

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

James Brown v. Marc Linder

No. 22-1463, United States Court of Appeals for the Eighth Circuit (January 4, 2023)

SUMMARY

The Eighth Circuit affirmed dismissal of a §1983 First Amendment retaliation claim against a public university law professor who criticized a urologist's expert testimony. The court held that identifying oneself as a state employee and acting within the scope of employment does not alone establish "under color of state law"—the plaintiff must plausibly allege the defendant exercised power possessed by virtue of state law or that the conduct was made possible only by state authority. Because the professor's criticisms were akin to private commentary rather than an exercise of official duties or state-controlled functions, the complaint failed to state a claim.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	GRUENDER; LOKEN; GRASZ
JURISDICTION	Federal
DECIDED	January 4, 2023
DOCKET	22-1463
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal of § 1983 claim under Federal Rule of Civil Procedure 12(b)(6)
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	James Brown, M.D. v. Marc Linder

TOPICS

- civil rights
- first amendment
- state action
- motions to dismiss
- standard of review
- civil procedure
- appellate procedure

PRACTICE AREAS

- Civil Rights
- Constitutional Law

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged that Linder acted under color of state law for a First Amendment retaliation claim under 42 U.S.C. § 1983.

HOLDINGS

1. A state employee who merely identifies himself as such and acts within the scope of his employment does not necessarily act under color of state law; the conduct must involve an exercise of power possessed by virtue of state law and made possible only because the actor is clothed with the authority of state law.

KEY QUOTATIONS

“To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” (at 4)

“a state employee, merely by publicly identifying himself as such, does not act under color of state law.” (at 5)

“to act under color of state law, a state employee must “exercise power possessed by virtue of state law and made possible only because [he] is clothed with the authority of state law.”” (at 5)

“Even when state employees are performing the services for which the state pays them, they may not be state actors while performing functions that the state has no right to control.” (at 6)

FACTUAL BACKGROUND

James Brown, a urologist at the University of Iowa Hospitals and Clinics, provided expert testimony for a meat-processing company in litigation about bathroom-use policies. Marc Linder, a law professor at the University of Iowa College of Law, criticized Brown's testimony through a verbal complaint to the urology department head, emails, wearing a t-shirt in the courtroom gallery, and comments in local newspaper articles. Brown alleged that Linder's actions constituted retaliation for engaging in constitutionally protected speech.

PROCEDURAL HISTORY

The district court dismissed Brown's § 1983 claim on multiple grounds, including failure to allege under color of state law, and declined supplemental jurisdiction over state-law claims, remanding them to state court.

DISPOSITION

affirmed

CASES CITED

- Kelly v. City of Omaha, 813 F.3d 1070, 1075 (8th Cir. 2016)
- Hamilton v. Palm, 621 F.3d 816, 817 (8th Cir. 2010)
- Yassin v. Weyker, 39 F.4th 1086, 1090 (8th Cir. 2022)
- Dossett v. First State Bank, 399 F.3d 940, 947 (8th Cir. 2005)

- *Magee v. Trs. of Hamline Univ.*, 747 F.3d 532, 535-36 (8th Cir. 2014)
- *West v. Atkins*, 487 U.S. 42, 50 (1988)
- *Polk Cnty. v. Dodson*, 454 U.S. 312, 324 (1981)
- *Montano v. Hedgepeth*, 120 F.3d 844, 850-51 (8th Cir. 1997)
- *Hall v. Witteman*, 584 F.3d 859, 866 (10th Cir. 2009)
- *Garcetti v. Ceballos*, 547 U.S. 410, 438 (2006) (Souter, J., dissenting)