Amendment immunity and absolute legislative immunity.

AFFIRMED.

GRANT, Circuit Judge, concurring in part:

I agree with the majority about legislative immunity in this case. It is not available, so the individual capacity claim should go forward. I respectfully disagree, however, with the majority's conclusion that any official capacity claim exists to go forward. The complaint seeks declarative and injunctive relief against Clemons; specifically, it targets Clemons's actions on his social media accounts. Though the complaint states that its claims are against Clemons in his official as well as his individual capacity, that label is not enough. Painting stripes on a horse doesn't turn it into a zebra, and no matter how the plaintiff names his claims, they still are what they are. Because the complaint targets Clemons not as a proxy for the sovereign, but for personal conduct that will not be repeated by his successor-in-office, the suit involves only an individual capacity claim—and it is for that reason that Clemons may not invoke sovereign immunity.

I begin by noting why we need to parse out whether the plaintiff has brought both an official capacity and an individual capacity claim at this stage. The Supreme Court has, in the posture of reviewing a motion to dismiss, instructed that "courts should look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars the suit." *Lewis v. Clarke,* 137 S. Ct. 1285, 1290 (2017). It makes sense that the Supreme Court has treated this question as a threshold inquiry: if the state employee is sued in his official capacity, then the action "is in essence against a State even if the State is not a named party," and the state is ordinarily "entitled to invoke the Eleventh Amendment's protection." Id. But if the sovereign would not be affected by the suit, there is no need to consider whether Ex parte Young would allow the suit to go forward. After all, under Ex Parte Young, a "suit alleging a violation of the federal constitution against a state official in his official capacity for injunctive relief on a prospective basis is not a suit against the state, and, accordingly, does not violate the Eleventh Amendment." *Grizzle v. Kemp,* 634 F.3d 1314, 1319 (11th Cir. 2011). And that rule can only come into play after deciding whether or not a suit is in fact brought against a state official in his official, rather than only individual, capacity.

This inquiry, moreover, does not involve any factual determinations or credibility judgments; it is directed at the legal nature of the complaint's allegations, not at the factual truth of any of those allegations. That is yet another reason this issue—whether the complaint alleges a claim that is "in essence" against the sovereign—is a threshold question that we should seek to answer before considering any exception to sovereign immunity. And as the Supreme

Court has recognized, "a question of immunity is separate from the merits of the underlying action for purposes of the Cohen test even though a reviewing court must consider the plaintiff's factual allegations in resolving the immunity issue." *Mitchell v. Forsyth,* 472 U.S. 511, 528–29 (1985).

*6 Guiding our assessment, the Supreme Court directs that we "may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign." *Lewis,* 137 S. Ct. at 1290. [1] We ourselves have explained that a complaint caption indicating an official capacity claim "is—in and of itself—of little significance." *Lundgren v. McDaniel,* 814 F.2d 600, 604 (11th Cir. 1987). The "complaint itself, not the caption, controls the identification of the parties and the capacity in which they are sued." *Welch v. Laney,* 57 F.3d 1004, 1010 (11th Cir. 1995).

And the capacity in which someone is sued makes a real difference. A suit "against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will v. Michigan Dep't of State Police,* 491 U.S. 58, 71 (1989). Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Yeldell v. Cooper Green Hosp., Inc.,* 956 F.2d 1056, 1060 (11th Cir. 1992) (quoting *Kentucky v. Graham,* 473 U.S. 159, 165–66 (1985)). So in "an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself." *Lewis,* 137 S. Ct. at 1291. That means an official capacity suit targets not the personal behavior of an official like Clemons, but his enforcement of, or action carrying out, a government policy. And the result of such a suit, if successful, is that both the current officeholder and any future officeholder will be barred from carrying out whatever policy is at issue.

By contrast, individual capacity suits "seek to impose personal liability upon a government official for actions he takes under color of state law." *Yeldell,* 956 F.2d at 1060 (quoting *Graham,* 473 U.S. at 165–66). And "to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." Id. (quoting *Graham,* 473 U.S. at 166 (emphasis in original)). The "plaintiff in a personal capacity suit need not establish a connection to governmental 'policy or custom.' " *Hafer v. Melo,* 502 U.S. 21, 25 (1991) (quoting *Graham,* 473 U.S. at 166–67). That means an individual capacity suit targets the individual behavior of an official like Clemons as he carries out his state duties. And a successful suit may result in an award of monetary damages, declarative relief, or injunctive relief to correct the constitutional violation.

I pause here to note a source of understandable confusion. Both individual capacity and official capacity claims brought under § 1983 require action "under color of state law"— meaning that both types of claims necessarily arise out of conduct that is connected in some way to the state employee's authority as a government official. But the mere fact that a state employee was acting under color of state law does not mean that a claim against that employee targets him in his official capacity. That is true even though—again, confusingly—the phrase "acted in an official capacity" is often used interchangeably with "acted under color of state law." So the term "official capacity" can mean one thing when describing the capacity in which an official acted, and another when describing the capacity in which the official is sued. See *Hafer,* 502 U.S. at 26.

That is a crucial distinction, but it is one that the majority opinion (like the district court opinion below) appears to elide. See Maj. Op. at 6–7 (stating that plaintiff's allegations "indicate that Representative Clemons is acting in his official capacity when he operates these social media accounts as an extension of his role in state office"). A "defendant acts under color of state law when she deprives the plaintiff of a right through the exercise of authority that she has by virtue of her government office or position." *Butler v. Sheriff of Palm Beach Cty.,* 685 F.3d 1261, 1265 (11th Cir. 2012). "The dispositive question" in the color-of-state-law inquiry "is whether the defendant was exercising the power she possessed based on state authority or was acting only as a private individual." Id. But the "official" nature of a defendant's acts—which may resolve the under-color-of-state-law inquiry—does not determine whether a particular claim is against a defendant in his official capacity. Instead, we must analyze the complaint to determine whether the requested relief operates against the office the individual holds—or rather, against the individual himself.

Hafer v. Melo provides a useful guide. See 502 U.S. at 22– 23. There, the newly elected auditor general of Pennsylvania fired eighteen employees shortly after assuming her position. Id. at 23. Several terminated employees alleged that Hafer fired them because of their political affiliation and filed suit seeking damages from her personally. Id. Hafer argued that because the suit concerned an official action—her decision to fire the employees—the suit must be against her in her official capacity. Id. at 26. It was in her interest to characterize the claim that way because an official capacity action for damages would have been barred. See *Will,* 491 U.S. at 71 ("[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983."). But the Supreme Court permitted the individual suit against Hafer to go forward, explaining that "the phrase 'acting in their official

capacities' is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury." *Hafer,* 502 U.S. at 26 (quoting *Will,* 491 U.S. at 71).

So the question of whether a government employee acted under color of state law is not a replacement for the question of whether the claim is targeted at the employee in an official capacity or in an individual capacity; action under color of state law is a requirement for either type of § 1983 claim.[2] Only if the defendant acted under color of state law and the complaint seeks relief against the sovereign do we need to consider exceptions to sovereign immunity. No sovereign means no sovereign immunity, and no sovereign immunity means no exceptions to sovereign immunity.

*8 These first pages have admittedly been a lengthy windup; the doctrine distinguishing official capacity and individual capacity claims is complicated. But applying that doctrinal framework in this case leads to the conclusion that Clemons is targeted only in his individual capacity, not in his official capacity. The complaint shows that Clemons acted with authority connected to his position as a state representative when he operated his social media accounts and blocked the plaintiff from those accounts—this was, as the majority opinion notes, an "extension of his role in state office." Maj. Op. at 7. Because a "person acts under color of state law when he acts with authority possessed by virtue of his employment with the state," Clemons was acting under color of state law for purposes of the individual capacity § 1983 claim. *Almand v. DeKalb Cty.,* 103 F.3d 1510, 1513 (11th Cir. 1997).

But that does not mean the plaintiff's complaint targets Clemons as a proxy for the sovereign. The complaint seeks no relief from the office that Clemons holds, alleges no Florida House of Representatives policy or custom regarding representatives' social media accounts, and requests no remedy that will in any way operate against the Florida House of Representatives or any other state entity.

The only relief that the complaint seeks is a declaration and "an injunction requiring" Clemons to "unblock" the plaintiff from his "official Twitter and Facebook accounts" and prohibiting Clemons from "blocking Plaintiff or others from the @ChuckClemons21 Twitter and Facebook accounts on the basis of viewpoint in the future." Crucially, if Clemons were to leave office, it would make no sense to have his successor-in-office automatically assume his role in the litigation. The account at issue belongs to Clemons; it is not an account for whatever person happens to currently hold that office. If Clemons were no longer a legislator, there is no reason to believe that Attwood would have any further interest in regaining access to Clemons's Twitter and Facebook accounts—and his successor-in-office would have no ability to manage those accounts in any event.

Even if Attwood succeeds, then, ordering his requested relief "will not require action by the sovereign or disturb the sovereign's property"—showing that this "is not a suit against [Clemons] in his official capacity." See *Lewis,* 137 S. Ct. at 1291 (citation omitted). Indeed, the only way we know that the complaint attempts to make an official capacity claim is that it says so in a single conclusory paragraph, and as we know from *Lundgren,* that is not enough. See 814 F.2d at 604; see also *Lewis,* 137 S. Ct. at 1290. Without more, the complaint does not contain an official capacity claim—and there is no need to consider whether Ex parte Young would nonetheless allow such a claim to go forward.

Davison v. Randall—cited approvingly in the majority opinion—shows why this is the right way to analyze these questions in this type of case. See Maj. Op. at 7 (citing *Davison,* 912 F.3d 666, 680 (4th Cir. 2019)). In *Davison,* the Fourth Circuit's opinion addressed a similar action against a government official (there, the chair of a county board of supervisors) for blocking a constituent from a social media account. In that case, as in this one, the plaintiff sued the government employee in both her individual and official capacities. 912 F.3d at 676. The Fourth Circuit affirmed a declaratory judgment against the government employee on the § 1983 individual capacity claim, explaining that the chair of a county board acted "under color of state law" because she "created and administered the Chair's Facebook Page to further her duties as a municipal official" and used the Facebook page "as a tool of governance." Id. at 680 (citation omitted). The court also concluded that the Chair "engaged in unconstitutional viewpoint discrimination" when she banned a constituent from her County Chair Facebook page. Id. at 688.

But the Fourth Circuit then affirmed the district court's dismissal of the official capacity claim against the Chair. Compare Maj. Op. at 7 (describing *Davison* as holding "that government officials can act in their official capacities when blocking persons from certain social media accounts related to their offices"), with *Davison,* 912 F.3d at 690 (affirming the district court for "rejecting Davison's official capacity claim"). The court explained that while individual capacity suits "seek to impose personal liability upon a government official for actions" taken under color of state law, official capacity suits are treated as actions against the government entity itself. Id. at 688 (quoting *Graham,* 473 U.S. at 165). Because no policy or custom of the county board of supervisors played a role in the Chair's decision to block the constituent from her Facebook page, there was no official capacity claim; the claim was against the person,

not the government. Id. at 689–90. *Davison* recognizes, then, that determining whether an official acted under color of state law does not answer the question of whether a plaintiff properly brought an official capacity claim.

While the complaint in this case plausibly alleges that Clemons acted under color of state law, I do not see how it alleges any claim against Clemons in his official capacity. For that reason, we may deny Clemons's invocation of sovereign immunity without considering Ex parte Young.

* * *

The intersection of politics, government, and social media has generated an increasing number of cases, and I trust that more are on the horizon. It is thus crucial that we analyze these claims with precision. Here, I would conclude that the plaintiff has sued Clemons in his individual capacity only. Because his complaint does not actually raise an official capacity claim against Clemons as a proxy for the sovereign, only the individual capacity claim should survive. I respectfully concur in the denial of legislative immunity, and otherwise find that no official capacity claim was presented for which sovereign immunity could be considered.

All Citations

--- Fed.Appx. ----, 2020 WL 3096325

Footnotes

1 To the extent that Representative Clemons is being sued in his individual capacity under § 1983, there is no Eleventh Amendment bar. See *Hafer v. Melo,* 502 U.S. 21, 3031 (1991) ("[T]he Eleventh Amendment does not erect a barrier against suits to impose 'individual and personal liability' on state officials."). We therefore limit our discussion in this section to the official-capacity § 1983 claim against Representative Clemons.

2 Representative Clemons also argues that Mr. Attwood's official capacity state-law claims—which are based on the Florida Constitution—are barred by Eleventh Amendment immunity. See Appellant's Br. at 19–20. Representative Clemons is correct that Ex parte Young is "inapplicable in a [federal] suit against state officials on the basis of state law." *Pennhurst State Sch. & Hosp. v. Alderman,* 465 U.S. 89, 106 (1984). See e.g., *Hays Cty. Guardian v. Supple,* 969 F.2d 111, 125 (5th Cir. 1992) (holding that the Eleventh Amendment bars state-law claims against university officials in their official capacities). But Mr. Attwood has represented in his brief that he is pursuing the state-law claims against Representative Clemons only as individual-capacity claims. See Appellant's Br. at 13. We accept Mr. Attwood's concession and deem any state-law official-capacity claims abandoned for good. We therefore need not address Representative Clemons' argument about those claims, and leave the individual-capacity state-law claims for the district court on remand.

1 The Supreme Court therefore has instructed us to make this determination as part of resolving an invocation of sovereign immunity, even though the party invoking sovereign immunity may well prefer to be sued in an official capacity. That preference, of course, may mean that the party is unlikely to point out the absence of an official capacity claim.

2 Nor does this Court's decision in *Luckey v. Harris* allow us to sidestep that inquiry. See 860 F.2d 1012, 1015 (11th Cir. 1988). The majority opinion suggests that *Luckey* provides a clear rule permitting an official capacity suit on these facts. Maj. Op. at 9 ("Our own precedent indicates that the constitutional deprivation need not be pursuant to the enforcement of a state law or policy; any act by a state official—as long as it is performed under color of state law—is sufficient." (citing *Luckey,* 860 F.2d at 1015)). But the phrase from *Luckey* that the majority opinion relies on—"All that is required is that the official be responsible for the challenged action"—was a specific rejoinder to a specific argument. *Luckey,* 860 F.2d at 1015. In *Luckey,* a set of governmental defendants contended that they could not be sued for injunctive relief in their official capacities because they had not personally taken any action that violated the Constitution in the events that gave rise to the case (rather than, say, supervising others who actually took the illegal action). See id. Taken in context, then, the rule statement from *Luckey* does not move the needle in this case—it addresses whether official capacity claims can be brought against officials who haven't themselves taken any personal actions, not how to distinguish between individual capacity and official capacity claims against officials that everyone agrees have acted.

Editor Notes: Social Media

We are living in very interesting times, and most of us have opinions on events of the day. But did you know that sharing your opinions on social media, even your own personal account, could cost you your job? In the last few weeks, we have seen a couple incidences where member employees have been reprimanded or dismissed from their job, for sharing their opinions on social media.

With that said, I would suggest you do a few things.
1. Review or develop your organization's social media policy (see attached model policy).
2. Review your social media policy with your employees. Educate them that sharing their opinions on social media, even within their personal accounts, may affect their employment.

Included in this issue is a copy of our social media model policy developed by the law firm Elarbee Thompson, and an article by James Satterfield, President and CEO of Crises Risk who discusses this topic. His bottom line which makes so much sense is " If you are commenting on current or other issues and in doing so , do not follow the wording, intent, and spirit of your city or county mission statement, then you should not be commenting". Please call or write with any questions or concerns.

.....

Why Should You Comment on Social Media in a Crisis?

By **James Satterfield,** President and CEO of Crises Risk

Today, we live in a different world. COVID-19. Recession. Social Justice. Violence. These combined with social media have heightened the impacts on our communities and each of us personally.

Thank you for your service to your community. Whether you are an employee or an elected official, you can make a difference. Today, your words and social media messages will be viewed through the lens created by the impacts people are seeing and experiencing. We have seen controversy escalate in ways that the writer of a social media post did not expect.

What you say on social media reflects on you personally, your family, and community as a whole. We learned growing up that if you cannot say something good, do not say anything. That childhood lesson is truer today than when you first heard it. Your words are no longer your words. They are owned by your organization. They will not change public opinion and can create a crisis by themselves.

As you think about posting or responding on social media, know that the reader will interpret your comments and pictures in light of the Crisis ABCs™ – ANGER, BLAME, and CONCERN. Can your message create ANGER? Will you or government entity experience BLAME as a result? Will the reader suffer CONCERN for future events?

We have all seen recent stories related to use of force in response to violence events. Everyone's perspective is based on their life experiences. To some, this may an example of racism or double standards. Others may focus on the fear of loss of their business or income. Many times, sides are taken immediately, and intent is assigned. Loss of life is never a good outcome for anyone. No one deserves to die for an action that does not physically harm another person.

Statements like "he broke the law and should have been killed." Will only extent the gap in communications. Similarly, "not every police response to violence is a racist act." Will cause the gap to increase. Statements should focus on understanding why someone could be angry or want to cast blame. Likewise, fear is a common for everyone in a crisis. People are afraid it could happen to them or someone in their family. Whether accusations are a wrongful arrest or false of abuse of power harm, mistrust increases.

There is a term called the fog of war. Meaning that in the heat of battle, no one has a clear vision of what is happening and knows what to do or say. The same thing is true in a crisis. Recognize that we are all making decisions based on the limited perspectives of the actual and emerging facts. Your words need to bring us back to what your local government entity stands for and how to help.

The communities that we live in have established missions, visions, and goals. Do your words support these common commitments or are they in conflict? If your words are in conflict in any way with them, you have placed your personal opinions above your job and your community. Is your posting worth more than your job

If you don't know your government's mission find out. Identify services or programs that are good examples of implementing your mission. Citizens look for

government entities to protect them, provide needed services, and to be there at a time of need. Clearly, in a crisis they will not want to hear about a new recreation program. People look for reassurance from what the organization has done in the past in other areas to accept what the government entity can do here in the crisis for them. Leadership, responsiveness, and hope are major themes.

Social media can create heroes or villains overnight. Social media can destroy in a few characters what took years to build. Your words will shape the consequences.

In a crisis, your initial focus is to let people know that you are concerned and are doing all you can to help them. This approach support's your community's vision and mission. If it does not, don't say it. Understand this incident is different from most events that you will ever face.

Every crisis is a human crisis. People will seek to know and understand your DECISIONS, ACTIONS, and WORDS. Simple honest answers are best.

Below are 10 common crisis communications traps:

In a crisis, everything you learn initially is wrong. Crises are fluid. The initial information that you have will turn out to be incorrect or incomplete. Statements made based upon erroneous facts will escalate negative reactions. Do not make initial statements wherever possible.

1. The facts will change. Assuming a fact is not knowing a fact. Your assumptions are opinions. When the underlying facts change, your earlier wrong statements place your credibility at risk. Avoid making any statements wherever possible. Better to make a statement late than be wrong. People can accuse a late response. They will not forget you were wrong.

2. If you are explaining, you are losing. There is no explanation that can change an outcome. If you are explaining, you are speaking on the problem and trying to make it go away. You can't. You need to speak to the solution. You cannot make the problem disappear by any explanation, ever. If you feel the need to explain. STOP. Do not explain.

3. You can't tell people what you want to be true. Crises are personal. You want the facts to be that it couldn't have happened that way. Wanting everything to be okay does not make it true. You can only share facts that have been validated.

4. Thinking someone didn't know or did nothing wrong. You know your fellow employees. In many cases, you immediately give them the benefit of the doubt regarding what they did or did not know or do regarding most things. These assumptions will prove wrong many times in a crisis. You cannot rely on this information in your DECISIONS, ACTIONS, and WORDS.

5. The impacts from this event will likely be traumatic. By its nature, crises are events where people experience extremely negative personal outcomes. In many cases, they will be unable to overcome them. Their responses to you will be driven by this realization. You can only try to show empathy.

6. Interpersonal rifts get worse in a crisis. Whatever animosity existed prior to the crisis escalates as people experience the impacts. You will be unable to resolve preexisting prejudices and conflicts in a crisis. Do not try to mend fences between people immediately in a crisis. Their differences will accelerate negative responses to your DECISIONS, ACTIONS, and WORDS.

7. Understand that no matter what you do or say, it will never be enough when someone is harmed. The loss of a family member is a

catastrophic to everyone involved. As a family realizes the loss, they will seek accountability to be placed on someone. It is impossible to know the level of the personal loss. You can only try to show empathy.

8. You can't bluff or puff your way though. In the course of a normal business as usual day, you can bluff your way through answers to questions

and resolving problems. A crisis is business unusual. Resolution of a crisis is not your day job. A crisis is complex, and the impacts are severe. Do not commit or try to have the answers to all the questions and issues. Listen and refer to Leadership.

9. You are not smarter than everyone else. It is not a matter of intelligence. You cannot understand all the underlying issues and concerns or have solutions to resolve. Egos should be left at home in a crisis. At best, you are just there to listen and pass information on to Leadership.

Model Local Government Social Media Policy

Please click **HERE** for printable version of the policy.

A. Purpose and Intent.

The purpose and intent of this policy is to establish guidelines for employees who engage in social media activity as defined herein. This policy is not intended to prohibit any employee's personal expression in general or through social media activity in particular; however, because such activity can adversely affect the efficiency and effectiveness of [City/County] operations, as well as undermine public trust and confidence, a certain amount of regulation is necessary and appropriate. This policy therefore attempts to strike a reasonable balance between the employees' interest in engaging in social media activity and the [City/County]'s interest in preventing unnecessary disruption to or interference with its operations and relationship to the public it serves.

B. Definitions.

1. For purposes of this policy, the term "social media" is defined as the online technologies through which employees and other individuals engage in "social media activity" as defined below. In most

cases, the term refers to internet-based websites such as MySpace®, Facebook®, Twitter®, LinkedIn®, Google+®, YouTube®, Tumblr®, and Blogger®. Online social media technologies covered by this policy also include, but are not limited to, such applications as web logs/blogs, video logs/vlogs, message boards, podcasts, and wikis.

2. For purposes of this policy, the term, "social media activity" is defined as the act of sharing information or otherwise communicating through social media, including, but not limited to, the posting, uploading, reviewing, downloading, and/or forwarding of text, audio recordings, video recordings, photographs/images, symbols, or hyperlinks.

C. Scope of Policy.

1. This policy applies to all employees of the [City/County] without regard to whether their social media activity is conducted in or outside the workplace, while on or off-duty, or anonymously or through the use of pseudonyms.

2. This policy applies to all employees of the [City/County] without regard to job title, position or rank; however, with the approval of _____, the [Police/Sheriff's Department/Office] and any other department or affiliated agency of the [City/County] having special or unique concerns pertaining to its employees' social media activity may adopt and implement more restrictive SOP's or other internal rules narrowly designed to address such concerns.

D. Prohibitions on Social Media Activity.

1. All employees of the [City/County] should remain mindful that, as public servants, they are generally held to higher standards than the general public with regard to their on-duty and off-duty conduct, professionalism, and ethics. As a result, certain social media activity that may be tolerated or even acceptable in the private sector may nevertheless constitute a violation of this policy.

2. Each employee of the [City/County] who engages in social media activity must take personal responsibility for ensuring that such activity is consistent with all policies of the [City/County], including, but not limited to, those pertaining to making false or misleading statements, promoting or endorsing violence or illegal activity, promoting or endorsing the abuse of alcohol or drugs, disparaging individuals or groups based on race, ethnicity, national origin, gender, sexual orientation, religion, disability, or other characteristics protected by law, or otherwise engaging in conduct unbecoming an employee of the [City/County], bringing discredit to the [City/County], or interfering with or detrimental to the mission or function of the [City/County].

3. Employees must refrain from engaging in any social media activity which disqualifies them from performing, or in any way reasonably calls into question their ability to objectively perform, any essential function of their jobs. Examples of such functions include, but are not limited to, testifying, making hiring or promotion decisions or recommendations, conducting performance evaluations, and determining eligibility for [City/County] programs.

4. While any employee, at his/her discretion, may engage in social media activity with any other employee(s) consistent with the prohibitions, limitations and restrictions, and guidelines of this policy, no employee may be required or otherwise compelled to engage in such activity with another employee.

5. No employee, whether for purposes of engaging in social media activity or otherwise, may disclose or otherwise reveal any privileged or confidential information of the [City/County], any other current or former employee of the [City/County], or any applicant for employment with the [City/County].

E. Limitations and Restrictions on Social Media Activity.

1. Employees are strongly discouraged from disclosing or otherwise revealing their status as employees of the [City/County] through social media and, except as otherwise authorized in advance by _____, are strictly prohibited from directly or indirectly representing themselves to be speaking on behalf of the [City/County]. Similarly, in the absence of prior approval, employees' social media activity should not reveal or depict the [City/County]'s adopted logos, seals, symbols, uniforms, patches, badges, or similar items identified with the [City/County].

2. Except as otherwise authorized in advance by _____, if an employee's status as an employee of the [City/County] is disclosed, revealed, or otherwise made apparent in connection with his/her social media activity, his/her social media activity must include a prominently displayed disclaimer to the effect that the activity reflects only the employee's personal views or opinions and not those of the [City/County]; provided, however, that no disclaimer will shield an employee from the imposition of appropriate corrective and/or disciplinary action for social media activity which otherwise violates this policy. Employees should recognize that social media activity is generally more likely to violate this policy and other policies of the [City/County] if their status as [City/County] employees is disclosed or revealed in connection therewith.

3. Except as otherwise authorized in advance by _____, no employee may utilize [City/County] computers or equipment for purposes of engaging in social media activity.

4. Except as otherwise authorized in advance by _____, no employee, whether for purposes of engaging in social media activity or otherwise, may post or upload any information, audio recordings, video recordings, photographs/images, etc. from [City/County] computers or equipment.

5. To preserve the continuity of the [City/County]'s message, ensure accuracy, and avoid unnecessary confusion in the community, except as otherwise authorized in advance by _____, employees should refrain from engaging in any social media activity that purports or serves to announce or explain the details of [City/County] programs, projects, activities, initiatives, or events.

6. Exceptions to the above-stated limitations and restrictions may be authorized by _____; provided, however, that any request for such an exception represents a promise by the employee that, if approved, the disclosure of information, photographs, audio, video, etc. via social media activity will be fully consistent with the letter and spirit of this and all other policies of the City, any internal SOP's or rules adopted by his/her department director, as well as any laws pertaining to copyrights, trademarks, trade secrets, patents, and privacy and reputational rights.

7. The [City/County] reserves the right to require any employee to remove immediately any posted or uploaded text, audio recordings, video recordings, photographs/images, etc. (even if previously approved) if such posted material constitutes a violation of this policy or other [City/County] policies.

F. Application to Other Policies.

All personnel policies of the [City/County] relating to employee conduct apply equally to conduct that occurs through social media. This includes, but is not limited to, policies relating to discrimination, harassment, retaliation, workplace violence, conflicts of interest, and political activity. Any conflicts or inconsistencies between this policy and any one or more other policies shall be resolved by _____.

G. Duty to Report.

All employees have an ongoing duty to report any violations of this policy by any other employee. The [City/County] considers this duty to report to be a critical component of its efforts to enforce this policy, and thereby ensure the safety, well-being, morale, and efficiency of its employees, preserve its reputation and goodwill in the community, and avoid or minimize unnecessary disruptions to or interference with its operations and service to the public.

H. No Expectation of Privacy in Social Media Activity.

1. [City/County] employees should be aware that social media activity is not secure or private, even if active steps are taken to restrict access. Once information has been posted or exchanged via social media, it is generally trackable, traceable, and accessible indefinitely. For this reason, and consistent with the [City/County]'s current [Name of Policy re: Employee Use of Internet & Email], employees should have no expectation of privacy in any social media activity conducted in the workplace and/or on-duty or in any social media activity which otherwise directly or indirectly relates to or affects the [City/County], any of its departments, or its employees.

2. The [City/County] reserves the right to inspect or monitor any social media activity engaged in by its employees using [City/County]-owned computers or other electronic equipment or devices. In addition, employees may be required to provide access to any social media websites or other applications in which they participate upon a determination by the City that there is reasonable suspicion to believe that such access will reveal evidence of a violation of this policy or any other

[City/County] policy.

I. Workplace and/or On-Duty Usage. [OPTIONAL]

Because it recognizes that social media is an emerging form of communication, the [City/County] permits employees to engage in limited social media activity in the workplace and/or while on duty, similar to receiving a personal text message or a telephone call of limited duration. Employees choosing to do so, however, are expected and required to use proper judgment and discretion, recognizing that even very brief periods of social media activity can collectively amount to significant periods of time. Supervisors are authorized to restrict or prohibit workplace/on-duty social media activity, as appropriate.

J. Corrective and/or Disciplinary Action; Other Potential Consequences.

1. Employees engaging in social media activity in violation of this policy will be held accountable, and corrective and/or disciplinary action, up to and including termination of employment, may be taken in accordance with the [City/County]'s disciplinary policies procedures.

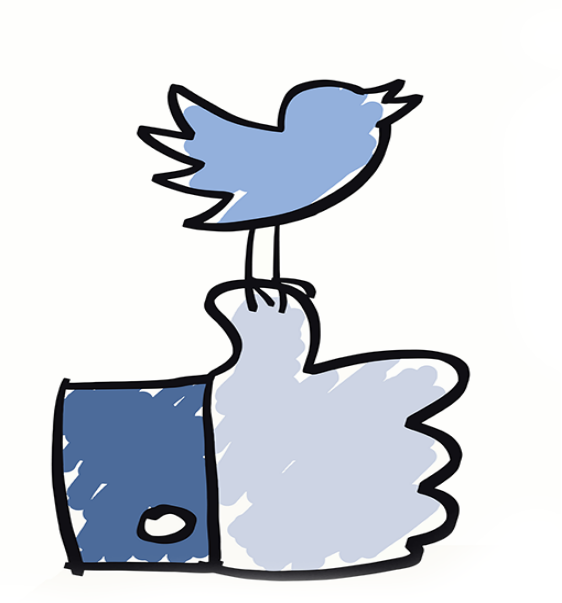
2. If an employee is sued in part due to his/her social media activity under circumstances where the [City/County] would ordinarily provide a defense and/or indemnify the employee, the [City/County] reserves the right to withhold or withdraw such defense or indemnification in the event any such activity is found to violate this policy or any other policy of the [City/County].

K. Interpretation and Application.

1. Nothing in this policy is intended to or will be applied in a manner that violates any employee's constitutional rights, including rights to freedom of speech, expression, and association, or federal or state rights to engage in any statutorily-protected activity.

2. Any employee unsure about the application of this policy to any particular social media activity should seek guidance from _____ _____ before engaging in such activity.

3. This policy is intended for internal use of the [City/County] only and should not be construed as establishing a higher duty or standard of care for purposes of any third party civil claims against the [City/County] and/or its employees. A violation of this policy by an employee provides only a basis for corrective and/or disciplinary action against such employee by the [City/County].



Analysis Atwood v. Clemmons

By James Westbury, Property and Liability Claims Manager

The defendant in this case, Charles Clemons, is a member of the Florida House of Representatives who uses Facebook and Twitter to "make official statements, to share information about legislative activities and government functions, and to communicate with the general public." The plaintiff, Peter Attwood, is a member of the general public who Clemons blocked from the social media accounts after linking a retweet to Clemons' accounts that he disagreed with.

This lawsuit followed in which Attwood sued Clemons in federal district court in his official and individual capacities seeking declaratory and injunctive relief under 42 U.S.C. § 1983 on the basis that Attwood's First Amendment rights had been violated. Clemons moved to dismiss the lawsuit, arguing that the lawsuit is barred by the Eleventh Amendment, which prevents actions against a state in federal court, and based upon absolute legislative immunity. The district court denied the motion, and this appeal followed.

The U.S. Court of Appeals for the Eleventh Circuit held that the motion to dismiss had been properly denied by the district court. Finding that the Eleventh Amendment did not apply, the court reasoned that the suit sought only declaratory and injunctive relief on a prospective basis. The court evaluated the nature of Attwood's claims—that Clemons was "acting in his official capacity when he operated these social media accounts as an extension of his role in state office. As such, the social media accounts he operated may be a type of public forum under the First Amendment, and if so, Representative Clemons may not be allowed to exclude others based on their views." While the court did not reach the merits of the First Amendment claim at the motion to dismiss stage, it relied upon cases from other circuits finding First Amendment violations where public officials—including the President of the United States—blocked persons from social media accounts.

Moving on to the question of absolute legislative immunity, the court concluded that the immunity did not apply, reasoning that "the official Twitter and Facebook accounts are much more like the public distribution of a press release than a speech made on the floor of the assembly."

The decision is a cautionary tale for public officials who choose to use social media accounts for communications related to their official business. To the extent that officials are sued in their official capacities, these suits are in reality a suit against the entity they represent. This means that city council members and county commissioners who are sued in their official capacity create significant exposure for the municipal and county governments they are part of. In cases such as this one seeking only declaratory and injunctive relief, and successful outcome for the plaintiff will nevertheless result in an award of attorney's fees under 42 U.S.C. § 1988. Because money damages are not sought, it is highly unlikely that insurance coverage would be available.

Perhaps more alarming from the standpoint of the official is the prospect of the individual capacity claim. For a First Amendment plaintiff who successfully prevails against an elected official under § 1983, this presents exposure to compensatory damages and § 1988 attorney's fees, which may or may not be covered by insurance, and punitive damages that are never covered. The personal exposure is very real.

Cautious elected officials will keep separate social media accounts for their personal and official business. To the extent that accounts are used for official business, the only acceptable practice is to not allow comments or allow all comments without viewpoint discrimination.

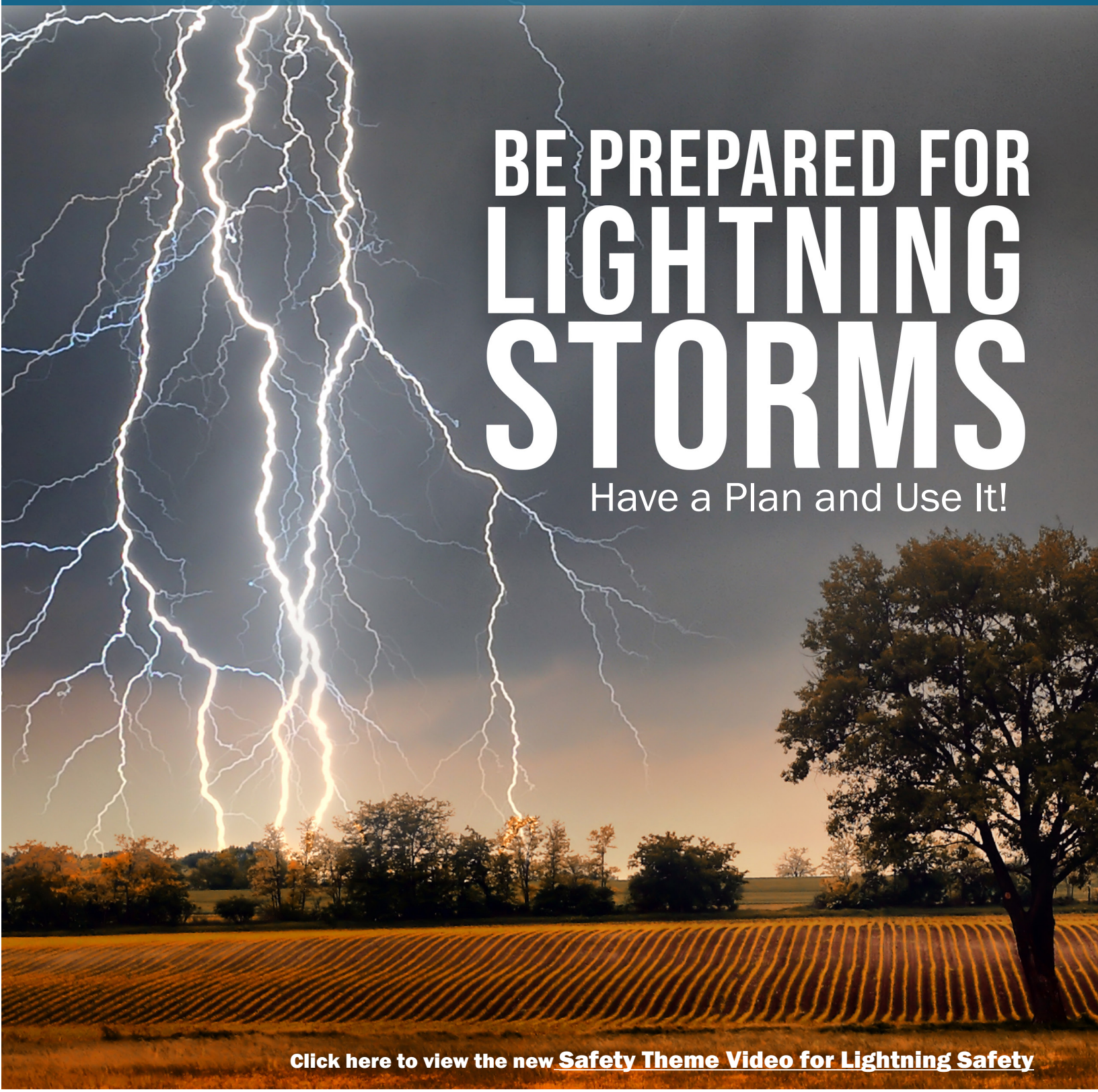
As this case proceeds, it will be interesting to see how the First Amendment claims are treated by the courts. Stay tuned.

LGRMS
RISK CONTROL
ACCG | GMA

July 2020

SAFETY THEME

LOCAL GOVERNMENT RISK MANAGEMENT SERVICES, INC., - A Service Organization of the ASSOCIATION COUNTY COMMISSIONERS OF GEORGIA and the GEORGIA MUNICIPAL ASSOCIATION



BE PREPARED FOR LIGHTNING STORMS

Have a Plan and Use It!

Click here to view the new Safety Theme Video for Lightning Safety

Don't Get Caught: Lightning Safety Tips

Plan your evacuation and safety measures in advance. When you first see lightning or hear thunder, activate your emergency plan. This is the time to go to a building or a vehicle. Lightning often precedes rain, so don't wait for the rain to begin before suspending activities.

Buildings

A safe building is one that is fully enclosed with a roof, walls and floor, and has plumbing or wiring. Examples of safe buildings include a home, school, church, hotel, office building, or shopping center. If lightning should directly strike a building with electricity and/or plumbing, the dangerous electrical current from the flash will typically travel through the wiring and/or plumbing, and then into the ground. This is why you should stay away from showers, sinks, and hot tubs, as well as electronic equipment such as TVs, radios, corded telephones, and computers.

Unsafe buildings include carports, open garages, covered patios, picnic shelters, beach pavilions, golf shelters, tents of any kinds, baseball dugouts, sheds, and greenhouses.

Vehicles

A safe vehicle is any fully enclosed metal-topped vehicle, such as a hard-topped car, minivan, bus, or truck. If you drive into a thunderstorm, slow down and use extra caution. If possible, pull off the road into a safe area. Do not leave your vehicle during a thunderstorm.

While inside a safe vehicle, do not use electronic devices such as radio communications during a thunderstorm. Lightning striking the vehicle, especially the antenna(s), could cause serious injury if you are talking on the radio or holding the microphone at the time of the flash. Emergency officials such as police officers, firefighters, and security officers should be extremely cautious using radio equipment when lightning is in the area.

Unsafe vehicles include convertibles, golf carts, riding mowers, open cab construction equipment, and boats without cabins.

Outdoors

If outdoors, avoid water, high ground, and open spaces. Avoid all metal objects, including electric wires, fences, machinery, motors, and power tools. Unsafe areas include underneath canopies, small picnic or rain shelters, or near trees. Where possible, find shelter in a substantial building or in a fully enclosed metal vehicle such as a car, truck, or van with the windows completely shut.
If lightning is striking nearby when you are outside, you should:

1. Crouch down.
2. Put your feet together
3. Place your hands over your ears to minimize hearing damage from thunder.

Always suspend activities for 30 minutes after the last observed lightning or thunder.

LGRMS
RISK CONTROL
ACCG | GMA

3500 Parkway Lane . Suite 110
Norcross, GA 30092
Phone: 678.686.6279
Fax: 770.246.3149

Visit Us Online!
www.lgrms.com

LGRMS Training Calendar www.lgrms.com

Due to the COVID 19 Pandemic all in person LGRMS training is on hold until futher notice. Please see our Training Calendar on the LGRMS website for the most current information, and check it regularly. Online training planned for the month of August and September may be accessed through the LGRMS Training Calendar.

LGRMS Website www.lgrms.com

We have established a COVID 19 resource section on the LGRMS website. It has three sections, Law Enforcement, Human Resources, and General. Articles, resources, links to important state and federal websites, as well as other current information will be placed there. GMA and ACCG also have updated information on COVID 19 on their websites as well.

Useful websites for more information.

https://www.cdc.gov/coronavirus/2019-ncov/index.html

https://www.usa.gov/coronavirus

https://dph.georgia.gov/covid-19-daily-status-report

https://www.fda.gov/emergency-preparedness-and-response/counterterrorism-and-emerging-threats/coronavirus-disease-2019-covid-19

https://www.dhs.gov/coronavirus

https://www.coronavirus.gov

https://www.nih.gov/health-information/coronavirus

https://www.fema.gov/coronavirus

For printable view of the Model Local Government Social Media Policy:

https://www.lgrms.com/getattachment/2020-Summer_Fall_Social-Media-Issue/3-Social-Media-Policy-Local-Government-6-29-2012.doc.aspx?lang=en-US

More information on our training classes, including descriptions of all courses, is available online.

Our online calendar is always the most up to date so be sure to check it frequently!

www.lgrms.com