

Filtering Social Media Comments And Blocking Commenter May Violate First Amendment

After a jury trial, a federal judge in Arkansas has ruled that the Arkansas State Police violated the First Amendment when it blocked an individual from and used a specific filter on its Facebook page.

In *Tanner v. Ziegenhorn, et al.*, employees of the Arkansas State Police removed from its Facebook page comments made by a local critic, Tanner, that the State Police deemed offensive. Tanner complained and the comment was later re-added to the page by the State Police. Later, Tanner began sending the State Police's Facebook page private messages that contained various criticisms and profanity, including phrases like "fascist pigs" and other four-letter words. The State Police warned Tanner that he would be blocked from the page if he continued to use profanity in the private messages. Ultimately, Tanner responded with another profanity-laced private message and the State Police blocked him from their Facebook page. This resulted in all of Tanner's previous comments on the public Facebook page being blocked from view, and blocked Tanner from interacting with the page completely. Tanner sued the State Police on the grounds that the blocking violated his First Amendment rights. During the trial, it was discovered that the State Police applied an added filter to scan comments for various words over and above Facebook's own "community standards" filter. The State Police's compiled list of words deemed offensive included "copper," "pigs," and "jerk" that if used on the Facebook page would result in the posting being blocked from



view. It was also discovered that the State Police had set Facebook's community standards settings (guidelines and rules set by Facebook that users agree to upon signing up to use the service and are not controlled by individual users) on their Facebook page to "strong," meaning that it would filter more words that could potentially be considered profane or offensive than it might if it were set to the "weak" or "medium" setting.

The court determined that while the State Police cannot necessarily control the profanity filter contained in Facebook's community standards, the use of Facebook does not absolve the government of its First Amendment duties. The court suggested that the agencies decision to set the setting to "strong" may be filtering too much speech, and therefore not sufficiently tailored to be in compliance with the

First Amendment. It recommended a setting to "weak" or turning the profanity filter off altogether and supplementing with specific, profane words to block. The court further determined that the agency's separate list of terms such as "copper," "pig," and "jerk" went awry of the First Amendment because the list included no context and could be blocking speech that is not otherwise offensive. The court further said that the term "jerk" is hardly offensive and should never be blocked.

This case is just another example of why local governments using social media, like Facebook, should consider all ramifications of implementing such a "two-way" avenue of communication. If a municipality does use Facebook, it may want to review the page settings to ensure that filtering devices are not unintentionally blocking protected speech of persons wanting to comment on the municipality's page. Additionally, a municipality should ensure that an adequate social media policy is in place. Consult with your city attorney if you have any questions. 🍋

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