

ANCHORAGE

ASSEMBLY

Social Media

Lindke

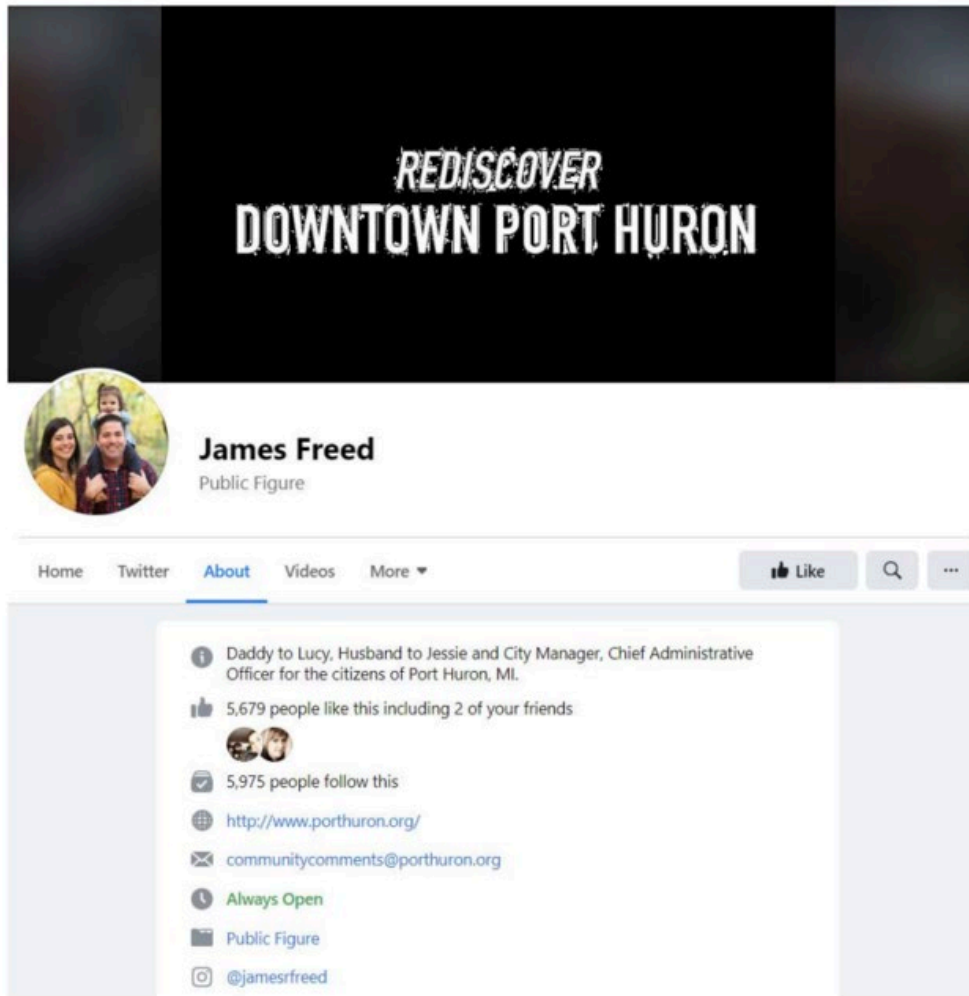
v. Freed



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Facts

James Freed



- Created Facebook page in college
- Converted his profile to a public page to exceed the 5000 'friend' limit.
- 2014 appointed city manager of Port Huron, MI
- Posted links to press releases.
- Solicited public input.
- Also posted family pictures, Bible verses, etc.

Facts



Kevin Lindke

- Started commenting on Freed's page regarding the City's COVID response.
- Made Political comments to more personal and family related posts.
- James Freed initially deleted comments.
- Freed ultimately blocked Lindke.
- Lindke sued for violating First Amendment right to Freedom of Speech.

Issue



Whether a local government employee's social media activity constitutes state action where the employee did not use the social media account to perform a governmental duty or to act under the authority of his or her office?

The Test

Test



For the reasons we explain below, a public official's social-media activity constitutes state action under §1983 only if the official

(1) possessed actual authority to speak on the State's behalf, and

(2) purported to exercise that authority when he spoke on social media. The appearance and function of the social-media activity are relevant at the second step, but they cannot make up for a lack of state authority at the first.

The Test: (1) possessed actual authority to speak

Step



“The inquiry is not whether making official announcements *could* fit within the job description; it is whether making official announcements is *actually* part of the job that the State entrusted the official to do.”

The Test: (1) possessed actual authority to speak

Step



“In sum, a defendant like Freed must have actual authority rooted in written law or longstanding custom to speak for the State. That authority must extend to speech of the sort that caused the alleged rights deprivation. If the plaintiff cannot make this threshold showing of authority, he cannot establish state action.”

The Test: (2) purporting to speak with authority

Step

2

“ “[G]enerally, a public employee” purports to speak on behalf of the State while speaking “in his official capacity or” when he uses his speech to fulfill “his responsibilities pursuant to state law.” West, 487 U. S., at 50. If the public employee does not use his speech in furtherance of his official responsibilities, he is speaking in his own voice.”

The Test: (2) purporting to speak with authority

Step

2

“Had Freed’s account carried a label (e.g., “this is the personal page of James R. Freed”) or a disclaimer (e.g., “the views expressed are strictly my own”), he would be entitled to a heavy (though not irrebuttable) presumption that all of the posts on his page were personal. Markers like these give speech the benefit of clear context: Just as we can safely presume that speech at a backyard barbeque is personal, we can safely presume that speech on a “personal” page is personal (absent significant evidence indicating that a post is official)..”

Takeaways: Best Practices

Official

- Clearly labeled as “Official”
- Can discuss matters before the body, serve as a place to engage constituency.
- Can provide links to municipal information and even be the exclusive source of that information.
- Aide can manage it.
- **Cannot** campaign.

Personal

- Clearly labeled as “Personal” or carries a disclaimer
- Can opine on political issues but **best not** to discuss matters before the body.
- Can provide links to municipal information but **cannot** be the exclusive source of that information.
- Aide **cannot** manage.
- Can be your campaign site.

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Questions



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