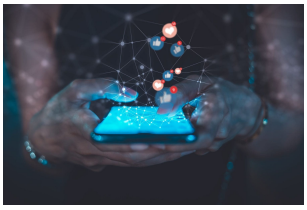

Lindke v. Freed: Supreme Court Clarifies Elected Official's Ability to Block Citizens on Social Media

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Authors:

Scott D. Phillips
Robert J. Mumma

In *Lindke v. Freed*, the U.S. Supreme Court decided whether public officials could block or delete other users' comments on their social media pages. The case arose from James Freed, the city manager of Port Huron, MI, blocking Kevin Lindke, a resident of Port Huron, after Lindke commented on several of Freed's Facebook posts, criticizing the city's response to the Covid-19 pandemic.

The Supreme Court held that a government official's social media posts can be attributed to the government only if the official had the authority to speak on behalf of the government and was exercising that power when he created the social media post at the center of the dispute. The court continued that in a case where a social media page includes personal and official posts, courts must look at the post's content and function when considering whether the First Amendment applies—with the key inquiry being whether the post was "*actually* part of the job that the State entrusted the official to do."

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As an example, the Supreme Court invited the reader to consider a situation in which an elected official posted a list of local restaurants with health code violations and deleted snarky comments made by users. If public health was not within the "portfolio" of the elected official's responsibilities, then neither the post nor the deletions would trigger First Amendment concerns because the actions were unrelated to the official's government role and authority.

The Supreme Court also stated that markers, such as labeling an account as a "personal page" or including a disclaimer (e.g., "the views expressed are strictly my own"), would entitle the official to a heavy, although not irrebuttable, presumption that the posts on the page were of a personal nature.

Importantly, the Supreme Court cautioned against blocking someone from a social media page containing personal and official posts because blocking would prevent the person from commenting on, or even viewing, official posts. The court warned that "[a] public official who fails to keep personal posts in a clearly designated personal account therefore exposes himself to greater potential liability."

Accordingly, public officials are advised to maintain two accounts, one for personal matters and another for matters related to their public position. The "public" account should focus on activities related to the official's governmental role, and users' comments should not be blocked, nor should comments be deleted. The official's personal account, by contrast, should strictly be limited to personal updates and comments on government activities that are *clearly* outside the authority of the position held by the user. In doing so, the elected official can avoid liability and enjoy the interconnectivity that social media provides.

For more information and assistance navigating social media for state and local governments, please contact the authors or any attorney with Frost Brown Todd's Government Services Practice Group.

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