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Case of the Month

A public official may violate citizens' First Amendment rights by blocking their posts on the official's social media page.

James Freed, the city manager for Port Huron, Michigan, converted his private, personal Facebook page to a public page and began posting information related to his position in addition to personal updates. Kevin Lindke, a local resident, commented on Freed's page criticizing the city's handling of the COVID-19 pandemic. Freed deleted those comments and eventually blocked Lindke. Lindke sued Freed under [42 U.S.C. § 1983](#), alleging that Freed violated his First Amendment rights by restricting his ability to comment on Freed's Facebook page, which Lindke characterized as a public forum, and that Freed engaged in viewpoint discrimination by limiting public criticism on his page. Freed moved for summary judgment, which the district court granted. Lindke appealed.

The U.S. Sixth Circuit Court of Appeals concluded Freed's activity on his page was operated in his personal capacity and not state activity because there was no authority that required Freed to maintain an account as part of his official duties, no state employees or resources were used to maintain the page, and the Facebook page belonged to him and not the office. The court affirmed the district court's judgment. Lindke appealed.

The U.S. Supreme Court conceded that the line between private conduct and state action in social media is difficult to draw, but stated the line should depend on the substance of the conduct, not the labels. A personal social media page can have a mix of public and private posts, but each post should be examined to determine whether the official had authority to make those posts. Authority could come from law or regulations, and could also come from longstanding custom to speak for the state. The Court also noted that the nature of the technology matters; the act of blocking a person from commenting versus merely deleting their posts could be state action if a citizen is prevented from commenting on official posts. The Court established the test for determining whether a public official's social media activity is state action depends on whether the official has actual authority to speak on the government's behalf on a particular matter, and if the official purported to use that authority in taking action on a post. The Court vacated the lower court's judgment and remanded for the lower court to apply the new test. [Lindke v. Freed](#), No. 22-611, 2024 WL 1120880 (Mar. 15, 2024).

Why is This Case Significant?

Social media is an increasingly important way for officials to engage with the public, but it involves risks when mixing public and private activity. The U.S. Supreme Court here establishes a test to determine whether social media activity is state action which may violate the First Amendment.

Updated on eLaw:

[Dual Credit Agreements with School Districts](#)

[Provision of High School and College Credit Only Instruction at School Districts](#)

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Personnel

Former employee provided sufficient evidence to overcome dismissal of his claim that a university medical school retaliated against him in violation of the [Family Medical Leave Act](#) (FMLA), among other claims, by failing to follow its own disciplinary policies in terminating him shortly after he returned from approved FMLA leave. [Vasquez v. Univ. of Tex. Health Sci. Ctr.](#), No. 4:23CV2418, 2024 WL 665343, (S.D. Tex. Feb. 16, 2024) (adopting report and recommendation in [Vasquez v. Univ. of Tex. Health Sci. Ctr.](#), No. 4:23CV2418, 2024 WL 666120 (S.D. Tex. Jan 25, 2024)).

Former employee failed to provide sufficient evidence she notified her employer about her disability to overcome dismissal of her claim a community college discriminated and retaliated against her and failed to accommodate her disability in violation of the [Americans with Disabilities Act](#) (ADA), for disciplining her for performance. [Neubel-Johnson v. Collin Coll.](#), No. 4:22-CV-1029-SDJ-KPJ, 2024 WL 1020564 (E.D. Tex. Mar. 8, 2024) (adopting report and recommendation in [Neubel-Johnson v. Collin Coll.](#), No. 4:22-CV-1029-SDJ-KPJ, 2023 WL 10352170 (E.D. Tex. Dec. 27, 2023)).

Former employee failed to provide sufficient evidence to overcome summary judgment on his claims his employer discriminated against him by failing to accommodate his Tourette syndrome in violation of the [ADA](#). [Cooper v. Dolgencorp](#), 93 F.4th 360 (6th Cir. Feb. 15, 2024).

The state of Texas provided sufficient evidence the federal government violated the U.S. Constitution [Quorum Clause](#) when it passed the federal [Pregnant Workers Fairness Act](#) (PWFA) without physical presence of the majority of the House's membership to be granted an

injunction against the federal government for enforcing the PWFA against the state and its divisions and agencies. [Tex. v. Garland](#), No. 5:23-CV-034-H, 2024 WL 967838 (N.D. Tex. Feb. 27, 2024) (mem. op.).

Students and Instruction

Former PhD student failed to provide sufficient evidence to overcome dismissal of his claims a university discriminated against him on the basis of race and national origin in violation of the U.S. Constitution [Fourteenth Amendment](#), Equal Protection and Due Process clauses by imposing additional requirements which delayed his graduation. [Zapata Hincapie v. Tex. Tech Univ.](#), No. 5:23-CV-045-H, 2024 WL 1054650 (N.D. Tex. Mar. 11, 2024) (mem. op.).

The U.S. Supreme Court denied an application for writ of injunction pending appeal by a university student group who claimed the university prohibited them from hosting a campus drag show in violation of the U.S. Constitution [First Amendment](#), preserving the lower court's previous decision upholding the university president's prohibition on campus drag shows. [Spectrum WT v. Wendler](#), No. 23A820, 2024 WL 1123370 (Mar. 15, 2024).¹

Community and Governmental Relations

Newspaper publisher provided sufficient evidence for dismissal under the [Texas Citizens Participation Act](#) of an assistant district attorney's claims that the newspaper published defamed him when it stated he assisted with the prosecution of a criminal case that was later overturned. [Polk Cnty. Publi'g Co. v. Coleman](#), No. 22-0103, 2024 WL 648672 (Tex. Feb. 16, 2024).

¹ This case was summarized in the [October 2023](#) Community College Services Legal Update.



Recent Regulations and Guidance

The Texas Board of Nursing amended [regulations](#) related to the use of standardized exams prepared by private entities in professional nursing programs, in response to statutory changes made during the 88th Legislative Session.

The Texas Health and Human Services Commission (HHSC) amended [regulations](#) requiring Nurse Aide Competency Evaluation Programs to accept HHSC's computer-based training in lieu of classroom training with proof of completion in accordance with requirements.

HHSC amended [regulations](#) relating to requirements for program directors and instructors of Nurse Aide Competency Evaluation Programs.

The Texas State Library and Archives Commission amended [regulations](#) removing the requirement to file records destruction requests.

The Texas Department of Public Safety (DPS) amended [regulations](#) authorizing the carrying of firearms by commissioned security officers and

personal protection officers who are licensed Texas peace officers or honorably retired Texas peace officers.

DPS amended [regulations](#) regarding self-defense course and documentation requirements for training instructors of commissioned security officer licenses, in response to statutory changes made during the 88th Legislative Session.

The Texas Real Estate Commission amended [regulations](#) relating to the disclosure notices related to tax assessments made by water districts, in response to statutory changes made during the 88th Legislative Session.

The State Board for Educator Certification amended [regulations](#) removing limits on certain professional development hours for teachers and counselors for standard certificate renewal.

The Texas Forensic Science Commission adopts [regulations](#) relating to license renewal and continuing education requirements for Forensic Technicians.



Policy Spotlight

When does a community college need a local policy?

Not every community college's policy code has both a legal framework and a local policy, with most codes only having a legal framework. In many cases, a college can rely on the legal framework at a policy code to outline the college's obligations under the law and administrative regulations to guide implementation and local practice.

Local policy is the primary way the board governs and oversees the management of the college according to legal provisions, but not

the only way. Boards also approve the college budget, pass resolutions, enter into contracts and memoranda of understanding, and vote on agenda items. Not every board decision or initiative requires a board-adopted policy.

A college needs a local policy in specific circumstances, including the following:

- Responding to a legal requirement for the board to adopt a policy;
- Reducing potential legal risk by mandating consistent practices across the college;

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- Declaring the college's choice among legal options; and
- Clarifying administrative authority to manage college business.

Why does TASB Community College Services sometimes recommend a local policy is not needed?

Generally, TASB Community College Services advises against local policy provisions that repeat legal requirements already addressed in the legal framework since colleges must comply with law. Local policy should address areas where the board has authority and choice.

Community College Services also advises against policies that include detailed administrative provisions. Board policy is meant to govern college operations, while administrative regulations are meant to guide implementation of board policy. Any guidelines, handbooks, manuals, forms, or other administrative regulations the college's administration develop should be consistent with board policy, and in cases of conflict between administrative regulations and policy, policy prevails.

The term *policy* is often used in ways that describe board-adopted policy and administrative regulations. However, Community College Services encourages colleges to use *policy* more narrowly to refer to board-adopted policy. Colleges can often satisfy a requirement from a governmental agency to develop a policy by developing administrative regulations rather than adopting board policy, particularly when the required provisions deal with implementation rather than governance.

How can TASB Community College Services help?

For those community colleges that are [localized](#) with TASB Community College Services, your [policy consultant](#) can provide guidance about whether local policy is needed on a topic. Community College Services issues [numbered updates](#) twice per year with revisions to local policy based on changes to law, accrediting agency guidelines, and recommended practice for your board's consideration.

If you would like legal review of your local policy, email colleges@tasb.org or call 800.580.1488 to get connected with a Community Colleges attorney.



In the News

The U.S. Department of Education, Office for Civil Rights, issued a [Dear Colleague letter](#) reminding community colleges of their obligation under [Title VI of the Civil Rights Act of 1964](#) to address discrimination against Muslim, Arab, Sikh, South Asian, Hindu, and Palestinian students.

The Texas governor announced a [Skills Development Fund](#) grant award totaling \$193,372 to Northeast Texas Community College by the Texas Workforce Commission, which will provide for customized training to workers at a Texas businesses.

The Texas Higher Education Coordinating Board [extended](#) the state financial aid application priority deadline to April 15 due to continued technical challenges related to the Free Application for Federal Student Aid (FAFSA).