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Case Law and U.S. Supreme Court Update

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Constitutional claims

- First Amendment and social media (Lindke v. Freed)
- Second Amendment and firearms (Bondi v. VanDerStok, Garland v. Cargill, US v. Rahimi)
- Fourth Amendment and use of force (Barnes v. Felix, Chaney-Snell v. Young)
- Fifth Amendment and Land-Use Permit Conditions (Sheetz v. County of El Dorado, California)
- Eighth Amendment and public camping bans (City of Grants Pass v. Johnson)
- Fourteenth Amendment and civil asset forfeiture procedure (Culley v. Marshall)

Lindke v Freed

601 U.S. 187 (March 15, 2024)

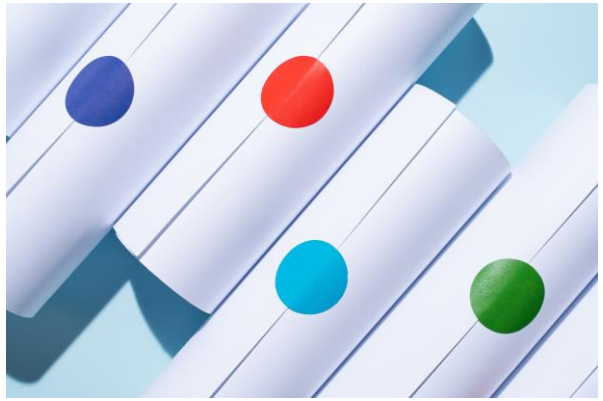
Port Huron City Manager (Freed) kept a Facebook account where he posted about a wide range of topics, both personal and professional.

Port Huron resident (Lindke) visited Freed's Facebook page and shared his dissatisfaction with the city's approach to the pandemic. For example, Lindke commented that the city's COVID response was "abysmal" and that "the city deserves better." When Freed posted a photo of himself and the mayor picking up takeout from a local restaurant, Lindke complained that while "residents were suffering," the city's leaders were out to eat.

Initially, Freed deleted Lindke's comments; ultimately, he blocked him. Once blocked, Lindke could see Freed's posts but could no longer comment on them.

Lindke filed a §1983 lawsuit, alleging that deleting his comments and blocking his ability to further comment violated his First Amendment right to Free Speech.

Lindke v Freed (continued)



Holding:

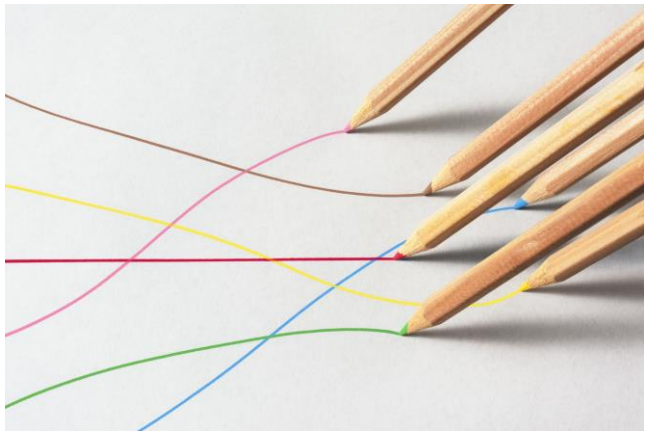
A public official's social-media activity constituted state action for purposes of §1983 and the First Amendment only if:

(1) the official possessed actual authority to speak on the government's behalf and

(2) intended to exercise that authority when he spoke on social media.

The appearance and function of the social-media activity were relevant at the second step, but they could not make up for a lack of state authority at the first.

Lindke v Freed (continued)



Reasoning:

While public officials can act on behalf of the State, they are also private citizens with their own constitutional rights.

The First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern. This right includes the ability to speak about information related to or learned through public employment, so long as the speech is not itself ordinarily within the scope of the employee's duties. Where the right exists, editorial control over speech and speakers on the public employee's properties or platforms is part and parcel of it.

Lindke v Freed (continued)

Warning!!!!

The state-action doctrine demands a fact-intensive inquiry.

A public official who fails to keep personal social media posts in a clearly designated personal account exposes himself to greater potential liability.

Second Amendment: Firearms

- *Garland v. Cargill*: A "Bump Stock Device" is not a "machinegun"
- *Bondi v. VanDerStok*: ATF did not exceed authority by regulating "Ghost Guns" and "parts kits"
- *United States v. Rahimi*: statute which prohibits firearm possession by persons subject to domestic violence restraining orders does not violate Second Amendment
- "Pistol Braces" and Short Barreled Rifles: ATF's 2021 rules are the subject of multiple pending circuit appeals. *Mock v. Garland*, No. 24-10743 (5th Cir.); *FRAC v. Garland*, No. 23-3230 (8th Cir. 2024). (Also, the SHORT Act and Hearing Protection Act would remove SBRs and suppressors from NFA. Passage depends on Senate's handling of House's current budget bill.)

Barnes v Felix

605 U.S. ___, 2025 LX 33633, 2025 WL 1401083 (May 15, 2025)

How far back in time should courts consider when assessing the "totality of circumstances" in Fourth Amendment excessive force claims?

Facts: The officer pulled a driver over for a traffic stop. The driver initially stopped and was cooperative but then started to drive away with the driver's door open. The officer jumped onto the doorsill, shouted "Don't f-ing move," and with no visibility into the car, fired two quick shots inside, killing the driver. About 5 seconds elapsed between when the officer stepped on the doorsill and when he fired the shots.

Barnes v Felix (continued)

Using the "moment-of threat" rule, the Fifth Circuit limited their view to the two seconds before the shooting and did not consider any facts leading up to the final moment. The Fifth Circuit ruled in the officer's favor and did not find excessive force when applying this rule.

One judge on the Fifth Circuit panel expressed concern with the moment-of-threat doctrine. Under the totality approach, a court could consider not just the "precise millisecond" when an officer deploys force, but everything that had transpired up until that time. And with that wider focus, the judge would have found that Felix's shooting of Barnes was unreasonable.

Barnes v. Felix, 221 L. Ed. 2d 751, 756-757

Barnes v Felix (continued)

HOLDING:

In resolving Fourth Amendment excessive force claims, courts may not apply a "moment-of threat" analysis because that rule constricts the proper inquiry into the totality of circumstances set forth in *Graham v Connor*.

To assess whether a law enforcement officer acted reasonably in using force, a court must consider all the relevant circumstances, including facts and events leading up to the use of force.

Barnes v Felix (continued)

Sixth Circuit relevance:

"Historically, this Circuit's precedent required the court to segment the incident into its constituent parts and consider the officer's entitlement to qualified immunity at each step along the way. We would carve up the incident into segments and judge each on its own terms to see if the officer was reasonable at each stage. But the Supreme Court's recent holding in *Barnes v. Felix*, 605 U.S. ___, 2025 LX 33633, 2025 WL 1401083 (2025) makes clear that such a segmented approach inappropriately constricts the proper inquiry into the 'totality of the circumstances."

***Hodges v. City of Grand Rapids*, 2025 U.S. App. LEXIS 13215, *38-39 (May 30, 2025) (cleaned up)**

Chaney-Snell v. Young

98 F.4th 699 (April 15, 2024)

Facts and Procedural Background:

Chaney-Snell pleaded guilty to the criminal offense of resisting arrest under Michigan Law. He later brought a §1983 excessive force lawsuit against the arresting officers. In his §1983 lawsuit, Chaney-Snell claimed that he did not resist, and after he peacefully surrendered, the officers punched him in the face, kneed him in the back, and dragged him across the floor.

The officers moved for summary judgment, arguing that the "Heck doctrine" barred Chaney-Snell's excessive force claim because it contradicted his criminal conviction. The district court disagreed. The defendant officers then appealed.

Chaney-Snell v Young (continued)

What is the *Heck* doctrine?

- Under the *Heck* doctrine, a convicted criminal defendant cannot bring a § 1983 lawsuit if it would, "necessarily imply the invalidity of their conviction." A criminal defendant must overturn the conviction on direct appeal or in habeas before moving forward with a § 1983 lawsuit. *Heck v Humphrey*, 512 U.S. 477 (1994)

- Example: A defendant found guilty of resisting "a lawful arrest" could not then claim in a §1983 suit that an officer's excessive force had rendered the arrest unlawful unless a court vacated the resisting-arrest conviction. *Hayward v. Cleveland Clinic Found.*, 759 F.3d 601, 608-13 (6th Cir. 2014)

Chaney-Snell v Young (continued)

<u>*Heck* as applied to Michigan's resisting arrest law</u>:

In *Schreiber v. Moe*, 596 F.3d 323 (6th Cir. 2010), the Sixth Circuit <u>refused</u> to apply the *Heck* doctrine to bar a §1983 lawsuit even when the plaintiff had been convicted of resisting arrest under Michigan law.

<u>Why???</u>

The then-existing Michigan caselaw (*Ventura*) interpreted Michigan law <u>not</u> to require proof that an arrest was lawful; Defendants could not argue that the arrest was illegal as a defense to the resisting charge.

So, a finding that an officer used illegal force in a § 1983 suit would not conflict with a resisting-arrest conviction and would not "necessarily imply the invalidity of such a conviction."

Chaney-Snell v Young (continued)

Chaney-Snell is important because it recognizes that:

"Michigan caselaw has since changed. In 2012, the Michigan Supreme Court overruled the state decision on which Schreiber relied for its conclusion. See, *People v. Moreno*, 491 Mich. 38, 814 N.W.2d 624, 625 (Mich. 2012). *Moreno* held that the resisting-arrest statute required prosecutors to prove that the police had made a lawful arrest. Given *Moreno*, Young argues, the claim that he used excessive force to arrest Chaney-Snell implies the invalidity of Chaney-Snell's conviction. And while we have favorably cited *Schreiber* in two unpublished opinions after *Moreno*, neither identified *Moreno's* change in law or discussed how it affects our *Heck* analysis."

Chaney-Snell v. Young, 98 F.4th 699, 707-708 (emphasis added).

Chaney-Snell v. Young (continued)

So stay tuned….

"Young raises an important question about the scope of *Heck* that warrants a reasoned answer at the proper time. But we can provide that answer only in an appeal where we have jurisdiction to consider the issue. And we lack jurisdiction to address the argument now."

Chaney-Snell v. Young, 98 F.4th 699, 708 (citation omitted).

Sheetz v. County of El Dorado, California, 601 US 267 (2024)

Background: Landowner sought to build prefabricated home on residential property. County conditioned approval of building permit on payment of $23,420 traffic impact mitigation fee.

The fee amount was not based on the costs of traffic impacts specifically attributable to the Landowner's particular project, but rather was assessed according to a rate schedule that took into account the type of development and its location within the County.

Landowner argued that conditioning the building permit on the payment of a traffic impact fee constituted an unlawful "exaction" of money in violation of the Takings Clause. Relying on *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 91994), Landowner argued the County had to make an individualized determination that the fee was necessary to offset traffic congestion. Lower court ruled against Landowner finding that *Nollan* and *Dolan* apply only to permit conditions imposed on an ad hoc basis by administrators, not to a fee imposed on a class of owners by Board-enacted legislation.

Sheetz v. County of El Dorado

Holding: Nothing in constitutional text, history, or precedent supports exempting legislatures from ordinary takings rules.

Just as the Takings Clause "protects 'private property' without any distinction between different types," . . . it constrains the government without any distinction between legislation and other official acts.

Both in the Founding era and Reconstruction, "early constitutional theorists understood the Takings Clause to bind the legislature specifically."

And the Court's past precedent "applied the per se rule requiring just compensation to both legislation and administrative action."

City of Grants Pass v. Johnson, 603 U.S. 520 (2024)

Background: City enacted ordinance prohibiting camping on public property or parking overnight in city parks. An initial violation triggers a fine, multiple violations could lead to being banned from parks for 30 days, and violating a ban could lead to a charge of criminal trespass (and jail time).

Plaintiffs filed a class action on behalf of all homeless people claiming the ordinance constituted cruel and unusual punishment. The homeless population in the city exceeded the number of available shelter beds. By criminalizing camping, the plaintiffs argued the ordinance outlawed being homeless.

Plaintiffs relied on *Martin v. Boise*, 920 F.3d 584 (2019), in which Ninth Circuit held that a public-camping ordinance in Boise, Idaho, violated the Eighth Amendment's Cruel and Unusual Punishments Clause to the extent homeless individuals lacked “access to alternative shelter.” *Id*., at 615.

City of Grants Pass v. Johnson

Holding:

None of the city's sanctions qualifies as cruel because none is designed to "superad[d]" "terror, pain, or disgrace." . . . Nor are the city's sanctions unusual, because similar punishments have been and remain among "the usual mode[s]" for punishing offenses throughout the country. . .

Under the city's laws, it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building.

Court declined to extend *Robinson v. California*, 370 U.S. 660 (1962) to cover involuntary acts, reaffirming *Powell v. Texas*, 392 U.S. 514 (1968).

Culley v. Marshall, 601 U.S. 337 (2024)

Background: Car owners sued after their vehicles were seized incident to arrest alleging the government violated their due process rights by retaining their cars during the forfeiture process without holding preliminary hearings.

Plaintiffs relied on Justice Sotomayor's opinion (when she was a Second Circuit judge) in *Krimstock v. Kelly*, 306 F.3d 40 (2nd Cir. 2002): "plaintiffs must be given an opportunity to test the probable validity of the City's deprivation of their vehicles *pendente lite*, including probable cause for the initial warrantless seizure."

Also relied on recent Sixth Circuit precedent: "Wayne County was required to provide a prompt post-seizure hearing for plaintiffs' personal vehicles." *Ingram v Wayne Cnty., Michigan*, 81 F4th 603, 620 (6th Cir., 2023).

Culley v. Marshall

Holding: “due process does not require a separate preliminary hearing before the forfeiture hearing.”

Using textualism/originalism, Court analyzed statutes from the Founding era as well as statutes from the Reconstruction era and determined there has never been a requirement for a preliminary hearing.

“When States seize and seek civil forfeiture of personal property, due process requires a *timely* post-seizure forfeiture hearing.”

Cases deciding jurisdiction and procedure issues

- SixARP LLC v. Byron Township
- Williams v. Reed
- Heos v. City of East Lansing

Sixarp, LLC v. Twp. of Byron

__ Mich ___; 2025 Mich. LEXIS 478 (March 26, 2025)

Sixarp, LLC, dba Praxis, a packaging company, applied for an eligible manufacturing personal property (EMPP) exemption for some of its manufacturing equipment.

The Township's assessor denied Praxis's request and mailed a denial notice stating the reason for denial and advising Praxis to appeal to the Board of Review. The Township also sent Praxis a separate notice of assessment with details on appealing to the Board of Review, including meeting dates and deadlines.

Praxis did not timely appeal the denial to the Board of Review. Praxis filed a petition with the MTT, which dismissed the petition for lack of jurisdiction since Praxis failed to first appeal to the Board of Review.

Praxis appealed and Court of Appeals reversed the MTT’s decision, holding that the Township's notice efforts did not comply with statutory obligations and so deprived Praxis of due process.

Sixarp, LLC v Twp. of Byron

Holding:

The Supreme Court reversed the Court of Appeals and reinstated the MTT's order dismissing Praxis's petition for lack of jurisdiction.

The Supreme Court held that the Township's notice to Praxis satisfied the statutory notice requirements (MCL 211.9m(3) and MCL 211.9n(3)), as well as the requirements of due process. The denial notice stated the reason for denial and advised Praxis of the right to appeal to the Board. While the denial notice omitted some details like specific meeting dates, the subsequent notice of assessment provided this information.

The Township's efforts, taken together, were reasonably calculated to apprise Praxis of the appeal process and afford an opportunity to present objections.

Williams v. Reed, 604 U.S. ___, 145 S.Ct. 465 (2025)

Background: Claimants sought unemployment benefits and claimed a due process violation due to the government's delays in processing claims. The trial court dismissed the claim for failure to exhaust administrative remedies, "leaving the claimants in a catch-22—unable to sue to obtain an order expediting the administrative process because they had not yet completed the process allegedly being delayed."

Holding: "In the unusual circumstances presented here—where a state court's application of a state exhaustion requirement in effect immunizes state officials from § 1983 claims challenging delays in the administrative process—state courts may not deny those § 1983 claims on failure-to-exhaust grounds."

State law that immunizes government conduct otherwise subject to 42 U.S.C. § 1983 is preempted even when the federal claim is raised in state court.

Heos v. City of E. Lansing

__ Mich __; 2025 Mich. LEXIS 246 (February 3, 2025)

The City of East Lansing entered into a franchise agreement with the Lansing Board of Water and Light (LBWL), requiring LBWL to collect and remit a 5% franchise fee from its consumers in East Lansing to the City.

The franchise fee was imposed by the City through an ordinance that was not approved by a majority of East Lansing voters.

The revenue from the franchise fee was placed into the City's general fund and used for various purposes, including pension and benefit payments.

The plaintiff, James Heos, and other LBWL consumers in East Lansing, filed a class-action lawsuit challenging the franchise fee as an illegal tax under the Headlee Amendment.

Heos v City of E. Lansing (continued)

Useful Legal Background Info:

The Headlee Amendment of the Michigan Constitution prohibits local governments from levying new taxes or increasing existing taxes above authorized rates without voter approval (Const. 1963, art. 9, § 31).

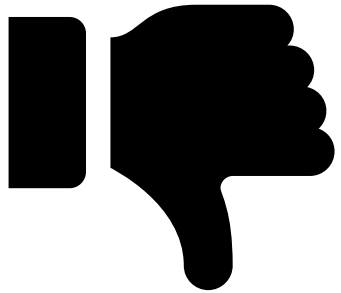
Heos v City of E. Lansing (continued)

Creative revenue raising?

"For reasons explained fully in this opinion, there is no question that the fee would be an illegal tax if the City imposed the charge directly on its residents. The issue therefore is whether a municipality may circumvent the Headlee Amendment by enlisting a cooperative nongovernmental entity to accept the imposition of a franchise fee with the express understanding that the entity would, in turn, collect the franchise fee from would-be taxpayers and remit the revenue collected to the municipality."

Heos v. City of E. Lansing, 2025 Mich. LEXIS 246, *6

Heos v City of E. Lansing (continued)



Holding:

The court applied the three-factor test from *Bolt v. Lansing* to determine whether the franchise fee was a tax or a permissible user fee.

The court concluded that the fee was a tax because: (1) it was imposed for a general revenue-raising purpose, (2) it was not proportional to any costs incurred by the City for LBWL's services, and (3) it was not voluntary since consumers had no choice but to pay or lose electricity.

The court then determined that the plaintiffs were taxpayers of the illegal tax, not mere members of the public, because: (1) LBWL had no legal obligation to pay the fee itself and merely acted as a conduit to collect and remit the fee from consumers to the City, (2) the City required LBWL to place the fee on consumers' bills, and (3) consumers bore the legal incidence of the fee since they had to pay it or risk losing electricity service.

Thank you!

Questions?

Any other recent cases of interest to the group?

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Nicole joined Oakland County Corporation Counsel in 2013 and currently serves as Litigator, representing Oakland County in lawsuits in both state and federal courts. She also specializes in providing legal advice and counsel on matters involving criminal law, law enforcement, civil rights, constitutional law, employment law and benefits, governmental regulatory compliance (e.g., Freedom of Information Act and Open Meetings Act), and government contracts.

Before joining Oakland County Corporation Counsel, Nicole worked as an attorney for the City of Dearborn. Nicole received her law degree from Wayne State University and her Bachelor's degree from Oakland University.

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Kevin represents individuals, corporations, and governments in all levels of state and federal court. His municipal practice centers on law enforcement use of force, searches and seizures, free speech, due process, equal protection, and deliberate indifference claims. He also represents municipalities in land use and zoning disputes, Freedom of Information Act (FOIA) and Open Meetings Act (OMA) litigation, and employment disputes. He has been recognized as a "Rising Star" by *Super Lawyers* and "One to Watch" by *Best Lawyers*.

Kevin attended Wayne Law and the University of Michigan.