24-5537

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Nevin Cooper-Keel,

Petitioner,

v.

Roberts Kengis,

Respondent.

Case Number:_____

On Petition for a Writ of Certiorari from
The United States Court of Appeals for the Sixth Circuit.

PETITION FOR WRIT OF CERTIORARI

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_____/

Questions Presented

1) Is a government's facebook page a traditional, designated public forum or a limited one?
2) If it is a limited public forum, is deleting my comment and/or turning off ability to comment on a government's facebook page post reasonable in light of the purpose served by the forum?
3) Is the motivation for interfering with the speech - which in the complaint for this case, alleges it was done because of viewpoint discrimination - a question of fact for a jury?

List of Parties to the Case

Nevin Cooper-Keel, Plaintiff, Appellant, Petitioner

Roberts Kengis, Defendant, Appellee, Respondent

State of Michigan – voluntarily dismissed by Plaintiff in District Court

Prior Court Proceedings

Original complaint was filed in the Western District of Michigan Federal District Court on March 2nd, 2022. The District Court dismissed this case June 14th, 2023. Notice of Appeal was filed with the United States Sixth Circuit Court of Appeals on July 14th, 2023. The Court of Appeals affirmed the dismissal on April 9th, 2024.

Table of Cited Authorities

Citation of Opinions Entered in this Case

Cooper-Keel v. State of Michigan et. al., West. Dist. Of MI., Case 1:22-cv-00189-SJB ECF No. 56, filed 6/14/23. (Unpublished)

Cooper-Keel v. State of Michigan et. al., 6th Circ. Ct. of Apps., Case: 23-1642, Document 12-1, filed 4/9/24. (Unpublished)

Statement of Jurisdiction

The US District Court for the Western District of Michigan dismissed this case in a final order that was filed on June 14th, 2023. The US 6th Circuit Court of Appeals affirmed the District Court's dismissal on April 9th, 2024. This Court is conferred jurisdiction to review the Court of Appeals decision under 28 U.S. Code § 1254.

Standard of Reivew

This case is primarily a question of First Amendment law and should therefore receive a de novo standard of review. 'We review legal determinations de novo', *S. Glazer's Distribs. of Ohio, LLC v. Great Lakes Brewing Co.,* 860 F.3d 844, 849 (6th Cir. 2017). Even if there are mixed questions of fact and law, the US Supreme Court recently stated that it should generally be de novo review. *U.S. Bank Nat. Ass'n v. Village at Lakeridge*, LLC, 138 S.Ct. 960, 967 (2018).

Laws Applicable

First Amendment – "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Statement of Case

The 48th Circuit Court of Allegan County, Michigan, created an official facebook page in its own institutional name, "48th Circuit Court of Allegan, Michigan", in 2018. Beginning in 2021, myself and some other displeased litigants (the most important people to allow to comment on there) began commenting regularly on it, from how the two circuit court judges got caught rigging criminal

trials with the Allegan County Prosecutor through ex parte emails about cases (see *State of Michigan v. Daniel Loew*, currently docketed with the Michigan Supreme Court case no 164133), to all sorts of other great americana you can only find in the public commons. In emails submitted by Appellee in the district court, he admittedly directed his staff to try to find a way to censor the comments on the court's facebook page. On or about February 22nd, 2022, the first comments of mine were deleted from the 48th Circuit Court's facebook page, which Appellee was admittedly in control of and directed his staff to do. I commenced a complaint in the Western District of Michigan Federal District Court about 10 days later, on March 2nd, 2022, raising a violation of my first amendment right to free speech, 1983 for damages, and injunctive and declaratory relief to deem it a 1A violation and injuncting Appellee to turn the ability to comment back on and stop deleting mine or anyone else's comments.

While Appellee claims it was done without regard to the content of the comments, nothing in the admitted communication says anything about it being done on the basis of view point neutral motivations either. Seems more likely than not that after three years of no critical comments on the page, the influx of critical comments in 2021 was the driving basis for the change in policy.

Facebook is a social media site that is privately owned, but essentially leases digital space to users of the site, where they have their own 'page', can make posts on it, and can *communicate* with other users on the site. The site itself is the platform. If government didn't wish to avail itself to a site that is designed for

social interaction between users, the government doesn't have to use or open itself to such a platform. On facebook, there is presently not a way for any user to make a post that does not allow comments upon initially posting it. Which means that once a user makes a post, in this case, this government entity just availed itself to somebody commenting on it – thereby opening a public forum. That is the site's intended use by design.

However, just because one user comments on another user's post, doesn't mean that some other user even has to view the comments. A facebook post's comments are generally obscured by facebook, and another user will not see them unless they themselves deliberately click on the "comments" tab of a post to intentionally view the comments. Appellee claims that the reason they didn't want comments on the court's facebook posts was because their intention was for their posts to be informational, and Appellee didn't want users commenting on the posts to distract from the information contained in them. I think even Appellee's purported rationale for *why* he directed his staff to delete my comment and turn off further ability to comment on the post is not reasonably related to something that prevents the government from sending its message – as somebody disrupting a public meeting with a loud speaker might. A comment on a facebook post is essentially optional for a third person from the public to view. So it stands that the only possible *effect* was that the public could not optionally view people like mine's public comments on the facebook posts, not that it would pose any barrier to the public viewing the 48th Circuit Court's facebook posts.

Appellee's clerk, Chris Dulac, has in the signature of his emails from the court a statement to "find us on facebook". They were inviting the public to come to the page, where you can make comments, and where they'd never sought to delete or limit comments prior to getting caught rigging trials, and people talking about that on the courts facebook page.

The District Court erroneously held that the 48th Circuit Court's facebook page is a limited public forum, rather than a traditional or designated public forum. As such, used the standard that "Any such restriction "must not discriminate against speech on the basis of viewpoint, and the restriction must be reasonable in light of the purpose served by the forum."", citing *Miller v. City of Cincinnati*, 622 F.3d 524, 533 (6th Cir. 2010). The District Court ruled that turning off the comments was a view point neutral and reasonable way to ensure that comments did not distract from the message. The United States Sixth Circuit Court of Appeals affirmed that ruling on April 9th, 2024.

We're living in a new type of dark age, but it has the same characteristic as all the others: informational ghettos. Instead of past dark ages that were characterized by extremely low literacy rates, and no other medium for transmission of information other than word of mouth, which was limited by travel difficulty – now limiting factors are either the national television carrying the same limited talking points, or internet big tech censorship, or social media algorithms. Caveats aside, if this case is allowed to stand as is, we are more informationally limited than past dark ages: local people can't even discuss local issues with each

other in the public square. The traditional public forums has shifted more than ever in recent times to social media platforms, and that trend is only increasing, where governmental entities have opened public forums in the form of social media accounts where those government entities "post" things, and now the government wants to view point discriminate those public comments on those social media posts without strict scrutiny.

Argument

1) **Is a government's facebook page a traditional, designated public forum or a limited one?**

In *Knight First Amendment Inst. at Columbia Univ. v. Trump, No. 1:17-cv-5205 (S.D.N.Y.), No. 18-1691 (2d Cir.), No. 20-197 (Supreme Court)*, the Second Circuit ruled that President Trump's twitter page was a designated public forum, which was later found to be moot because President himself had left office. The distinguishing feature between this case and that, is that President Trump's twitter page was a private page he created, that then became essentially a designated public forum while he was in office, and once he left office, it became a private page again, thereby becoming moot for injunctive relief. However, in this case, the page is made in the name of and owned by a public institution – the 48th Circuit Court.

This case will not become moot because the owner of the page in question is the governmental institution, not a private person whose page became a designated public forum once he became president. For the sake of brevity, I'd just ask this Court to adopt the 2nd Circuit Court's reasoning in *Knight First Amendment Inst. at*

Columbia Univ. v. Trump, id, in determining that the 48th Circuit Court's facebook page is a designated public forum, rather than a limited public forum, as the District Court determined it to be, and the 6th Circuit affirmed, and interference with speech on it from the public be subject to strict scrutiny analysis.

The nature of facebook is discourse. Therefore, it is not a limited public forum. In *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738, 750 (6th Cir. 2004), the Sixth Circuit found that because a limited public forum was created for the limited purpose of voting, it did not become a .... In *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983), the US Supreme Court said that 'the government creates a designated public forum where it opens up its property for use by the public as a place for expressive activity.' In *Cornelius v. Naacp Legal Defense Ed. Fund*, 473 U.S. 788 (1985), SCOTUS said that 'by intentionally opening up a nontraditional forum for public discourse.' "Social" media – a place to *interact*, which is the nature of what "discourse" is. "Discourse" comes from discoursus, which means "running too and fro". At its root, it is most similar to the Greek word, "dialogue", which more explicitly delineates the concept of a two-way communication, and that is what discourse is. That is what the nature of facebook and all social media is meant to be.

WHEREFORE, a government institution's facebook page is a designated public forum and any restrictions of speech on it must face strict scrutiny.

2) **If it is a limited public forum, is deleting my comment and/or turning off ability to comment on a government's facebook page post reasonable in light of the purpose served by the forum?**

The basis for what Appellee said in his affidavit submitted to the district court for why he wanted comments turned off was purported to be so that they did not detract from the informational message of the court's facebook posts. However, a user does not even see the comments when first seeing a facebook post on their feed, but always sees the information contained within a post. If the user chooses to click on the comments, they will expand and can be viewed. While there are sometimes one or two comments displayed automatically, they don't do anything to the original post made by the user who owns the page itself. It is not like defacing a sign, where our comments in any way obscure the initial post – whatever the 48th Circuit Court decides to post on facebook remains unaffected by the comments about it. Public perception on the other hand, is the only thing the comments on facebook could possibly have an effect on. Which is why if anything, Appellee wanted the comments silenced because of viewpoint discrimination, because they could not reasonably have been for the purpose stated.

"Any such restriction "must not discriminate against speech on the basis of viewpoint, and the restriction must be reasonable in light of the purpose served by the forum."", *Miller v. City of Cincinnati*, 622 F.3d 524, 533 (6th Cir. 2010). There is no reason to restrict comments on the facebook posts to stop them from detracting from the purpose of the forum, since the purpose of the forum is social interaction –

people reacting and interacting, not a one way communication tool, like broadcast television. Even if the purpose of the forum was to share information with the public, other users commenting on the post does not hinder the delivery of the informational message whatsoever.

WHEREFORE, even if this Court deems the 48th Circuit Court's facebook page to be a limited public forum for the purpose of informational communication if the government so claims it intends it, turning off and deleting comments is not doing anything to enhance or take away from the government sharing its message and is still an unreasonable infringement of the First Amendment.

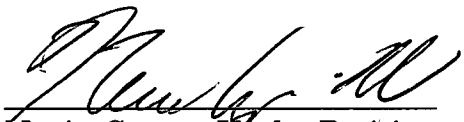
3) **Is the motivation for interfering with the speech a question of fact for a jury?**

Even if This Court finds in Appellee's favor in Questions presented one and two, there is sufficient evidence that has been presented to create a question of fact of whether Appellee's true intentions with deleting the comments were to engage in viewpoint discrimination. I'm not buying that. The circumstances that this page was never censored for 4 years since its creation in 2018, until 2022, when disgruntled litigants actually started sharing real information on the government's facebook page about decisions it was making in court, creates the ability to make an inference that it was actually viewpoint discrimination. I've plead as much, and I'm supposed to have a Seventh Amendment Right to a jury trial and a First Amendment right to petition the government for it.

WHEREFORE, Please order the jury trial on that question of fact, and if it was viewpoint discrimination, and if found in favor, regardless questions 1 and 2,

there is a basis for injunctive relief to turn the comments back on and stop deleting them.

Respectfully Submitted by:



Nevin Cooper Keel – Petitioner pro se 7.8.24

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CERTIFICATE OF WORD COUNT

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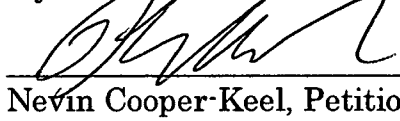
_____/

I, Nevin Cooper-Keel, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (9.9.24).that the word count of my Petitioner for Writ of Certiorari 2,811 words, exclusive of appendix.



Nevin Cooper-Keel, Petitioner pro se 9.9.24