

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 22-1463

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James Brown, M.D.

*Plaintiff - Appellant*

v.

Marc Linder, in his individual and official capacities

*Defendant - Appellee*

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Foundation for Individual Rights and Expression, formerly known as Foundation  
for Individual Rights in Education

*Amicus on Behalf of Appellee(s)*

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Appeal from United States District Court  
for the Southern District of Iowa - Eastern

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Submitted: October 20, 2022

Filed: January 4, 2023

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Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

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GRUENDER, Circuit Judge.

James Brown and Marc Linder both work for the State of Iowa. Brown is a urologist

*Rapids Gazette*, Linder stated that Brown’s testimony “could have unleashed . . . terrible consequences for workers of Iowa.” In another, published in UI’s student newspaper, *The Daily Iowan*, Linder called Brown a “hired gun” who “had never even published a single scholarly article on urinary incontinence frequency/urgency.” These articles attributed Linder’s comments to “Marc Linder, a UI law professor whose focus is on labor law” and “Marc Linder, UI Professor of Law,” respectively.

In addition to these published comments, Linder allegedly criticized Brown’s testimony by stating or implying that Brown wanted “to [M]ake America Great Again by helping his customer,” “subordinate[d] . . . his medical ethics” in order “to pay his kids’ college tuition,” and wished for workers to “urinate less and kill animals more.” Brown does not say when, in what form, or to whom Linder made these criticisms.

Brown says that Linder’s “multi-faceted retaliatory vendetta” caused him and his family emotional and psychological distress. Others expressed to Brown their concerns about Linder. Kreder told Brown that he was worried about Brown’s safety and advised him to hire a lawyer. A.1 ( )TJBh9kh(ye)3.6 (8.3 (u))12.7 (r)l(n)]TJ 0 Tc 0 T

engaging in protected speech. As for the other claims, t



affairs,<sup>4</sup> it would not necessarily follow that he acts under color of state law. *See Polk Cnty. v. Dodson*, 454 U.S. 312, 324 (1981) (holding that a public defender does not act under color of state law when “exercising her independent professional judgment in a criminal proceeding”). Indeed, we have suggested that, at least for certain state employment, whether a defendant’s conduct is “fairly attributable to the state” depends more on the degree of control that the state exercises over such conduct. *Chen*, 2011 WL 1216 (11/15/11).

