Lindke v. Freed

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37 F.4TH 1199 (6TH CIR. 2022)

In *Lindke v. Freed*, the Sixth Circuit affirmed the District Court for the Eastern District of Michigan's judgment in favor of the appellee because the mere inclusion of his title of "City Manager" on Facebook did not signify that his Facebook activity was state action.[1] Therefore, his activity did not contravene the federal rights of the appellant.[2] The court recognized the "state-official test" as the appropriate framework through which to evaluate the social media activity of public servants, which requires that such activity be either an "actual or apparent duty" of public office or else be dependent upon "the authority of [public] office."[3]

I. BACKGROUND

Prior to his appointment as City Manager in Port Huron, Michigan, James Freed joined Facebook to connect with his social circle.[4] His profile was initially a private account, accessible only to those with whom he mutually agreed to connect, but he eventually accrued so many connections that he converted his profile to a "public figure" page, which allowed an unlimited number of followers.[5] After his appointment, he updated his Facebook page to include, along with other personal information, his title of "City Manager, Chief Administrative Officer for the citizens of Port Huron, MI."[6] The contact details of the page (website, email, and physical address) were that of Port Huron's city hall and administration.[7]

Freed posted a variety of content to his page, drawn from both his private and professional life.[8] In 2020, he posted about policies he initiated for Port Huron in the wake of the COVID-19 pandemic.[9] A Port Huron citizen, Kevin Lindke, was critical of Freed's policies and expressed his displeasure in the comments on Freed's Facebook posts.[10] In response, Freed deleted Lindke's comments and eventually blocked Lindke from viewing and interacting with his page.[11] Frustrated that he could no longer access Freed's

1. Lindke v. Freed, 37 F.4th 1199, 1207 (6th Cir. 2022), *vacated*, 144 S. Ct. 756 (2024).
2. *See id*. at 1202.
3. *Id*. at 1203 (quoting Waters v. City of Morristown, 242 F.3d 353, 359-60 (6th Cir. 2001)).
4. *See id*. at 1201.
5. *Id*.
6. *Id*.
7. *Lindke*, 37 F.4th at 1201.
8. *See id*.
9. *Id*.
10. *Id*.
11. *Id*. at 1202.

page to express his views, Lindke sued Freed in federal court under 42 U.S.C. § 1983, which provides a cause of action when federal rights are violated by someone acting "under color of any statute, ordinance, regulation, custom, or usage, of any State."[12] Lindke alleged that Freed "violated his First Amendment rights by deleting his comments and blocking him from the page."[13] The District Court for the Eastern District of Michigan granted summary judgment to Freed. Lindke appealed to the United States Court of Appeals for the Sixth Circuit.[14]

II. ANALYSIS

On appeal, the Sixth Circuit affirmed the district court's judgment in favor of Freed, rejecting Lindke's argument that Freed acted "under color of any statute, ordinance, regulation, custom, or usage, of any State" when he deleted Lindke's comments and blocked him from the page.[15] Courts have interpreted the language of 42 U.S.C. § 1983 to mean that a defendant must be acting in a state capacity for liability to attach to his actions.[16] This state action requirement is dependent upon whether a defendant's actions are "fairly attributable to the State."[17] A state official's actions are not state action when they are within "the ambit of [his] personal, private pursuits."[18] The Sixth Circuit, acknowledging that case law is a little "murky" with regard to the division between official and personal acts, sought to "realign how state officials' actions fit into the current framework," in the context of "the ever-changing world of social media."[19]

A. *The "State-Official Test" Framework*

The Supreme Court has set out three tests by which to evaluate state action: the public function test, the state-compulsion test, and the nexus test.[20] However, these tests are intended to assess whether a private party has engaged in state action, not to distinguish between a public servant's official and personal activities. Consequently, drawing upon their own precedent, the Sixth Circuit applied the "state-official test."[21] This test directs the court to inquire whether a state official is "'performing an actual or apparent duty of his office,' or if he could not have behaved as he did 'without the authority of his office.'"[22] It draws upon Supreme Court guidance pertaining to public officials, which allows that a "public employee acts under the color of state law while acting in his official capacity or while exercising his responsibilities

12. *Id.*; 42 U.S.C. § 1983.
13. *Lindke*, 37 F.4th at 1202; U.S. CONST. amend. I.
14. *Lindke*, 37 F.4th at 1202.
15. *Id.*; 42 U.S.C. § 1983.
16. *Lindke*, 37 F.4th at 1202 (quoting West v. Atkins, 487 U.S. 42, 48 (1988)).
17. *Id.* (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).
18. *Id.* (quoting Stengel v. Belcher, 522 F.2d 438, 441 (6th Cir. 1975)).
19. *Id.*
20. *Id.* (citing *Lugar*, 457 U.S. at 939).
21. *Id.*
22. *Lindke*, 37 F.4th at 1203 (quoting *Waters*, 242 F.3d at 359).

pursuant to state law."[23] In addition, the state-official test may be thought of as an alternate version of the Supreme Court's nexus test, which asks whether a defendant's activity "may be fairly treated as that of the State itself."[24] In answering these questions, courts must evaluate whether a defendant's action is "'entwined with governmental policies' or subject to the government's 'management or control.'"[25] The state-official test applies these same sub-questions to the activity of a public servant.[26]

B. State Action in the Age of Social Media

In the context of social media, the Sixth Circuit decided that pages and accounts must be assessed as a whole, rather than by singular posts, because too narrow a focus would belie the larger context necessary to answer the test's questions.[27] A public official's social media activity must be subject to the same state action test, and ask whether such activity is "part of an officeholder's 'actual or apparent dut[ies],'" or "depends on his state authority."[28] An example of social media activity that would meet this test is that of an official who is mandated by law to maintain a social media account: "a page can constitute state action if the law itself provides for it."[29] In this case, the fact of the social media account and all related activity would be an "actual duty."[30] The Sixth Circuit also stated that the use of state resources to run an account would suggest that the usage of such an account would amount to performing a duty.[31] In addition, the court determined that, by their very nature, accounts associated with *offices* rather than people could not be used in the same manner "without the authority of the office."[32] These accounts include those which are passed on to successive office holders. In addition, the management of a social media account by staff members represents a type of social media activity that would not occur without public authority.[33] It is only when a public official operates an account, such as in the examples described above, "pursuant to his actual or apparent duties or using his state authority" that his action is "fairly attributable to the state."[34] Absent some element of state action, 42 U.S.C. § 1983 is inapplicable.[35]

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23. *Id.* (citing *West*, 487 U.S. at 50).
24. *Id.* (quoting Jackson v. Metro. Edison Co., 419 U.S. 345, 351 (1974)).
25. *Id.* (quoting Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 296 (2001)).
26. *Id.*
27. *Id.*
28. *Id.* at 1203 (quoting *Waters*, 242 F.3d at 359); *Id.* at 1204.
29. *Lindke*, 37 F.4th at 1203.
30. *Id.* at 1204.
31. *Id.*
32. *Id.* (quoting *Waters*, 242 F.3d at 359).
33. *Id.*
34. *Id.* (citing *Waters*, 242 F.3d at 359; *Lugar*, 457 U.S. at 939).
35. *Lindke*, 37 F.4th at 1202.

C. Applying the "State Official Test"

The court determined that Freed's Facebook posts were not state action because they neither represented his duties nor did they depend upon his state authority.[36] Freed was not required by law to maintain his Facebook account, and there were no records demonstrating that he used public funds to operate his account.[37] Despite Lindke's contention that, according to Freed's own words, "regular communication . . . is essential to good government" and was therefore implicitly representative of state action, the court rejected this premise on the basis of its breadth.[38]

Addressing the second prong of the state action evaluation, as to whether Freed's activity depended upon his authority, the court found that because the page did not belong to the office of the City Manager and was not maintained by Freed's employees, his posts did not qualify as state action.[39]

D. Disposing of Alternative Tests

The court declined to apply the broad standard proposed by Lindke, wherein state action would be found where "the presentation of the account is connected with the official's position," although this standard was accepted by other circuits.[40] In particular, the court distinguished the instant case from *Knight First Amendment Institute v. Trump*, a Second Circuit case relied upon by the appellant, wherein not only did President Trump's Twitter account include the "trappings of an official, state-run account," it was also subject to "substantial and pervasive government . . . control."[41] In this way the court found that even if it were to accept the appellant's alternative standard, there were not sufficient facts to prove state action.[42]

The court also evaluated whether the instant case could be analogized to the framework of factors used to assess whether police officers have engaged in state action.[43] Disagreeing with the appellant, the court determined that in the case of police officers, it was the fact of their appearance—their badges and uniforms—that granted authority, not the reverse.[44] In contrast, Freed was not endowed with his authority by virtue of his Facebook page.[45] Instead, the court returned the focus to official duties and state authority, with the object of providing a clear framework for both public servants and lower courts in the Sixth Circuit.[46]

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36. *Id.*
37. *Id.* at 1205.
38. *Id.* (citing Appellant's Brief, No. 21-2977, 2021 WL 6197754, at *29 (6th Cir. Dec. 8, 2021)).
39. *Id.*
40. *Id.* (quoting Appellant's Brief, 2021 WL 6197754, at *35).
41. *Lindke*, 37 F.4th at 1206 (quoting Knight First Amend. Inst. v. Trump, 928 F.3d 226, 235 (2d Cir. 2019)).
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.* at 1207.
46. *Id.* at 1206-07.

III. CONCLUSION

For the preceding reasons, the Sixth Circuit affirmed the district court's summary judgment, holding that James Freed, City Manager of Port Huron, Michigan, did not engage in state action when he posted on his Facebook page, because his social media activity was not "part of his actual or apparent duties," nor was it "dependent on the authority of his office" and therefore did not fall within the bounds of 42 U.S.C. § 1983.[47]

47. *Lindke*, 37 F.4th at 1203-04, 1207 (quoting *Waters*, 242 F.3d at 359); On March 15, 2024, the Supreme Court vacated and remanded this case to the Sixth Circuit, issuing a new test by which to determine whether a state official who blocks someone from commenting on their social media page has engaged in state action. The Court held that the state action doctrine requires that a social media user must demonstrate that the state official "(1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media." *Lindke v. Freed*, 144 S. Ct. 756, 762 (2024).