

**SEVENTH CIRCUIT COURT OF APPEALS RULES UNIVERSITY'S POLICY TO
REMOVE "OFF-TOPIC" POSTS ON ITS SOCIAL MEDIA ACCOUNTS
VIOLATES FIRST AMENDMENT**

On August 1, 2025, the U.S. Court of Appeals for the Seventh Circuit (Illinois' jurisdiction for appeals in federal court cases), issued a ruling in *Krasno v. Mnookin*, finding that the University of Wisconsin-Madison ("University") violated the First Amendment when it applied a University policy to hide and remove a student's comments on the University's social media accounts pursuant to the University's social media policy.

The University maintained public Instagram and Facebook accounts and a social media policy allowing the University to remove any content for any reasons, including comments posted by others that were deemed "off-topic," and assigning full responsibility for content posted by users to the users who uploaded the content. To enforce its social media policy, the University used keyword filters to automatically hide Facebook and Instagram users' comments containing certain key words and phrases, including words and phrases related to allegations of animal abuse and animal testing. The student in the case was an animal rights advocate who posted several comments and responses calling for closing the University's animal research centers and alleging that the University exploited animals. The University hid and/or deleted her posts as being "off topic" and eventually restricted her Instagram account so that her comments would be automatically hidden.

The student filed a lawsuit in federal court alleging that the University violated her First Amendment rights by censoring her speech in the University's social media comment threads. On appeal, the Seventh Circuit held that the comment threads attached to the University's social media posts were limited public forums in which the University's regulation of speech had to be viewpoint neutral. The court found that the University's "off-topic" rule for comments on its social media posts was unconstitutional, both as applied to the student and generally. It was unconstitutional as applied to the student because it discriminated against her anti-animal testing and pro-animal rights viewpoint. The court noted the key words and phrases that the University selected for automatic filtering were ones that would be used by individuals opposed to animal testing. The court also emphasized that the University had hidden one of the student's comments on a University post about animal testing, indicating that the student's comment was on-topic and the restriction was based on her viewpoint rather than being off-topic.

The Seventh Circuit then explained that, generally, the University's off-topic rule was unconstitutional as written because it was unreasonable. The off-topic rule's stated objective -- keeping comment threads unclogged and allowing for University responses to posted questions and comments -- was permissible in the court's view. However, the court concluded that the off-topic rule lacked objective standards and gave staff too much discretion to decide allowable comments. Without objective, workable standards, the off-topic rule was not reasonable. The court also deemed the rule unreasonable because the University's use of automatic keyword filters did not further its "off-topic" justification because there is no way to know before a post is created whether a word or phrase in response will be off-topic in relation.

The Seventh Circuit's decision has significant implications for how public bodies establish and use social media accounts as well as whether and how they may restrict comments posted to their social media accounts. For those clients who permit public comments on social media accounts, we recommend the following steps:

- Review any filters used to ensure against automatic filtering that may be discriminating against particular viewpoints.
- Review current social media policies to ensure they:
 - Include explicit language stating that content is private speech if it is posted by anyone who is not authorized to post on behalf the school district/cooperative.
 - State that social media accounts are not designed or intended for open public expression, but rather for specific purposes and in a specific timeframe.
 - Ensure that restrictions on content are objective and reasonable, and do not contain vague and overly discretionary language that could result in discriminating against particular viewpoints.
- Train staff members assigned to manage content on district/cooperative/school social media accounts on appropriate policies and practices for restricting speech on the accounts.

Please contact any ECB&S attorney at 630.313.4750 with any questions you may have regarding this decision or its implications.