



PRIMER EJERCICIO: SEGUNDA FASE

TRADUCCIÓN DIRECTA INGLÉS-CASTELLANO

PERFILES: 14 y 15

LINDKE v. FREED

James Freed, like countless other Americans, created a Facebook profile sometime before 2008. After he was appointed city manager of Port Huron, Michigan, he continued to operate his Facebook page himself and post prolifically about his personal life, although he also posted information related to his job. He often responded to comments left by city residents about community matters and occasionally deleted others that he considered “derogatory”.

Facebook user Kevin Lindke commented on some of Freed’s posts, unequivocally expressing his displeasure with the city’s approach to the pandemic. Initially, Freed deleted Lindke’s comments; ultimately, he blocked him. Lindke sued Freed under U. S. C. § 1983, alleging that Freed had violated his First Amendment rights. As Lindke saw it, he had the right to comment on Freed’s Facebook page because it was a public forum. The District Court determined that because Freed managed his Facebook page in his private capacity, and because only state action can give rise to liability, Lindke’s claim failed. The Sixth Circuit affirmed.

Section 1983 provides a cause of action against “every person who, *under color of any statute, regulation or custom of any State*” deprives someone of a federal constitutional or statutory right. Section 1983’s “under color of” text makes clear that it is a provision designed as a protection against acts attributable to a State, not those of a private person.

A public official’s social-media activity constitutes state action 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.



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The test is grounded in the bedrock requirement that “the conduct allegedly causing the deprivation of a federal right be *fairly attributable to the State*”. Lindke’s focus on appearance skips over this critical step. If the official does not speak in furtherance of his official responsibilities, he speaks with his own voice. A post that expressly invokes state authority to make an announcement not available elsewhere is official, while a post that merely shares otherwise available information is personal.