

U.S. Supreme Court Clarifies Rules for Public Officials' Personal Social Media Accounts

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ATTORNEYS

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Public officials may now “block” commenters on their purely personal social media accounts, under a new ruling from the United States Supreme Court. The Court’s unanimous ruling on Friday in the case of *Lindke v. Freed* means that councilmembers’ and other local officials’ social media accounts will be considered personal (and not required to protect the First Amendment rights of commenters) unless the author of the account (1) possessed actual authority to speak on the agency’s behalf, and (2) purported to exercise that authority when the author wrote on social media.

The Supreme Court notes that determining whether a public official’s social media activity constitutes state action, and thus must protect commenters’ rights, is a “fact-intensive inquiry.” But, the Court makes clear that unless the official possesses actual authority to speak on behalf of the governmental entity, the appearance or function of the social media account will not matter.

The source of the authority can spring from several potential places, such as a statute, ordinance, regulation, custom, or usage. But, to qualify as “custom” or “usage,” the officer’s use of a social media account as an official voice of the government must be “permanent and well settled” and that authority must extend to the type of speech in question.

One suggestion made by the Court is that a social media account carry a label (e.g., “this is the personal page of [public official]” or a disclaimer (e.g., “the views expressed are strictly my own”) but the Court notes that while this is entitled to a heavy presumption that the account is personal, that presumption is not irrebuttable.

Because the factual portion of these cases is not yet decided, local officials should continue to follow the issue and may wish to discuss the use of their social media accounts with their legal counsel. However, this Supreme Court decision is an affirmation of the First Amendment rights of local officials when they use social media in their personal lives.