

# Is Blocking Constitutional? Ninth Circuit Applies New Social Media Test for Public Officials

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ATTORNEYS

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Public officials could violate the First Amendment if they block constituents on social media sites such as Facebook and X (formerly Twitter) they use for official purposes. The Ninth Circuit recently applied the U.S. Supreme Court's two-part test from *Lindke v. Freed*, to determine that a public official's social media posts about official business constituted "state action" triggering the application of First Amendment protections.

The president of the Poway Unified School District ("PUSD") Board used her social media accounts for a mix of personal and official content. She blocked the plaintiffs, parents of students in the district, from accessing and commenting on her posts and the parents sued, alleging a violation of their First Amendment rights. Under *Lindke*, a public official's actions on social media constitute state action for purposes of 42 U.S.C. § 1983 if the official (1) had actual authority to speak on the government's behalf and (2) used the relevant speech in furtherance of the that authority. Applying the *Lindke* test, the Ninth Circuit held that the Board member acted under color of state law and violated the First Amendment when she prevented plaintiffs from interacting with her social media posts. The case is *Garnier v. O'Connor-Ratcliff*.

The court found that the Board member had actual authority to speak on the District's behalf when posting about school district issues. California law permits school boards to inform the public about district activities. PUSD's Board bylaws also expressly authorize individual board members and particularly the Board President to communicate with the public via electronic communications about official business. The Board member was serving as Board President when she blocked the plaintiffs, and many of her posts fell squarely within her authorized role, including sharing board meeting information and announcing the hiring and firing of superintendents.

The Ninth Circuit emphasized that mixed-use social media pages, blending personal and official content may trigger constitutional obligations. The content and function of each post will determine whether the official had state authority and invoked that authority by posting on social media about government

business. The *Garnier* decision underscores the importance of drawing a clear line between personal and official communications online. Public officials can reduce this risk of liability by using their personal accounts with clear disclaimers, avoiding official titles and email addresses, and refraining from posting governmental information not otherwise publicly available. Public officials and agencies should ensure that social media practices are consistent with constitutional standards and consider adopting or revising policies that address platform use, comment moderation, and account designations.

For further guidance on managing public official speech online or updating your agency's policies, please contact **Chelsea Downes** or any attorney in **RWG's Public Law Department**.