



ILLINOIS STATE
BAR ASSOCIATION®

Intellectual Property

The newsletter of the ISBA's Section on Intellectual Property Law

September 2026 • Volume 66 • Number 1 •

Social Media Use and Abuse

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On June 8, 2026, the U.S. Court of Appeals for the Seventh Circuit affirmed separation of former U.S. Coast Guard Auxiliary Member and Officer James C. Wenzler for posting “a series of crass statements on LinkedIn while serving as a member of the Coast Guard Auxiliary and depicting himself in uniform.” He also listed an Auxiliary position, “branch Chief for Human Resources.” *James C. Wenzler v. United States Coast Guard*, No. 25-1896 (7th Cir. June 8, 2026). After being told to stop, he persisted. He threatened to sue. He made more inappropriate communications and was separated from the Auxiliary. Then he did sue claiming his free speech being constrained.

Disclaimer! I am not your lawyer, or a legal officer of the Auxiliary. The opinions expressed herein are my own. The citations to the case and applicable manuals are believed to be accurate at the time of writing.

Executive summary

Do not put any one of (1) government organization membership; (2) government organization officer position; or (3) wearing a government authorized uniform on a social media profile or page on which you want to post critical opinions. Certainly not all three.

If context or people’s knowledge of your prominence in an organization require, include some kind of disclaimer.

And content wise, think through the implications of what you write to those who will read it. Think twice and re-read before you hit “Post.” Civility in communications is a plus.

Legal standard

Wenzler was treated, for First Amendment purposes as a government employee. Case law recognizes that volunteers can be subject to the same standards as paid employees.¹ Wenzler sued, so it was his burden to prove his separation violated his free speech rights.²

“To prevail on a First Amendment retaliation claim, a public employee must show that ‘(1) their speech was constitutionally protected; (2) they suffered a deprivation likely to deter free speech; and (3) their speech was at least a motivating factor in the employer’s actions.’”

In deciding the first element, the court looks to “whether the speech in question involved a matter of public concern, as opposed to a purely personal interest. See *Connick*, 461 U.S. at 147.” Then, “[i]f so, we balance the speaker’s interest ‘in commenting upon matters of public concern’ against the government’s interest ‘in promoting the efficiency of the public services it performs through its employees.’”

Multiple factors can be considered (factors are part of the analysis, but not all are mandatory) including:

1. whether the speech would create problems in maintaining discipline or harmony among co-workers;
2. whether the employment relationship is one in which personal loyalty and confidence are necessary;
3. whether the speech impeded the employee’s ability to perform her responsibilities;
4. the time, place, and manner of the speech;
5. the context in which the underlying dispute arose;
6. whether the matter was one on which debate was vital to informed decision making; and
7. whether the speaker should be regarded as a member of the general public. *Hicks v. Ill. Dep’t of Corr.*, **109 F.4th 895**, 901 (7th Cir. 2024).

Analyzing the Auxiliary and Wenzler’s conduct

The court discussed the establishment of the Auxiliary and its role complementing the Coast Guard. There are four listed things the Auxiliary does that make Auxiliarists like “public employees” (patrols, advising the public of limited access, unarmed opposition forces, gather data for plans) consistent with Congress providing for support if injured while under orders.

Wenzler argued “the Auxiliary is nothing more than a ‘government-sponsored fraternity.’” So much for honor, respect, and devotion to duty.³ The District Court and Court of Appeals disagreed with Wenzler.

Court conclusion

“Accounting for the nature of the Auxiliary, we conclude under *Connick/Pickering* that its interests outweigh Wenzler’s. To serve its purpose, the Auxiliary must be able to count on its members to perform their assigned duties, including

professionally performing leadership responsibilities. And '[a] public employer's reputational interests are a valid part of the balancing inquiry.' *Schneider*, 148 F.4th at 449.

Given the uncontested facts before us, the Auxiliary could have reasonably determined that Wenzler's speech and actions would be detrimental to the Auxiliary and its reputation. He served in a leadership role and the example he set mattered. The Auxiliary could have reasonably expected that other Auxiliarists would be less likely to work with Wenzler, or at least to work well with him, following his derogatory comments and attacks on others. See *id.* ("[A] public employer may act based on potential disruption so long as its predictions are reasonable." (cleaned up)). Wenzler's statements alarmed at least two members of the public enough to notify the Auxiliary. On this record, the Auxiliary could have been justifiably concerned about negative impacts to its reputation and, in turn, its recruiting and retention. In the long run, its ability to serve the public might suffer, or at least the Auxiliary could have reasonably believed so.

The district court properly found that the Coast Guard's reasonable determination that Wenzler's speech could undermine the Auxiliary's mission outweighed his interest in the statements he made. We see no error in its conclusion that the Auxiliary did not violate the First Amendment by separating Wenzler."

Remember, this was Wenzler suing claiming he was wrongfully separated. It was his burden to show the Auxiliary did something wrong and the Coast Guard is responsible for restraining Wenzler's free speech rights. He did not prove his case.

What can we learn

What Was Said

Wenzler's statements were discussed as "a series of crass statements on LinkedIn." Two of them were: "One of the posts accused certain Supreme Court Justices of being racist, and another included a crude remark about the Girl Scouts." Wenzler's response when notified of his impropriety an argumentative reverse discrimination claim: "... disagree with your fake Letter of Caution, and am going to file a complaint against you for your racist and bigoted action against me because I am White. I find your behavior reprehensible."

Who Was Responsible for Publishing Those Things on Social Media

While free speech means we sometimes need to tolerate people with whom we respectfully disagree, and also tolerate jerks, the rules are different when the speaker appears to be speaking with the authority of a government employer. Wenzler's profile indicated he was a person who could speak with authority:

"He held various positions [with the Auxiliary] over the years, eventually becoming a Vice Flotilla Commander. Wenzler publicized his affiliation with the organization on LinkedIn. His profile depicted him in uniform and represented that he served as the Auxiliary's Branch Chief for Human Resources."

He not only wrote about his position, his LinkedIn photo showed him in uniform.

Thus: (1) Auxiliary Member; (2) Auxiliary Flotilla Officer; (3) In uniform; and (4) claim of a position Branch Chief Human Resources.⁴

Connecting who and what

The social media profile, membership, position, and uniform left the clear impression that Mr. Wenzler was an Auxiliary officer leading to the reasonable conclusion he was speaking on behalf of the Auxiliary. This is not, therefore, merely an employee expressing a personal political opinion ("whether the speaker should be regarded as a member of the general public" *Hicks*, supra).

The Auxiliary Flotilla Procedures Guide⁵ includes: "... ensure **flotilla postings** do not convey any form of political, religious, racial, or any other form of endorsement, criticism, or commentary." Wenzler's problem was that he portrayed himself as a voice for the Auxiliary, the equivalent of a "flotilla posting."

Disclaimers

Whether people actually read all disclaimers may be debated. But including an effective communication can lessen confusion. Formal words "the opinions expressed herein are the personal opinions of the author and should not be attributed to a particular group, firm, employer or membership organization" looks like it is written by a lawyer (guilty). Just a phrase "... in my personal opinion ..." might be enough in the correct context. As an aside, opinion, rather than fact, makes a difference for defense of other legal claims.⁶

Minimum rule for exercise of free speech

Do not put any one of (1) government organization membership; (2) government organization officer position; or (3) wearing a uniform on a social media profile or page on which you want to post critical opinions. Certainly not all three.

If context or people's knowledge of your prominence in an organization require, include some kind of disclaimer.

The offensiveness of the content was not discussed by the Seventh Circuit, but understanding one is posting "under" a connection to a government organization, civility is a virtue.

1. Beyond the issues in *Wenzler*, an intellectual property lawyer may wonder if the logic in this “volunteer has the same standard as paid employees” could be extended to illuminate things such as “scope of employment” for copyright work made for hire authorship. Copyright Office Circular 30 says “copyrightable work is ‘made for hire’ in two situations: When it is created by an employee as part of the employee’s regular duties. ... ” 17 U.S.C. 101 says “A ‘work made for hire’ is—(1) a work prepared by an employee within the scope of his or her employment; ...” This is an observation, and *Wenzler* only provides a possible argument.
2. It also appears *Wenzler* contested a personnel decision by the Wisconsin Department of Corrections which allegedly did not pay him while on administrative leave because of a misconduct investigation. *James Wenzler v. State of Wisconsin Department of Corrections*, Wisconsin Employment Relations Commission, Case ID: 1.0434, Case Type: PA Decision No. 338955 (June 7, 2021).
3. Auxiliary Manual, M16790.1G at 3-14. “[M]embership hinges upon the demonstrated commitment to and practice of the Coast Guard’s core values: Honor, Respect, and Devotion to Duty.”
4. The Summary Judgment, consistent with the Seventh Circuit opinion says *Wenzler* had held the position of Flotilla Vice Commander. *Wenzler v. Coast Guard*, No. 23-cv-00170-jdp, Document 144 at 3. Also in the Summary Judgment opinion is that notice of infractions to *Wenzler* included “(1) showing a lack of respect for colleagues and Coast Guard policy in his July 15 response to Randall, and by refusing to comply with the Unofficial Internet Posts policy; (2) making ‘inappropriate and disrespectful’ comments on LinkedIn while representing himself in uniform as an Auxiliary leader, which discredited the Coast Guard and Auxiliary; (3) misrepresenting himself as branch chief of the Auxiliary’s human resources directorate; and (4) failing to follow the commandant’s Anti-Discrimination and Anti-Harassment Policy Statement.” *Id.* at 6-7.
5. Auxiliary Manual, M16790.1G at 3-36; Redacted public version at https://www.wow.uscgaux.info/Uploads_wowII/AUX60/FPG_REDACTED_VERSION_2025.pdf  .
6. The effectiveness of disclaimers depends on many issues surrounding how they communicate. Courts often comment favorably about them and sometimes find them ineffective. *Champion Spark Plug v. Sanders*, **331 U.S. 125** (1947) (disclaimer for remanufactured spark plugs negated likely confusion); *Playboy Enterprises, Inc. v. Terri Welles*, **7 F. Supp. 2d 1098** (S.D. Cal. 1998) (disclaimer helped avoid likely confusion); *E.S.S. Entertainment 2000, Inc. v. Rock Star Videos, Inc.*, **547 F.3d 1095** (9th Cir. 2008) (disclaimer that sites in game were fictional); *Graham Webb Intl v Emporium Drug Mart*, **916 F. Supp. 909** (E.D. Ark. 1995) (“While it is true that the effectiveness of a disclaimer in a Lanham Act case may generally be a question of fact, [citation omitted] a disclaimer expressly declaring that the seller is “not affiliated” with the owner of the trademark or is “not an authorized distributor” of the trademark owner’s products has been held to be an effective means of preventing confusion in the minds of consumers as to affiliation with the owner of the trademark. *Matrix Essentials*, 756 F. Supp. at 282. As in *Matrix Essentials*, the only reasonable conclusion in this case is that Drug Emporium’s warnings to consumers disclaiming any affiliation with or authorization by Graham Webb effectively prevents likelihood of confusion in the minds of consumers as to sponsorship or affiliation.”); *Rolex Watch, U.S.A., Inc. v. Michel Co.* **179 F.3d 704**, 50 U.S.P.Q.2d 1939 (9th Cir. 1999) (disclaimer inadequate to “prevent consumer confusion”); *Coilcraft, Inc. v. Inductor Warehouse, Inc.*, No. 98 C 0140, 2007 WL 2071991 (N.D. Ill. Jul. 18, 2007) (“prominent” disclaimer requirement not satisfied by “minuscule, easily-missed type at the bottom of the page”); FTC Advertising FAQs: A Guide for Small Business, <https://www.ftc.gov/business-guidance/resources/advertising-faqs-guide-small-business> (“How prominent does a disclaimer or disclosure have to be in other kinds of ads? When the disclosure of qualifying information is necessary to prevent an ad from being deceptive, the information should be presented clearly and conspicuously so that consumers can actually notice and understand it.”).

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