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Court Report

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U.S. Supreme Court Announces Stringent Test for Public Officials' Use of Social Media as State Action

In *Lindke v. Freed*, the Supreme Court examined whether a public official's social media activity constitutes state action under 42 U.S.C. § 1983 when the official deletes comments on his page or blocks another user from commenting on his posts. Central to the case was the Facebook page of James Freed, an avid Facebook user who converted his account to a public figure page, where any user can view his posts and comment. After Freed became city manager of Port Huron, Michigan, he updated his page with details identifying his role, including a profile picture of himself in a suit with a city lapel pin. Freed posted regularly on his self-managed page, primarily about his personal life, but occasionally shared city-related news, such as press releases. Amidst the COVID-19 pandemic, another user, Kevin Lindke, commented on Freed's posts, criticizing the city's public health response. In response, Freed first deleted Lindke's comments from the posts, but later blocked Lindke from commenting on his page entirely. Lindke then sued Freed, alleging a violation of his First Amendment rights.

As the First Amendment applies to state action, the Court unanimously held that a public official's actions on their social media page only constitute state action if the official both: (1) possessed actual authority to speak on the State's behalf on the matter; and (2) purported to exercise that authority when making the relevant social media posts. To illustrate, a school board member posting an announcement about a school board's decision on a social media page designated an official page in a profile description and with the username @ BoardMemberMike would likely constitute state action.

The Court also issued a per curiam opinion in the related case of O'Connor-Ratcliff v. Garnier, which involved school board members blocking district parents from their personal social media pages where they would sometimes discuss school matters with the public. The Court remanded the case to the Ninth Circuit Court of Appeals to apply the test announced in *Lindke*.

Seventh Circuit (IL, IN, WI) Rejects Parent Group's Challenge to School Gender Policies

A Wisconsin school district promulgated guidelines for schools designed "to address the needs of transgender, nonbinary, and/or gender non-conforming students," which included a gender support plan that contemplated not involving parents in some circumstances. An association of district parents challenged the guidance and plan, alleging violations under the Due Process Clause of the Fourteenth Amendment and the Free Exercise Clause of the First Amendment. The U.S. Court of Appeals for the Seventh Circuit affirmed the district court's dismissal of the challenge for lack of Article III standing. The court explained that the parent group failed to allege that any particular parent had experienced an actual or imminent injury attributable to the guidance or support plan. The court also emphasized that the federal judiciary's role is limited to resolving concrete disputes between adverse parties using established rules of procedure and methods of legal reasoning, not offering policy perspectives on sensitive issues.

Nevada Federal Court Dismisses First Amendment Challenge to Use of Profanity at School Board Meeting

An assignment in a Las Vegas high school drama class required a student to perform a teacher-approved monologue written by a fellow student in front of the class. The student then performed the assigned monologue, which contained sexually explicit language. The student's mother later discovered the monologue. Concerned about the assignment, the mother brought her concerns to a school board meeting, where during public comment she began reading the monologue (and its profanity) aloud. The mother brought a First Amendment challenge against the school district and school officials after being cut off during her reading. The U.S. District Court for the District of Nevada dismissed the claim, finding that the school board expressed reasonable, viewpoint-neutral restrictions on the use of profanity in public meetings.

Tenth Circuit (CO, KS, NM, OK, UT, WY) Holds that IDEA Requires Only One Publicly-Funded IEE

Parents of a student with autism spectrum disorder disagreed with the conclusions in the student's triennial reevaluation (that the school district conducted pursuant to the Individuals with Disabilities Education Act) regarding speech-language and occupational therapy. The parents requested an independent educational evaluation (IEE) in those areas at public expense, which the school district indeed funded. Following that evaluation, the parents continued to challenge the conclusions and requested another publicly-funded IEE in the area of neuropsychology. The school district refused this request, and the parents paid $5,500 for another evaluation. The U.S. Court of Appeals for the Tenth Circuit held that IDEA only required the school district to fund one IEE ion response to the parents' objections.

Pending U.S. Supreme Court Petitions to Watch:

- O'Handley v. Weber – Whether the government speech doctrine empowers state officials to tell a social media platform to remove political speech that the state deems false or misleading.
- Dutra v. Jackson – Whether U.S. Supreme Court precedents are the only source of clearly established law for purposes of qualified immunity (instead of a federal circuit court's precedent).

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