

PARODY FACEBOOK PAGE LEADS TO UNJUSTIFIED ARREST THAT INFRINGES AUTHOR'S FREE SPEECH RIGHTS

Media Law & First Amendment Alert
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A new federal court decision highlights the tension between fake Facebook pages and First Amendment rights, particularly when the page involves a governmental entity. The decision is especially timely, considering the proliferation of fake Facebook pages has gained significant notoriety since the 2016 Presidential Election and resulting Russia investigation. The Congressional testimony of Facebook founder and CEO Mark Zuckerberg this week put the issue under the spotlight again. But the potential for mischief is not limited to Russian Bots.

In March 2016, an Ohio man grew frustrated with the City of Parma Police Department. Capitalizing on the anonymity and free access that Facebook offers, he created a Facebook page that was a parody of the City of Parma Police Department's page. The page included press releases from the Department touching upon topics such as policing priorities, racial sensitivity, and respect for civil rights. The page was only online for 12 hours and attracted less than 100 followers. While the press releases were intended to be tongue-in-cheek, the Department did not see the humor in them.

The same day that the parody website went up, the Department announced a criminal investigation into its origins. The Department issued a takedown notice to Facebook, served a subpoena on Facebook to determine the IP address of the author, and it prepared a search warrant for Facebook.

Upon receipt of the documents from Facebook, the Department arrested Anthony Novak for the crime of disrupting police operations, a felony under Ohio law. The Department also seized every electronic device in Mr. Novak's possession. Mr. Novak went to trial on the charge and was acquitted.

Following his criminal acquittal, Mr. Novak commenced a civil suit against the City and arresting officers for, among other things, retaliation for exercising his First Amendment rights. To establish such a claim, Mr. Novak was required to prove that he was engaged in a constitutionally protected activity, that the Defendants' actions caused him to suffer an injury that would likely chill an ordinary person from continuing to engage in the activity, and that the Defendants' actions were motivated at least in part as a response to him exercising his constitutional rights.

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The Defendants moved to dismiss the lawsuit.

Last week, in a lengthy and well-reasoned decision, the court denied the motion to dismiss. The court noted that parody is a form of protected speech and no reasonable person would believe that the page was anything other than a parody. Second, the court held that the Defendants' response to the webpage was such that even "a person of *extraordinary* firmness—let alone ordinary firmness—[would be chilled] from exercising his First Amendment rights." (Emphasis in original). And finally, the court found that the facts showed the Defendants' actions were motivated by Mr. Novak exercising his constitutionally protected free speech rights.

The case, *Novak v. The City of Parma, et al.*, 17-CV-2148 (N.D. Ohio 2017), is a good reminder that even if one finds another's speech distasteful or offensive, it does not mean it can be infringed. Maybe next time, the Defendants will heed Henry Ward Beecher's admonition:

A person without a sense of humor is like a wagon without springs — jolted by every pebble in the road