



PASADENA

FEDERAL APPELLATE COURT DECISIONS REGARDING PUBLIC OFFICIALS' USE OF SOCIAL MEDIA PAGES

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Recent News re: Settlements of First Amendment Lawsuits Arising from Public Official Blocking of Constituents on Social Media

City Attorney's/City Prosecutor's Department – Civil Division

Irvine settles lawsuit that accused former Irvine mayor of violating a resident's 1st Amendment rights

Colorado's Senate president blocked a Facebook commenter. That cost taxpayers \$25,000 — and he's not the first to prompt a payout

Jefferson County settles social media lawsuit

Policy changes to follow allegation of First Amendment violation

MONTGOMERY COUNTY, PA — Montgomery County Commissioner Joe Gale has agreed to a settlement which states he will not block citizens who are critical of him on social media, or delete their comments.

The settlement came in response to a lawsuit that alleged Gale violated the 1st Amendment rights of area residents in blocking them on Facebook, Twitter, and Instagram. The lawsuit, filed by seven local residents, is believed to be the first suit of its kind in Montgomery County.

Beech Grove, ACLU reach settlement in Facebook case

ACLU: Lawsuit over mayor's Facebook blocks settled

Posted on September 1, 2021



Davidson v. Randall

912 F.3d 666 (4th Cir. 2019)

City Attorney's/City Prosecutor's Department – Civil Division

- Randall created “Chair Phyllis J. Randall” Facebook page one day before she was sworn in as Chair of County Board of Supervisors
- Randall posted on Chair’s Facebook page about “town hall” meeting
- Davison commented on page
- Randall (a) deleted the post/comments; and (b) blocked Davison

Chair Phyllis J.
Randall

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Davison v. Randall (cont.)

City Attorney's/City Prosecutor's Department – Civil Division

- Fourth Circuit affirmed judgment in favor of Davison
- Randall acted under color of law
- Davison prevailed against Randall on First Amendment claim
 - > Interactive component of Facebook page → public forum
 - > Randall engaged in viewpoint discrimination



Robinson v. Hunt County, Texas 921 F.3d 440 (5th Cir. 2019)

City Attorney's/City Prosecutor's Department – Civil Division



- Plaintiff posted negative comment on Sheriff's Facebook page
 - > Comments deleted / banned from commenting
- Fifth Circuit found Plaintiff should have been able to proceed in litigation with claims against Sheriff's Office
 - > Court assumed Facebook page is a public forum
 - > Plaintiff properly alleged that Sheriff's Office has a policy of viewpoint discrimination on Facebook page



Knight First Amendment Institute v. Trump

928 F.3d 226 (2d Cir. 2019) (cert. granted, judgment vacated as moot)

City Attorney's/City Prosecutor's Department – Civil Division

- President blocked certain Twitter users from his Twitter account
- District Court granted users' Motion for Summary Judgment
- Second Circuit affirmed
 - > President's use of Twitter account created a "public forum"
 - > Blocking of Plaintiffs → viewpoint discrimination
 - Rejected argument that "workarounds" could still allow for viewing tweets



Campbell v. Reisch

986 F.3d 822 (8th Cir. 2021)

City Attorney's/City Prosecutor's Department – Civil Division

- Missouri state representative candidate created Twitter account same day she announced candidacy
- Solicited donations to campaign, support for candidacy
- Post-election purpose of account “seems” to be for promoting and positioning Reisch for more electoral successes
- Twitter feed only "occasionally" used for updates on bills



Campbell v. Reisch (cont.)

City Attorney's/City Prosecutor's Department – Civil Division

- Eighth Circuit found Reisch not acting under color of state law when blocking constituent from Twitter
 - > Account is "akin to a campaign newsletter"
 - > Post-election use of account too similar to pre-election use to suggest private account had "morphed" into government one



Lindke v. Freed

37 F.4th 1199 (6th Cir. 2022)

City Attorney's/City Prosecutor's Department – Civil Division

- Port Huron, Michigan City Manager updated personal Facebook page to reflect job title, with contact info as city (not personal) email
- "Medley" of posts from personal to city business
- Lindke posted comments on City Manager's page expressing disapproval of City Manager's handling of COVID-19 pandemic
- Freed blocked Lindke from the page



Lindke v. Freed (cont.)

City Attorney's/City Prosecutor's Department – Civil Division

- Sixth Circuit held that City Manager operated his Facebook page in personal capacity – not state action – departing from other circuits
- Focused on actor's official duties and use of government resources/employees – and did not examine page's appearance or purpose (as was the case with other circuits)
 - > Facebook use not required by law, page does not depend on status as City Manager, and page not funded by government
 - > “When Freed visits the hardware store, chats with neighbors, or attends church services, he isn't engaged in state action merely because he's ‘communicating’—even if he's talking about his job”



Garnier v. O'Connor-Ratliff
41 F.4th 1158 (9th Cir. 2022)

City Attorney's/City Prosecutor's Department – Civil Division

- O'Connor-Ratliff and Zane created Facebook and Twitter pages to campaign for Poway USD Board of Trustees
- Both candidates (now Trustees) won election
- Trustees then used same social media pages to inform residents and solicit feedback about items concerning school district business or promoting school district generally
 - > Garniers posted (often repetitive) criticisms in comments
- Trustees ultimately blocked Garniers



Garnier v. O'Connor-Ratliff (cont.)

City Attorney's/City Prosecutor's Department – Civil Division

- Two-day bench trial – District Court held that blocking Garniers indefinitely not "narrowly tailored" to avoid repetitive comments on Trustees pages
- School district incurred \$164,000 in fees through trial
- Ninth Circuit held that Trustees' blocking of Garniers constitutes state action
- Close nexus between social media pages and official positions



Options for Public Officials

City Attorney's/City Prosecutor's Department – Civil Division

- If discussing personal and City business on same social media page, if comments are deleted and/or users blocked, there may be First Amendment liability
- Options to consider
 - > Do not discuss City business on personal social media
 - > Ban all comments on social media pages
 - > Create dual accounts on social media platform, i.e., one for personal use, and one for City business