August 6, 2018

The Hon. Jackie Lacey
Public Integrity Division
Los Angeles County District Attorney's Office
211 West Temple Street, Ste 1000
Los Angeles, CA 90012

Dear District Attorney Lacey,

We are writing to request an investigation by the Los Angeles County District Attorney's Public Integrity Division into whether Long Beach Mayor Robert Garcia attempted to place unconstitutional restrictions on members of the public as to their First Amendment rights to free speech and to petition their government for a redress of grievances. Mayor Garcia appears to have hidden social media posts by people who express opinions that differ from his Administration's positions on issues affecting municipal services; specifically, the need to reform the Long Beach Animal Care Services animal shelter. If that is the case, we believe the Mayor is engaging in viewpoint discrimination in violation of both the First Amendment and federal law, 42 U.S. Code Sec. 1983.

Factual Basis for Complaint

On April 4, 2018, just six days prior to an election in which he was a candidate, Mayor Garcia made a post (https://goo.gl/tKRZyf) on his "public figure" Facebook page (facebook.com/pg/robertgarcialb) and an identical post (https://goo.gl/4n1K8u) on the official Facebook page of the Long Beach Mayor (facebook.com/LongBeachMayor) which took credit for progress the shelter has made in saving animals' lives. In this post, he solicited applications to a mayoral task force that was to be formed after the election. This elicited a large number of comments and replies to the post. Mayor Garcia responded to many of the comments, in some cases inviting people individually in his capacity as mayor to join the task force, as can be seen in Screen Capture 1 below.

When the comments were critical of his Administration, by contrast, Mayor Garcia appears to have engaged in viewpoint discrimination by removing them from public view, violating the civil rights of citizens under the First Amendment and federal law, as can be seen in Screen Captures 2-10, also below.

The "hiding" of posts on Facebook is more damaging to a person's right to free speech than simply blocking them or deleting their comments because the person is not always aware of the infringement of his or her free speech. When an individual's comment has been hidden, he or she is *not* notified that it has been hidden, and if he/she returns to the comment to look at the post, the post will appear to still be available and readable by the general public. However, it is not. It is only visible to the commenter and his or her "Friends" on Facebook. Unless the commenter makes an effort to look at the post and his/her comment while logged into the account of someone who is not his/her "Friend" on Facebook (a circumstance that is not likely because it is difficult to achieve) the commenter will believe that his or her comment is still visible to the public because it will remain visible on his/her page and on the pages of his/her Friends. Thus, the commenter will not be aware that any viewpoint discrimination has taken place and will not know to seek redress.

To the extent that he has done so, Mayor Garcia hiding of comments disagreeing with his stance on changes at the shelter, and specifically, his hiding of a comment pointing out the timing of the announcement just before an election, suggest that Mayor Garcia was suppressing people's right to free speech in an attempt to eliminate any negative impact their statements may have on his bid for re-election.

Legal Basis for Complaint

42 U.S. Code Sec. 1983 reads, in pertinent part,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

A recent court ruling, in a proceeding against President Trump for blocking them from commenting on his Twitter account, found that public officials may not block users from commenting on their social media accounts because doing so "based on their [the commenters'] political speech constitutes viewpoint discrimination that violates the First Amendment." (*Knight First Amendment Institute at Columbia University v. Donald J. Trump*.) In *Davidson v. Loudoun County Board of Supervisors*, the court likewise found that by blocking plaintiff from commenting on her public Facebook page, County Supervisor Phyllis J. Randall violated plaintiff's right to free speech under the First Amendment:

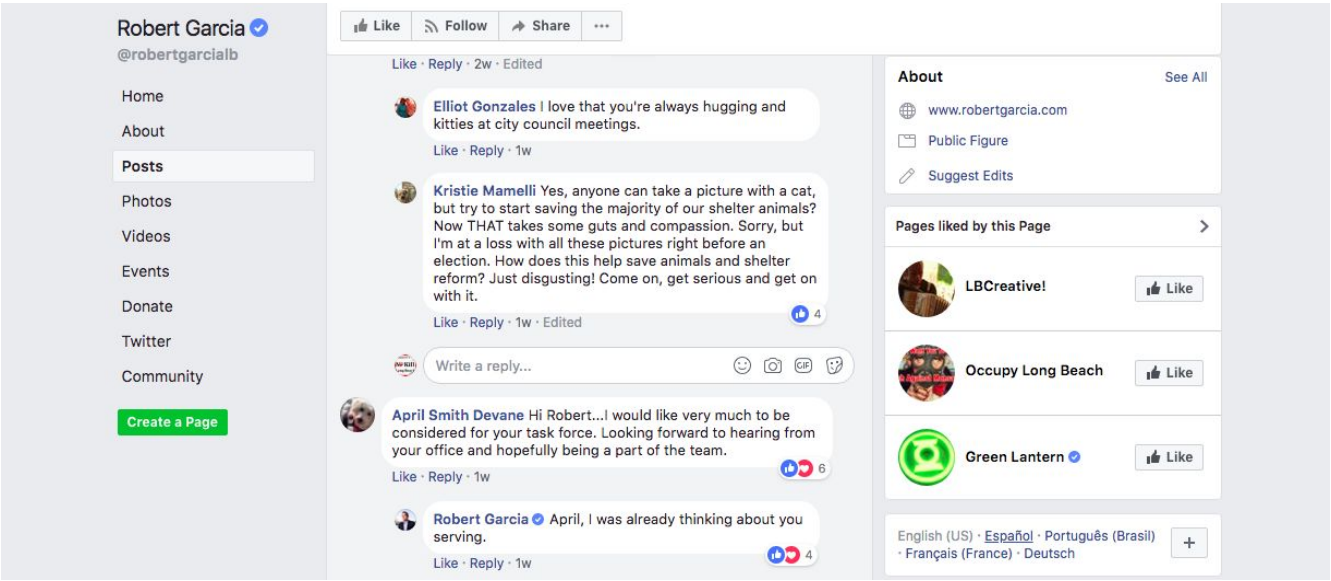
> If the Supreme Court's First Amendment jurisprudence makes anything clear, it is that speech may not be disfavored by the government simply because it offends. *See Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (listing cases). Here, as discussed above, Defendant acted in her governmental capacity.
>
> Defendant's offense at Plaintiff's views was therefore an illegitimate basis for her actions – particularly given that Plaintiff earned Defendant's ire by criticizing the County government. Indeed, the suppression of critical commentary regarding elected officials is the quintessential form of viewpoint discrimination against which the First Amendment guards. *See Rossignol*, 316 F.3d at 521–22. By prohibiting Plaintiff from participating in her online forum because she took offense at his claim that her colleagues in the County government had acted unethically, Defendant committed a cardinal sin under the First Amendment.

See also *Karras vs. County of San Diego* and *Hawaii Defense Foundation vs. City and County of Honolulu*, which reached similar resolutions.

Mayor Garcia routinely engages people in communications and interactions about city business on both his mayoral page and his public figure page. Mayor Garcia's "Long Beach Mayor" page is the official page of the Mayor of Long Beach. Mayor Garcia treats his public figure page as an extension of the Long Beach Mayor page, posting announcements about city initiatives and city business, links to newspaper articles about the city and his work as mayor, videos in which he speaks as mayor, and responses to community requests in which he at times "tags" city departments and asks them to respond to the request. Therefore, both of these pages appear to be public forums and comments by members of the public on those pages are protected by the First Amendment and federal law, 42 U.S. Code Sec. 1983.

Public Figure Page Screenshots

Screen Capture 1: Mayor Garcia solicits participation in a mayoral task force on his public figure page

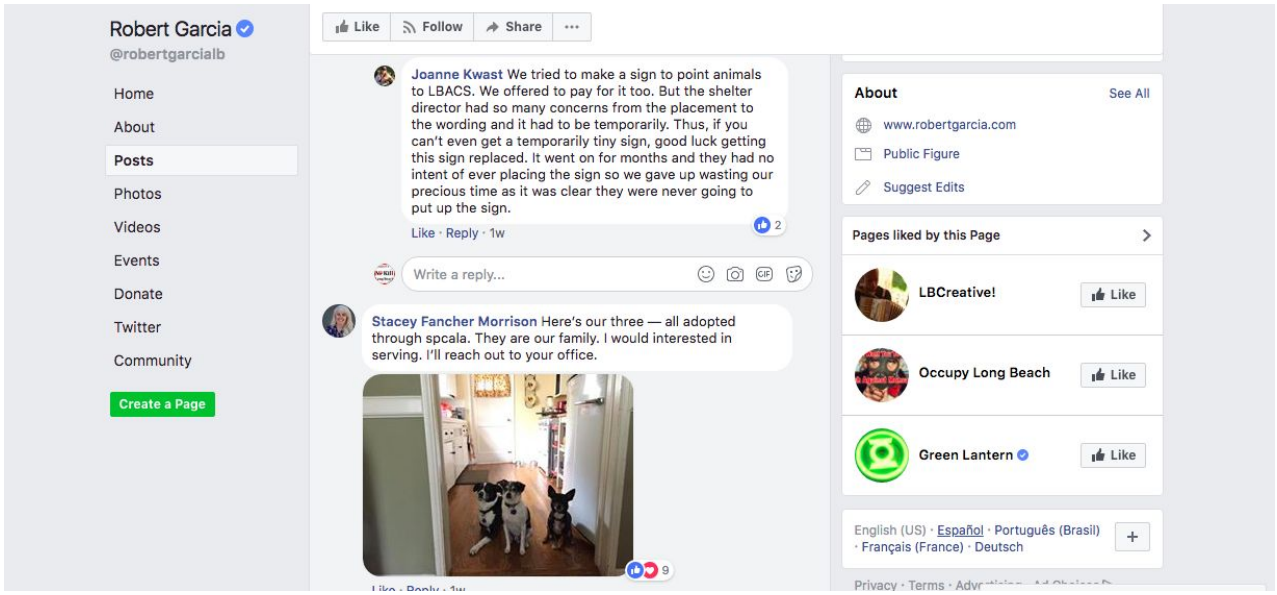


It appears that Mayor Garcia hid approximately 25 comments critical of his Administration's stewardship of the shelter. When a page administrator "hides" a comment on a post on Facebook, that comment become visible only to the person who originally wrote the comment and to that person's "Friends" on Facebook. It hides the comment from the other commenters and from the general public viewing the thread. A sampling of the posts that Mayor Garcia appears to have hidden is given below. Screenshots of each post that appears hidden are provided in the Appendices to this complaint.

Screen Capture 2: Joanne Kwast

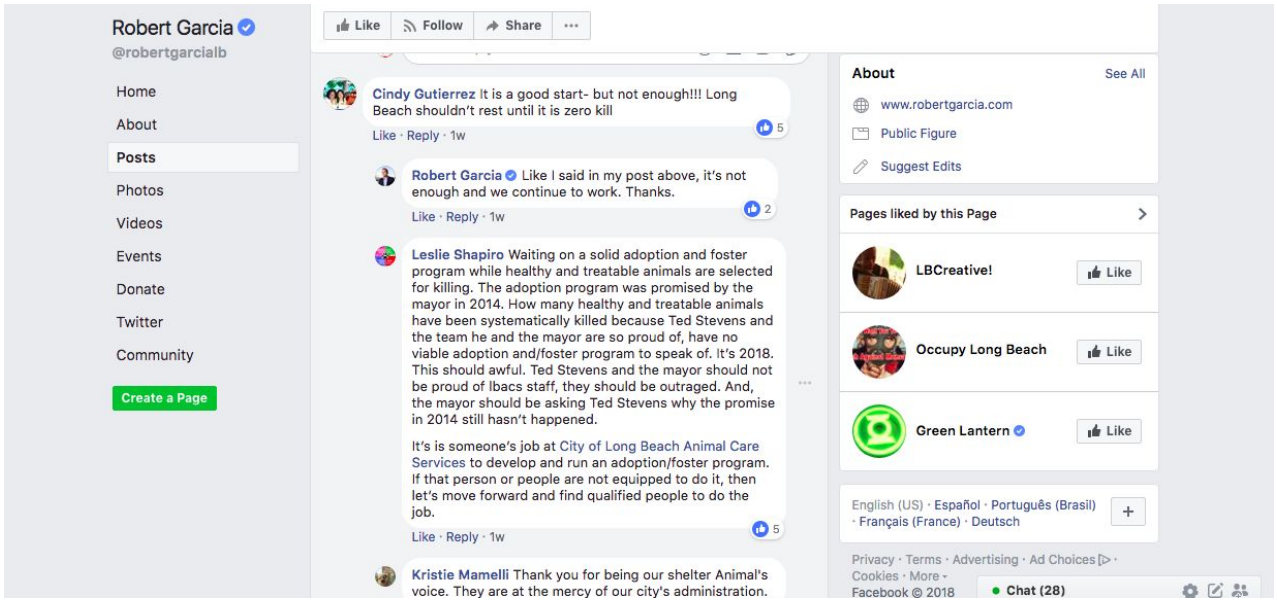
Ms. Kwast is a resident of Long Beach. Ms. Kwast commented on the thread that her rescue group had requested and offered to pay for a sign that would provide clear directions to the animal shelter. She recounted the difficulty her group had in getting the City of Long Beach to place this sign in a place that

was visible to the public. She noted that a sign was never mounted. Ms. Kwast's comment was on-topic, factual and respectful in tone, and yet it appears to have been hidden.



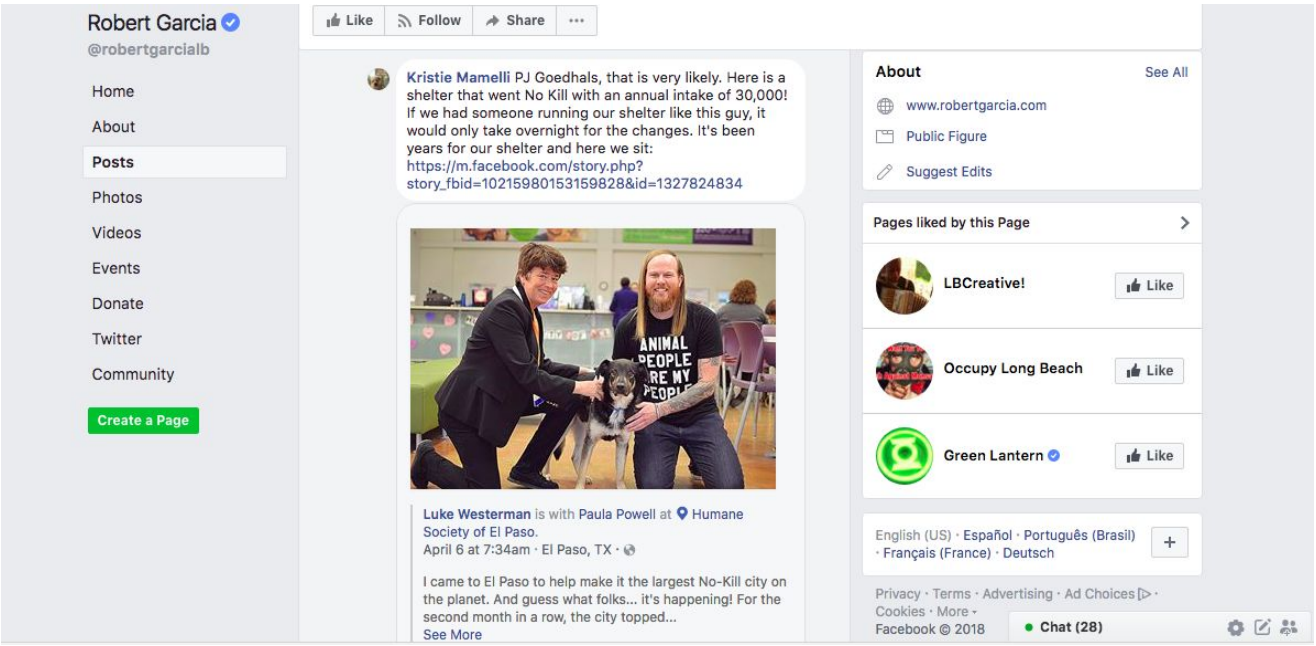
Screen Capture 3: Leslie Shapiro

Ms. Shapiro is a resident of Los Angeles and volunteers for rescue groups in Long Beach. Ms. Shapiro posted a comment discussing the lack of a "solid adoption and foster program" at the animal shelter. She noted that Mayor Garcia had promised to put in place an adoption program in 2014. Her comment was on-topic, respectful in tone and factual in its content. Mayor Garcia appears to have hidden it so that the general public could not see it.



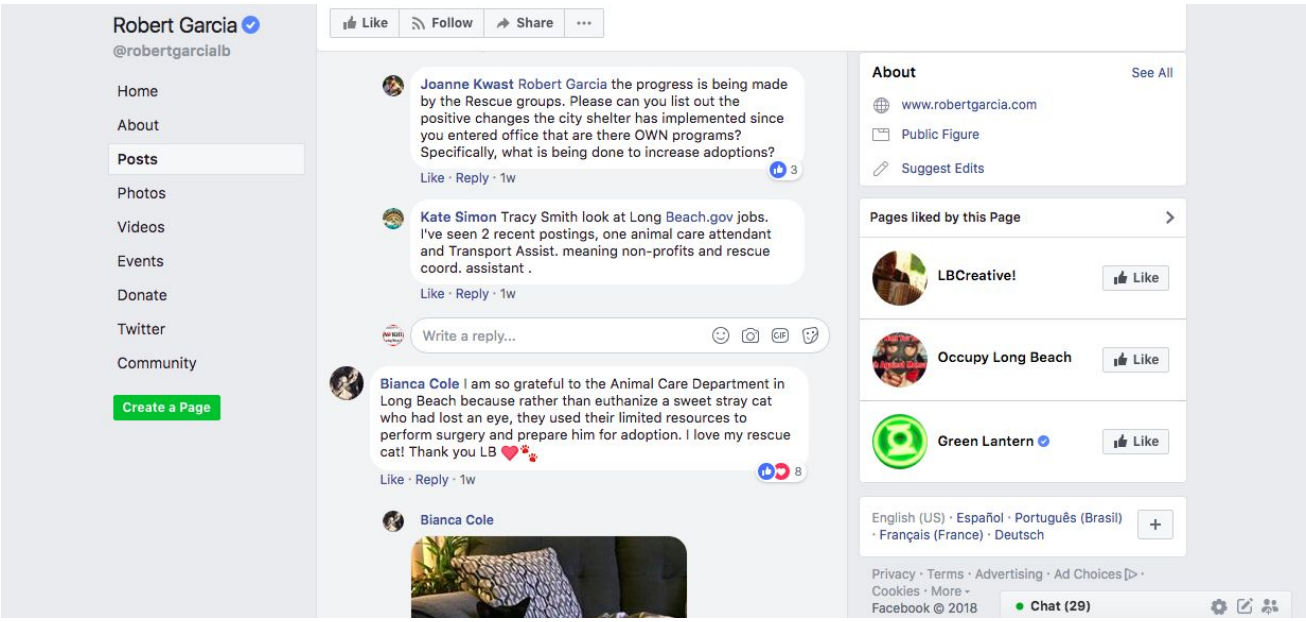
Screen Capture 4: Kristie Mamelli

Ms. Mamelli is a resident of Long Beach and advocates publicly for shelter animals. Ms. Mamelli posted the example of a shelter that had a larger intake than Long Beach and was nevertheless able to significantly increase the number of animals it placed. In her comment, she noted, “If we had someone running our shelter like this guy, it would only take overnight for the changes. It's been years for our shelter and here we sit." Ms. Mamelli’s post was on-topic, factual and respectful in tone. Mayor Garcia appears to have hidden this post from the general public.



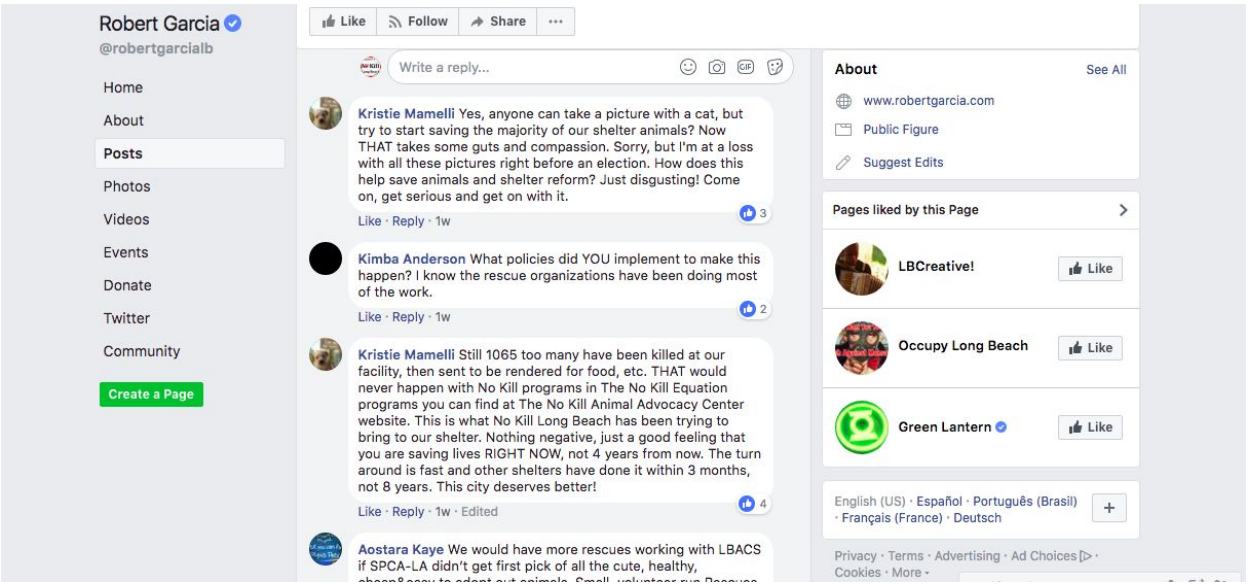
Screen Capture 5: Joanne Kwast

Ms. Kwast commented that the progress at the Long Beach shelter was due to the work of rescue groups and asked Mayor Garcia to list the positive changes that the shelter itself has put in place since Mayor Garcia was first elected in 2014. Mayor Garcia had specifically campaigned as an animal-friendly candidate in the 2014 election (see, e.g, https://goo.gl/MmDJEX) and had said that he would increase adoptions at the shelter (lbreport.com/news/oct14/nokill.htm). However, adoptions remain low since Mayor Garcia was elected in 2014. Indeed, cities of similar size do thousands of adoptions more than the Long Beach city shelter. Ms. Kwast’s comment was on-topic, factual and respectful in tone. Mayor Garcia appears to have hidden her comment so that the public could not see it.



Screen Capture 6: Kimba Anderson

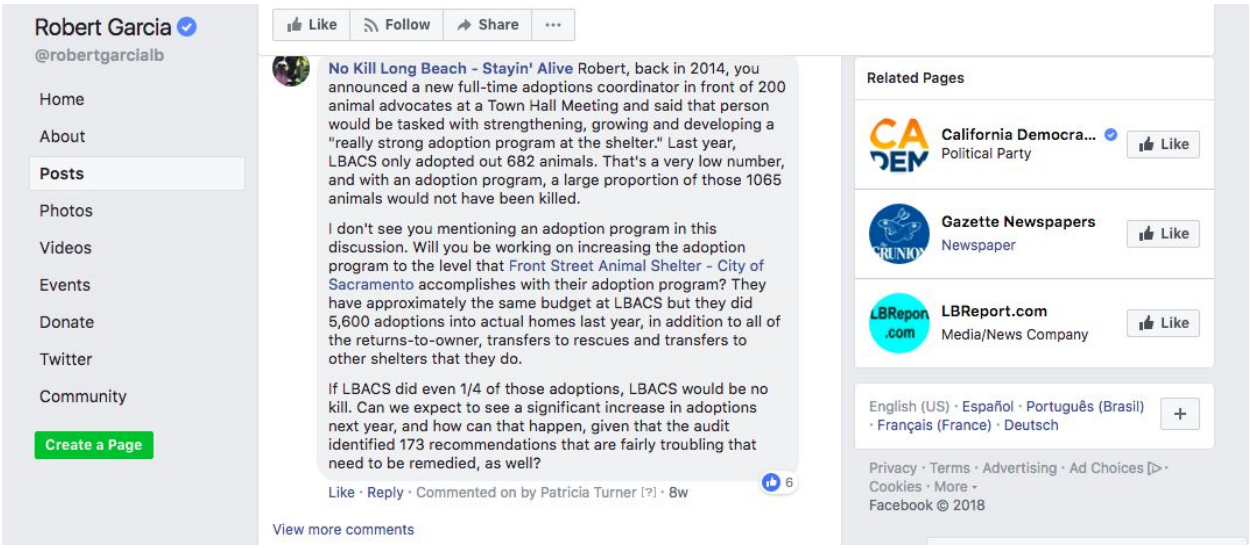
Kimba Anderson's city of residence is not known. Like Ms. Kwast in Screen Capture 5, Ms. Anderson asked Mayor Garcia to enumerate the policies he had put in place at the shelter. As with the other comment, Ms. Anderson's comment was on-topic and respectful in tone. This comment appears to have been hidden from the general public. Ms. Mamelli's two comments before and after Ms. Anderson's also appear to have been hidden.



Screen Capture 7: No Kill Long Beach

No Kill Long Beach is an animal advocacy organization in Long Beach composed of individuals concerned about the kill rate and lack of lifesaving programs at the city animal shelter. In their post, they reminded

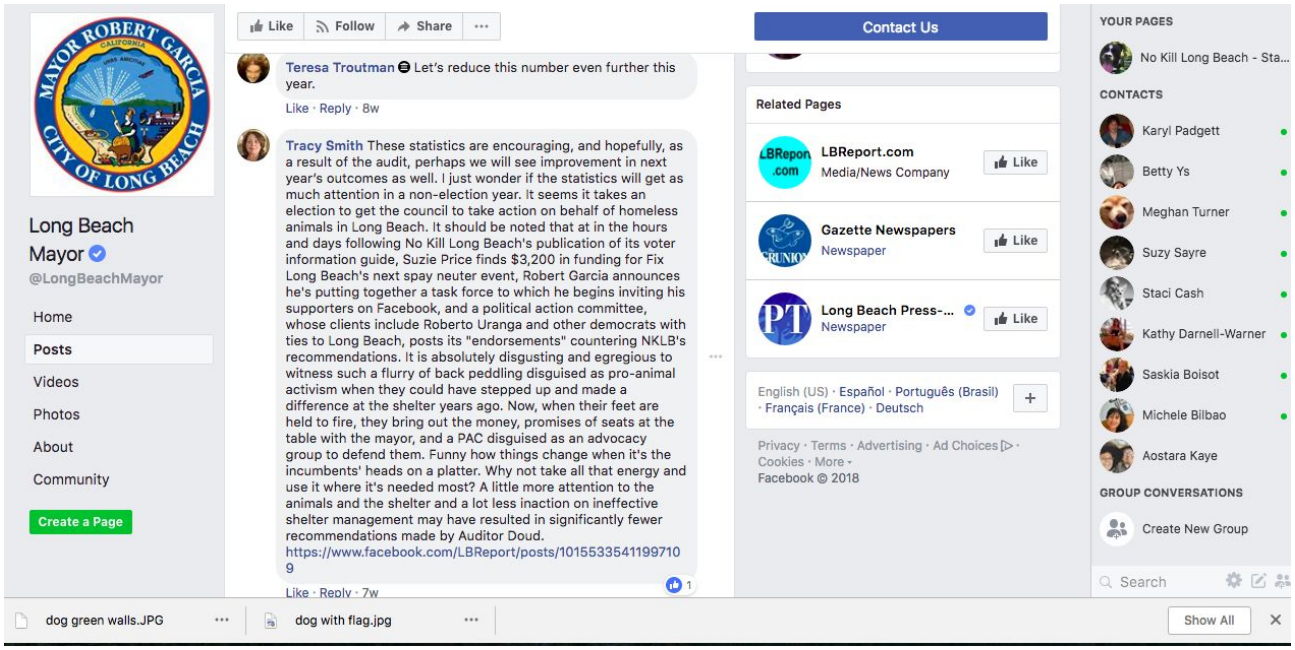
Mayor Garcia of his past statements regarding the adoption program at the Long Beach shelter and asked him about his intentions with regard to the adoption program in the future. These comments were on-topic, factual and respectful in tone. Mayor Garcia appears to have hidden this comment.



Official Page of the Long Beach Mayor Screenshots

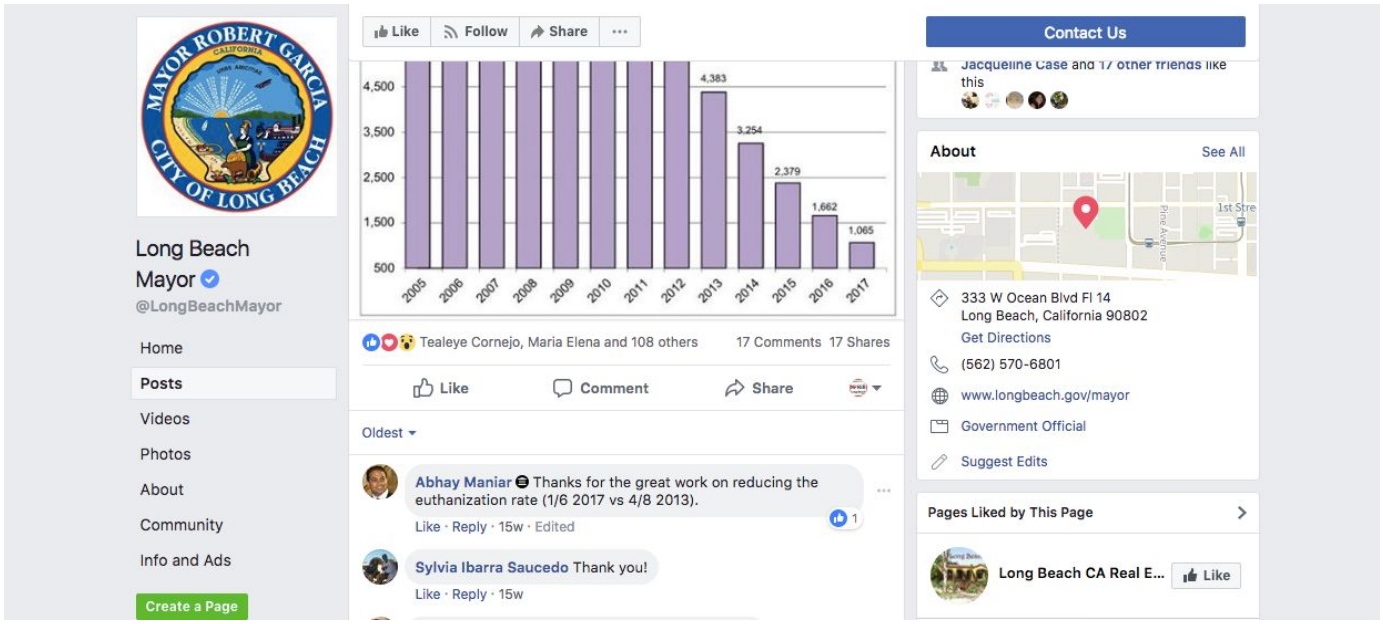
On April 4, the same day he posted on his public figure page, Mayor Garcia made the same post about shelter progress and solicited interest in serving on the mayoral task force on the Long Beach Mayor's official page. The post elicited several responses from the public. Those responses that were positive about the post were permitted to be viewed by the general public. However, Mayor Garcia hid one response by Tracy Smith, who advocates for shelter animals in Long Beach. In it, Ms. Smith criticizes Mayor Garcia's announcement of an animal task force as "a flurry of back peddling disguised as pro-animal activism." Ms. Smith's comment, though critical, was on topic and is an example of protected political speech. Yet Mayor Garcia appears to have hidden and to continue to hide her post.

Screen Capture 8: Tracy Smith

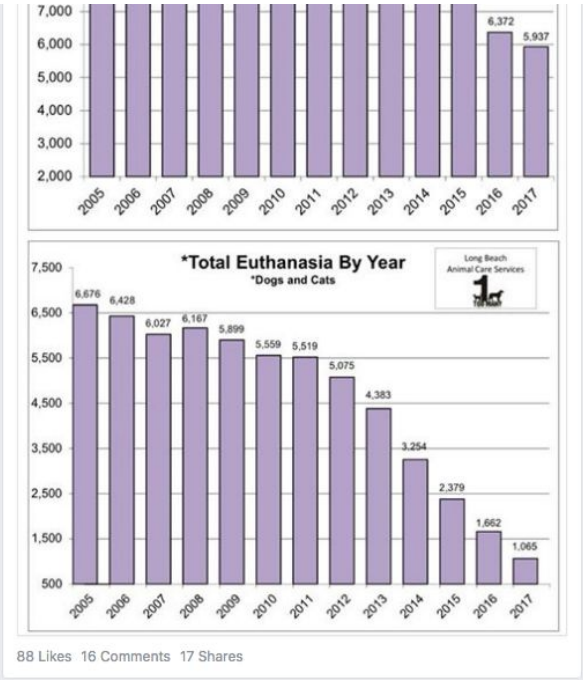


To the extent they are hidden, each of the preceding posts limit the freedom of speech of people whose comments reflect poorly on his efforts as Mayor. Further, the apparent hiding of the posts occurred just prior to an election. And to the extent that they were, they suppress citizens' speech in order to limit a potential negative impact on Mayor Garcia's campaign for re-election which was then underway.

Screen Captures 9 & 10: Number of Comments



The post notes there are 17 comments when signed in on an account connected to Tracy Smith.



The post notes there are 16 comments when the general public views it as Ms. Smith's comment no longer appears.

An index of all suspected hidden comments, as well as screenshots of comments, are further enclosed in the appendices.

Thank you for your time and consideration.

Very truly yours,

Nathan J. Winograd