



Lindke v. Freed: When Public Officials Can Be Held Liable for Blocking Individuals on Social Media

Courtney Gabbara Agrusa

Foster Swift Municipal Law News

March 25, 2024

On Friday, March 15, 2024, the Supreme Court of the United States (the “Court”) unanimously held that a public official engages in state action under 42 USC §1983 (“§1983”) when posting on social media about job-related topics only if the official 1) possesses actual authority to speak on the State’s behalf and 2) purports to exercise such authority when speaking on social media.

This decision comes in response to *Lindke v Freed*, a case involving a local public official who deleted comments made by, and ultimately blocked, a constituent on their personal social media page. Specifically, James Freed maintained a private Facebook account where he posted regularly about a variety of topics. At some point, Freed converted his private profile to a public page, which allowed anyone to see and comment on his posts. In 2014, in response to being hired as the city manager for Port Huron, Michigan (the “City”), Freed updated his Facebook page to reflect his new role. As like before, Freed continued to operate his Facebook page as he always had—sharing information related to his personal life and his job.

When the COVID-19 pandemic began, Freed posted both personal and work-related information about it. It was at this time that Kevin Lindke began to comment on Freed’s posts, which were subsequently deleted and eventually led to Freed blocking Lindke altogether. In response, Lindke sued Freed under §1983, alleging Freed’s actions violated Lindke’s First Amendment rights. Specifically, Lindke argued 1) he had a right to comment on Freed’s Facebook page because it was a public forum and 2) by deleting his comments and blocking him, Freed was engaging in impermissible viewpoint discrimination.

The issue for the Court to decide was whether Freed, as a state official, engaged in state action or functioned as a private citizen when posting on social media. To answer this question, the Court considered whether Freed 1) possessed actual authority to speak on the State’s behalf and 2) purported to exercise such authority when speaking on social media.

AUTHORS/ CONTRIBUTORS

Courtney Gabbara Agrusa

PRACTICE AREAS

First Amendment - Media Law

General & Commercial Litigation

Governmental Relations

Municipal & Public Entity Law

Municipal Litigation

Telecommunications



The bedrock requirement of the first prong is that the public official's conduct causing the alleged deprivation of a federal right be fairly attributable to the State. See *Lugar v Edmondson Oil Co*, 457 US 922, 937 (1982). If an act is not traceable to a State's power or authority, it is not attributable to the State regardless of how official it appears. Here, Lindke had to show that Freed had more than just some authority to communicate on behalf of the City; he had to show that the City entrusted Freed with the power, authority, and responsibility to communicate on its behalf.

This type of power is derived from §1983, which provides in part that a cause of action against a person can be made if that person, under the color of a statute, ordinance, regulation, custom, or usage, of any state, deprived another of a federal constitutional or statutory right. Without such written law or longstanding custom authorizing Freed to speak on behalf of the State (here, the City), Lindke failed to meet this necessary threshold and, thus, was unable to establish a state action.

As a result, the Court held that the source of the power under which the person is operating controls, not the identity of the employer (i.e., the distinction between private conduct and state action depends on the substance, not labels). As Justice Amy Coney Barrett explained, public officials who act on behalf of a State are also private citizens with their own constitutional rights, meaning that they do not relinquish their First Amendment rights simply by taking office.

Even if Lindke were to show Freed had the authority to speak on behalf of the State, Lindke still had to meet the second prong by showing Freed used such authority (i.e., if Freed did not use his speech in furtherance of his role as city manager, then he was speaking in his private capacity). To make this determination is fact-intensive, reviewing the content and function of the posts themselves (e.g., if the posts express invocation of state authority, immediate legal effect, or are not available elsewhere).

Please contact a member of our municipal practice group if you have further questions or would like assistance with or guidance on the drafting of a social media policy.