

Navigating Social Media in Light of the United States Supreme Court Decision in *Lindke v. Freed*

July 10, 2024



U.S. Supreme Court Decision - *Lindke v. Freed*

Background

- James Freed – City Manager of Port Huron, Michigan
 - Maintained a Facebook page open to the public
 - Described himself on page as “Daddy to Lucy, Husband to Jessie and **City Manager, Chief Administrative Officer for the citizens of Port Huron, MI**”
 - Posted about his personal life but also included information about his job as City Manager

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- Kevin Lindke responds to Freed's posts about the City's COVID-19 response and expresses dissatisfaction
- Freed **deletes** Lindke's comments and **blocks** Lindke from Freed's page
- Once blocked, Lindke could see Freed's posts but could no longer comment on them

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- Lindke sued Freed for violating 42 U.S.C. Section 1983, which prohibits the **state** from depriving someone of a federal constitutional or statutory right (e.g., First Amendment rights)
- This section protects individuals from "state action" rather than individual or private actions
- **ISSUE:** *Did Freed, a public official, engage in "state action" or was he functioning as a private citizen when he deleted Lindke's comments and blocked Lindke from Freed's Facebook page?*
 - What is considered private conduct versus "state action" on social media?

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- **State-Action Doctrine Test** - A public official engages in “state action” under Section 1983 when using social media only if the public 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 or taking the action(s) concerned**
- Ultimately, the Court remanded the case to lower court to analyze the facts based on the State-Action Doctrine Test

California Law - Limitations AB 992 (2020)/Government Code § 54952.2

- Effective January 1, 2021
- Expires January 1, 2026, law returns to pre-2021 form
- Board members **may not** use social media to “**discuss among themselves**” **official business** (Gov. Code, § 54952.2)
- AB 992 attempted to clarify how members of a legislative body may permissibly use **internet-based social media platforms** to address matters **within the subject matter jurisdiction of their legislative body** by amending the Brown Act in two notable ways

AB 992 (2020)/Government Code § 54952.2



- Clarifies that certain communications on social media are **not** considered meetings under the Brown Act
 - Separate communications to answer questions, provide information to the public, and/or solicit input on matters within the agency’s jurisdiction, as long as a majority of board members do not *discuss among themselves* business of a specific nature that is within the subject matter of the agency
 - “Discuss among themselves” includes comments or use of digital icons that express reactions to communications

AB 992 (2020)/Government Code § 54952.2



- Provides that a member of the Board may not **respond** directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the Board that is **made**, **posted**, or **shared** by any other member of the Board
 - Any two members can violate this provision regardless of the number of members of the legislative body; major distinction from other Brown Act provisions, which require majority of the legislative body

Is it State Action?

- In this example, we have Mesa Water's official Instagram account; all activity on this account is related to Mesa Water
- If John Doe is blocked by Mesa Water's official social media account, this would be "state action" and a probable violation of John's First Amendment Rights



Is it State Action?

- In this example, we have the official Instagram account of the Board President of Mesa Water; all activity on this account is related to the Board President's position
- If John Doe's comment is deleted by the Board President's account, this would likely be considered "state action" and a violation of John's First Amendment Rights

