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U.S. Supreme Court Provides Test for Protected Speech on Government Official's Social Media Pages

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On March 15 the U.S. Supreme Court provided guidance on whether state actors can be held accountable for their actions on their social media accounts.

In *Lindke v. Freed,* the Supreme Court held in a unanimous decision that a government official who blocks an individual from commenting on his/her page can constitute state action under 42 U.S.C. § 1983. Even if the page is the government official's own personal social media page, the removal or blocking of posts can be a violation of the poster's First Amendment rights **if** the official both possessed actual authority to speak on a particular matter and purported to exercise that authority when speaking in the relevant post.

The social media user (Lindke) brought an action under § 1983 against the city manager (Freed), alleging Freed violated his First Amendment rights by deleting his comments on Freed's social media page. While Freed's Facebook page was his own personal account where he posted personal matters, he also included his city manager title in his bio and regularly posted information related to his job as city manager. During the COVID-19 pandemic, Freed posted about the pandemic both on a personal level and as it related to his position at the city. Lindke commented on Freed's posts and voiced his displeasure with the city's handling of the pandemic. Freed deleted Lindke's posts and later blocked him from commenting on his page all together. Lindke sued Freed claiming violations of his First Amendment rights.

The Supreme Court held that a public official who prevents someone from commenting on the official's social media page engages in state action under § 1983 only if the official both (1) possessed actual authority to speak on the state's behalf on a particular matter; and (2) purported to exercise that authority when speaking in the relevant social media posts. The Supreme Court found that "state action turns on substance, not labels: Private parties can act with the authority of the State, and state officials have private lives and their own constitutional rights – including the First Amendment right to speak

about their jobs and exercise editorial control over speech and speakers on their personal platforms."

The Supreme Court found that it is not enough for a social media page to simply belong to a public official. Instead, the public official must *actually* hold the authority and be purporting to use the aforementioned authority to speak in the particular post. That is, the public official must be "possessed of state authority" to post city updates and register city concerns, and the "alleged censorship must be connected on a matter within (the public official's) bailiwick." That is, the "threshold inquiry to establish state action is not whether making official announcements *could* fit within a job description but whether making such announcement is *actually* part of the job that the State entrusted the official to do."

The Supreme Court did state that had Freed included a disclaimer such as "'this is the personal page of James R. Freed,' he would be entitled to a heavy presumption that all of his posts were personal."

This new ruling should be a warning to public officials to make sure they keep their personal and professional social media pages separate. Disclaimers should also be used on personal pages in order to avoid any potential grey areas that may build a bridge between personal and professional.