



Trolls on Social Media: Can I Block Them?

2024 League of California Cities Annual Conference
October 17, 2024

Presented by: Laurence Wiener – Richards, Watson & Gershon

Why are we here?

- Official social media sites are a “public forum”

What is a public forum?

- **Government property where speech can be delivered**
 - Traditional public forum
 - Limited/designated public forum
 - Non-public forum



Public Forum Concept Applied to Social Media

“While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the ‘vast democratic forums of the Internet’ in general, . . . and social media in particular.”



How was this applied in California?

- Persons identified themselves as public officials
- Invoked their governmental status to encourage engagement
- Inform the public about events and news concerning the public entity

Lindke v. Freed

- U.S. Supreme Court weighs in



James Freed

- **James Freed is City Manager of Port Huron, Michigan**

- Picture of himself with a city lapel pin, identifies his title
- Linked to city's website
- Uses his email address



James Freed

- **James Freed is City Manager of Port Huron, Michigan**
 - Solicited feedback from the public
 - Posted a link of a survey about housing and encouraged people to complete it



James Freed

- **James Freed is City Manager of Port Huron, Michigan**

- Talks about his job
- Reconstruction of the City's boat launch
- Streamlining leaf pick-up
- Stabilizing water intake from the local river



James Freed

- **Responded to questions**

- Both personal and professional
 - Can City's residents be allowed to have chickens?

- **Covid 19**

- Personal and Professional information

Kevin Lindke

■ Concerned citizen

- Pandemic responses were “abysmal” and “the City deserves better”
- Commented on picture of City Manager taking out from restaurant

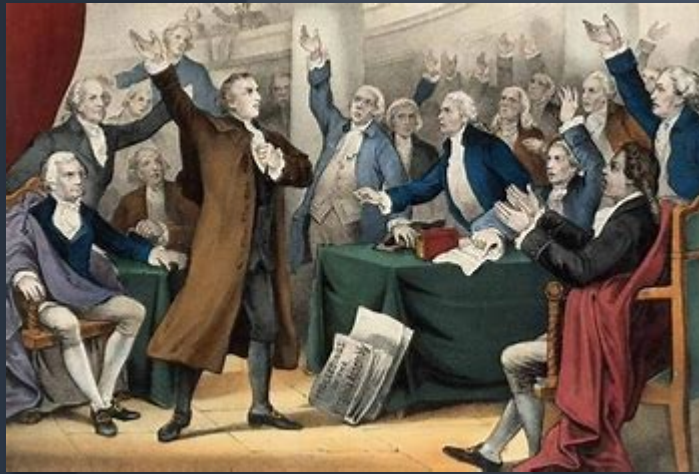


Lawsuit

- First Amendment Claim
- Right to Comment because it was a public forum

Public Officials Have Rights

- Freed did not relinquish his First Amendment rights when he became city manager



Rule

- A public official's social-media activity constitutes state action only if the official:
 - Possessed actual authority to speak on the State's behalf, and
 - Purported to exercise that authority when he spoke on social media



Possessed of State Authority

- Statute
- Ordinance
- Regulation
- Custom or usage

Statute, Ordinance & Regulations

- **Must be in writing**
 - Must be specific



Custom or Usage

- **Persistent practices**
 - Doesn't have to be on social media

Must be the Cause of the Violation

- Limited authority results in limited liability

Rule

- **A public official's social-media activity constitutes state action only if the official:**
 - Possessed actual authority to speak on the State's behalf, and
 - Purported to exercise that authority when he spoke on social media



Purported to exercise that authority

- Exercising responsibility - not merely reporting on it



Labels Make a Difference

- **Official:**

- City Manager of Port Huron
- Mayor of Beverly Hills

- **Personal:**

- Personal page of James Freed
- Personal page of Joe Smith, Mayor of Beverly Hills

Council Member Takeaways

- **Indicate that the social media page is not official**
 - Personal
 - Link to official page
- **If posting about news, be honest**
 - City Manager form of government
- **City should adopt “official” City pages**

City Manager Takeaways

- **Official City Sites**

- Clearly possesses authority
- Don't use your social media to exercise authority

**SUPREME COURT
OF THE UNITED STATES**

 KEVIN LINDKE,)
 Petitioner,)
 v.) No. 22-611
 JAMES R. FREED,)
 Respondent.)

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrrccourtreporters.com



Thank you!

Laurence Wiener
lwiener@rwglaw.com