

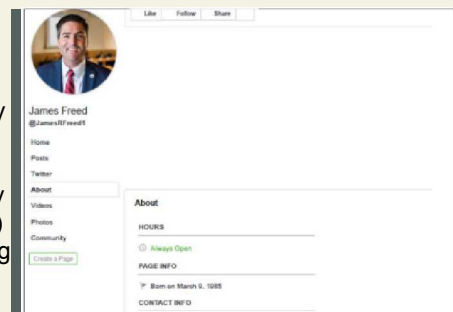


Civics is all around us. The United States Supreme Court is the highest court in the land. Through its power of judicial review, its decisions have a lasting impact on "We the People". So what is the Court hearing this session and how might the justices rule? Let's help each other expand our civic literacy.

## The Case of Social Media Blocking

### The Facts of *Lindke v. Freed* and *O'Connor-Ratcliff v. Garnier*:

In March of 2020, the City Manager of Port Huron, Michigan, James Freed posted updates on his social media page regarding the town's COVID-19 pandemic response. Kevin Lindke, a Port Huron resident, commented on these posts criticizing the local government's policies. Freed deleted the comments made by Lindke, and eventually blocked him from commenting on his page. Lindke sued Freed under 42 U.S.C. §1983 for violating his First Amendment rights. Freed contends that the page in question is a long-standing personal social media page, and that he was not paid by the city to operate the page, did not do so on a city device, and only shared information after it was first shared through public channels (Respondent Brief, p.7) According to Lindke, the "appearance and function" of the page made it official state action, with Freed using words like "we, us, and our" and "soliciting feedback and responses" from constituents on city topics (Petitioner Brief, p.7-14).



In 2017, a similar situation occurred in Poway, California. There, two members of the Unified School District Board of Trustees, Michelle O'Connor-Ratcliff and T.J. Zane created Facebook and Twitter accounts for their government offices to share school-district business and news. Parents Christopher and Kimberly Garnier often commented on these pages with criticisms of the Board. Soon, they discovered their posts were being hidden and/or deleted. Eventually, O'Connor-Ratcliff and Zane blocked the Garniers from their social media pages. The Garniers sued the two officials under 42 U.S.C. §1983 for violating their First Amendment rights as blocking them prevented the exercising of free-speech and government-petitioning rights in a public forum (Petitioner Brief, p.8).

In *Lindke v. Freed*, the U.S. District Court for the Eastern District of Michigan at Detroit determined in summary judgment that because Freed managed his Facebook page in his private capacity, and because only state action can give rise to liability under §1983, Lindke's claim failed. The U.S. Court of Appeals for the Sixth Circuit affirmed.

In *O'Connor-Ratcliff v. Garnier*, the U.S. District Court for the Southern District of California determined in summary judgment that the Trustees were subject to qualified immunity and therefore exempt from damages being sought by the respondents. However, the court did allow the case to proceed on its merits (First Amendment claim), because O'Connor-Ratcliff and Zane, as Board Trustees acted "under color of" state law when they blocked the Garniers. The Ninth Circuit affirmed.

The U.S. Supreme Court granted certiorari in both cases and heard oral arguments for both on October 31, 2023.

The Court was being asked to address one question:

1. Does a public official engage in state action subject to the First Amendment by blocking an individual from the official's personal social media account, which the official uses to communicate about job-related matters with the public?

On March 15, 2024, the Court issued a unanimous decision for *Lindke v. Freed* and a per curiam ruling for *O'Connor-Ratcliff v. Garnier* which resulted in both cases being sent back down to their respective Courts of Appeals. Both cases had their rulings vacated and remanded with instructions that continued proceedings should now use the new test/considerations from the unanimous *Lindke v. Freed* decision. The decision, written by Justice Amy Coney Barrett, outlined the following considerations for the lower courts:

- \*Public officials maintain their own First Amendment rights to speak about their jobs as private citizens
- \*Courts may need to look at the facts of individual social media actions in terms of content and function
- \*When determining if an individual is acting as a private citizen or a public official on social media, the courts must look at:
  - +Whether the individual has the authority to speak on behalf of the government and is doing so within the social media action in question
  - +Whether the social media account was designated personal or official
  - +Whether the social media action was done by the individual or government staffers
  - +The "nature of the technology"
    - ~A public official may delete comments from only personal posts
    - ~Blocking someone from an entire social media page that contains both personal and official posts could prevent someone from commenting on official posts

In the end, the justices warned that, "A public official who fails to keep personal posts in a clearly designated personal account therefore exposes himself to greater potential liability" (Opinion of the Court, p.15).

### Supreme Court Precedent Used in this Case:

- *Brentwood Academy v. Tennessee Secondary School Athletic Association* (2001): The Court held that state school officials who are involved in a private school sports organization, with the knowledge of the state education board, can be sued for First and Fourteenth Amendment violations as they are "entangled" with state action
- *Griffin v. Maryland* (1964): The Court ruled that an arresting deputy, despite working as a private employee at the time, possessed and acted under state authority, making the state of Maryland responsible for his actions.
- *Lugar v. Edmondson Oil Co.* (1982): The Court ruled that a state was liable for damages caused by unconstitutional conduct when two conditions were met. First, "the deprivation [of a constitutional right] must be caused by the exercise of some right or privilege created by the State." Second, "the party charged with the deprivation must be a person who may fairly be said to be a state actor." This includes both state officials and those whom are significantly aided by them.

**To Think and To Do:** Given the parameters set by Justice Barrett in the unanimous decision of the Supreme Court, and the precedents used in this case, how do you think the 6th Circuit and 9th Circuit Courts of Appeals will rule once they re-evaluate both cases? Explain.

to Learn MORE about this case, view the Brief for the Petitioner, Kevin Lindke, Brief for the Respondent, James Freed or the Brief for the Petitioners, Michelle O'Connor-Ratcliff and T.J. Zane, Brief for the Respondents, Christopher and Kimberly Garnier

