AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Democratic Rights/Freedom of Speech

**Davison v. Loudon County Board of Supervisors, No. 1:16cv932** (E.D.Va. 2017)

*Brian Davison was a resident of Loudoun County, Virginia, and posted comments critical of the members of the elected board of supervisors on the board’s public Facebook page. The chair of the board of supervisors also maintained an official Facebook page under her own name. A site administrator deleted Davison’s comments from the board’s page and the chair blocked Davison from posting on her page. Davison filed suit in federal district court, arguing that the Facebook pages were limited public fora and the exclusion of his comments from those pages violated his First Amendment rights. The district court found a sufficient First Amendment claim for the case to proceed.*

JUDGE CACHERIS.

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"Limited public forums are characterized by `purposeful government action' intended to make the forum `generally available'" for certain kinds of speech. At the time of the events giving rise to this suit, the County maintained a Policy stating that "the purpose of Loudoun County social media sites is to present matters of public interest in Loudoun County." The Policy provided that visitors were "encourage[d] to submit questions, comments and concerns," but that "the county reserve[d] the right to delete submissions" that violated enumerated rules, such as comments that include "vulgar language" or "spam." Such a policy evinces the County's purposeful choice to open its social media websites to those wishing to post "questions, comments and concerns" within certain limits.

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. . . . [S]peech online is treated no differently from speech offline under the First Amendment. A "metaphysical" forum created by a government policy like the County's social media policy is subject to the same First Amendment analysis regardless of whether that policy is applied to online speech. *Rosenberger v. Rector & Visitors of the University of Virginia* (1995). . . .

Defendant contends that "[n]o individual has the right to hi-jack an individual's Facebook page by relentlessly posting his or her comments at will, negative or otherwise, or demand that their comments remain posted indefinitely, just because the person is also a County official or employee." This argument both assumes that the Facebook page in question is maintained by Defendant in her individual capacity — an argument the Court has rejected for purposes of the present Motion — and obscures the relatively narrow issue now before the Court. The Court is only tasked here with determining whether Plaintiff has adequately pled that Defendant Randall's Facebook page is governed by the County's Social Media Comments Policy, and that her actions failed to comport with that policy. The Court finds that Plaintiff has adequately pled as much, and so has stated a claim under the First Amendment.

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