FIRST AMENDMENT – STATE ACTION DOCTRINE: NEW RULE FOR STATE ACTION ON SOCIAL MEDIA

Lindke v. Freed, 601 U.S. 187 (2024).

ABSTRACT

In *Lindke v. Freed*, the United States Supreme Court announced the test to determine whether a public official's social media activity constitutes state action subject to the protections of the First Amendment. In doing so, the Court resolved a circuit split and highlighted practical considerations for public officials interacting with their communities and constituents through social media.

Plaintiff Kevin Lindke disapproved of defendant James Freed's actions as City Manager of Port Huron, Michigan in response to the COVID-19 pandemic. Expressing his disapproval, Lindke posted critical comments on Freed's Facebook page, which was public to all Facebook users and used by Freed to share both personal and professional updates. Freed removed Lindke's comments and eventually blocked him from engaging with his posts. When Lindke sued Freed, alleging that Freed violated his First Amendment rights, the courts were faced with the question of whether a public official using their personal Facebook profile is engaged in state action. The Court did not come to a definitive conclusion about Freed's actions, and instead remanded the case, providing a detailed test for lower courts to apply. Under the Court's new test, a public official's actions on social media are considered state action only if (1) the official had actual authority to speak on the state's behalf and (2) the official purported to exercise that authority in speaking on social media.

The two-pronged test announced in *Lindke v. Freed* will impact state and local government officials across the country. Government officials use social media often to campaign, inform, and connect with community members. This Comment will inform North Dakota practitioners how to advise government actors to effectively use social media while respecting First Amendment rights and the latest state caselaw developments.

I. FACTS

Defendant James Freed was a long-time Facebook user.[1] After he approached the limit of 5,000 Facebook "friends," Freed changed his profile to a public page so that all Facebook users, regardless of whether Freed was "friends" with them, could see and interact with his page.[2] Freed chose to categorize his page as belonging to a "public figure," though no information was required to verify or define the term.[3] Freed continued to post personal life updates on his Facebook page, including an update announcing his appointment as City Manager of Port Huron, Michigan.[4] Freed's profile identified him as the City Manager, and his frequent posts detailed both family life

1. Lindke v. Freed, 601 U.S. 187, 191 (2024).
2. *Id.*
3. *Id.*
4. *Id.*

and city activities.[5] He shared updates and communications from other city officials and occasionally made posts soliciting feedback from city residents.[6] The comment sections on Freed's posts were active, and he sometimes answered residents' questions about the city.[7] These trends continued into the COVID-19 pandemic, and Freed's Facebook page shared personal and work-related pandemic updates.[8] Plaintiff Kevin Lindke, a Port Huron resident, was frustrated with the city's response to the pandemic, and expressed this dissatisfaction on Freed's posts through comments calling the city's response "abysmal" and highlighting residents' "suffering" while city leaders ate at upscale restaurants.[9] Freed deleted some of these comments but eventually blocked Lindke, which meant that Lindke could see Freed's public posts but could not comment on them.[10]

Lindke sued Freed in the United States District Court for the Eastern District of Michigan for a violation of First Amendment rights under 42 U.S.C. § 1983, arguing that Freed's Facebook page was a public forum on which public speech could not be discriminated against.[11] The district court's decision to grant summary judgment to Freed turned on its determination that Freed was posting in his private rather than public capacity.[12] The Sixth Circuit Court of Appeals affirmed, stating that Freed's social media presence was not "fairly attributable" to his government employer.[13] This case arose at the same time as *Garnier v. O'Connor-Ratcliff*, a factually analogous case from the Ninth Circuit Court of Appeals, which applied a different test than the Sixth Circuit.[14] Thus, through *Lindke*, the Supreme Court of the United States resolved a circuit split by providing a new test for determining when a public official violates the First Amendment by blocking citizens on social media.[15]

5. *Id.* at 192.
6. *Id.*
7. *Id.*
8. *Id.* at 192-93.
9. *Id.* at 193.
10. *Id.*
11. *Id*.
12. Lindke v. Freed, 37 F.4th 1199, 1202-04 (6th Cir. 2022), *vacated and remanded*, 601 U.S. 187 (2024).
13. *Id.* at 1204.
14. *See* Garnier v. O'Connor-Ratcliff, 41 F.4th 1158, 1170-71 (9th Cir. 2022), *abrogated by* Lindke v. Freed, 601 U.S. 187 (2024).
15. *Lindke*, 601 U.S. at 204.

II. LEGAL BACKGROUND

The case of *Lindke v. Freed* was brought because Lindke believed that his First Amendment rights had been violated.[16] Some of the legal steps necessary to resolve Lindke's claim are clear, like satisfying the state action requirement of the First Amendment and Section 1983 of the United States Code.[17] Other steps are ambiguous due to the rapid growth of social media. As is apparent in *Lindke*, social media blurs the line between professional messaging by state actors and personal communication among citizens.[18]

A. FIRST AMENDMENT PRINCIPLES, SECTION 1983, AND STATE ACTION DOCTRINE

The Free Speech Clause in the First Amendment to the United States Constitution states, "Congress shall make no law . . . abridging the freedom of speech . . . ."[19] The First Amendment has been a powerful safeguard for individuals to express dissent, criticism, or grievances toward the public.[20] The government and those speaking on its behalf must meet a strict scrutiny standard to justify limitations on speech, which protects individuals from retaliation for unpopular or critical perspectives.[21]

Legal claims relating to the First Amendment may arise under Section 1983 of the United States Code, which provides a cause of action against "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State" infringes upon the federal constitutional or statutory rights of another person.[22] Protection against the actions of government employees in their *official* capacities is intrinsic to both sources of law.[23] Thus, in order to bring an action under Section 1983, the defendant must have been engaged in official state action at the time of the incident.[24]

The majority of U.S. Supreme Court precedent focuses on when an ostensibly *private person* is engaging in state action under Section 1983 rather than determining when a *state actor's* conduct is in his or her official versus private capacity.[25] It is established, however, that public employees "do not surrender all their First Amendment rights" by assuming a job that empowers

16. *Id.* at 193.
17. U.S. CONST. amend. I; 42 U.S.C. § 1983.
18. 601 U.S. at 197.
19. U.S. CONST. amend. I.
20. *See, e.g.*, Brandenburg v. Ohio, 395 U.S. 444 (1969); N.Y. Times Co. v. United States, 403 U.S. 713 (1971).
21. *See, e.g.*, Reed v. Town of Gilbert, 576 U.S. 155 (2015).
22. 42 U.S.C. § 1983.
23. *See* U.S. CONST. amend. I; 42 U.S.C. § 1983.
24. *See* U.S. CONST. amend. I; 42 U.S.C. § 1983.
25. Lindke v. Freed, 601 U.S. 187, 196 (2024).

them to engage in state action.[26] Included in the state action doctrine is an exception for "acts of officers in the ambit of their personal pursuits."[27] Moreover, the ability of a private citizen to successfully assert a Section 1983 claim against a public official involves more than the defendant's job title.[28]

B. STATE ACTION DOCTRINE CIRCUIT SPLIT

Before the rule announced in *Lindke v. Freed*, the standard for state action regarding social media use varied across federal circuits.[29] The Sixth Circuit Court of Appeals acknowledged that the precedent for delineating personal versus official actions for a state official is "murky," and that social media complicates the analysis.[30] At the time the Sixth Circuit decided *Lindke*, the Supreme Court's tests for assessing state action applied only in determining when a private person is engaged in state action—not when a public official may be acting as a private citizen.[31] Since the existing Supreme Court tests did not resolve the issue in *Lindke*, the Sixth Circuit applied its own "state-official test."[32] In order to preserve a public official's rights as an individual citizen, this test focuses on whether the public official is "performing an actual or apparent duty of his office," or if the action was dependent on "the authority of his office."[33] Thus, in applying the state-official test, the Sixth Circuit analyzed the presence of either duty or authority to speak as a state actor.[34]

Other circuits focused on the appearance and content of a social media account, and then assessed whether it looked official.[35] The Ninth Circuit emphasized that actions outside of a public official's core duties, like operating a social media page to interact with the public, "may be actionable under § 1983."[36] There, the defendants in *Garnier v. O'Connor-Ratcliff* were found

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26. Garcetti v. Ceballos, 547 U.S. 410, 417 (2006).

27. Screws v. United States, 325 U.S. 91, 111 (1945).

28. *See Garcetti*, 547 U.S. at 417.

29. *See generally* Garnier v. O'Connor-Ratcliff, 41 F.4th 1158 (9th Cir. 2022), *abrogated by* Lindke v. Freed, 601 U.S. 187 (2024); Knight First Amend. Inst. at Columbia Univ. v. Trump, 928 F.3d 226 (2d Cir. 2019), *judgment vacated by* Biden v. Knight First Amend. Inst. at Columbia Univ., 141 S. Ct. 1220 (2021) (mem).

30. Lindke v. Freed, 37 F.4th 1199, 1202 (6th Cir. 2022) *vacated and remanded*, 601 U.S. 187 (2024).

31. *Id*. at 1202; *see, e.g.*, Lugar v. Edmondson Oil Co., 457 U.S. 922, 939 (1982).

32. *Lindke*, 37 F.4th at 1202.

33. *Id.* at 1203 (quoting Waters v. City of Morristown, 242 F.3d 353, 359-60 (6th Cir. 2001)).

34. *Lindke*, 37 F.4th at 1203.

35. *See generally* Garnier v. O'Connor-Ratcliff, 41 F.4th 1158 (9th Cir. 2022), *abrogated by* Lindke v. Freed, 601 U.S. 187 (2024); Knight First Amend. Inst. at Columbia Univ. v. Trump, 928 F.3d 226 (2d Cir. 2019), *judgment vacated by* Biden v. Knight First Amend. Inst. at Columbia Univ., 141 S. Ct. 1220 (2021) (mem).

36. *Garnier*, 41 F.4th at 1173 (citing Trevino ex rel. Cruz v. Gates, 23 F.3d 1480, 1482 (9th Cir. 1994)).

liable under Section 1983 because they *represented* themselves "to be acting in their official capacities on their social media."[37] By the Ninth Circuit's analysis, such a representation was only possible because the defendants were active on their social media accounts "under color of state law" in a way that private citizens would not have been.[38] Similar determinations were reached by the Second, Fourth, and Eighth Circuits.[39]

Both tests purported to be rooted in the Supreme Court's nexus test that determines when a private citizen is engaging in state action by asking if there is "such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'"[40] This circuit split among courts applying variations of the same Supreme Court test was resolved by *Lindke*, and the new test clarifies how First Amendment claims against public officials engaging in potentially private action should be analyzed.[41]

III. ANALYSIS

Justice Amy Coney Barrett delivered the opinion of the unanimous Court, which announced the test for determining when a public official's actions satisfy the state action requirement for a Section 1983 claim.[42] The Court did not resolve the dispute between the parties, but rather vacated and remanded for the lower court to apply the new test which required that the plaintiff prove the defendant "(1) had actual authority to speak on behalf of the State on a particular matter, and (2) purported to exercise that authority in the relevant posts."[43]

A. OVERVIEW OF THE PLAINTIFF'S ARGUMENT

Lindke leaned into arguments the Fourth Circuit found persuasive, arguing that the state action requirement is satisfied because Freed's Facebook page "looks and functions like an outlet for city updates."[44] Since Freed

37. *Id.*

38. *Id.* at 1173, 1177.

39. *See* Davison v. Randall, 912 F.3d 666 (4th Cir. 2019); Knight First Amend. Inst. at Columbia Univ., 928 F.3d 226; *see also* Campbell v. Reisch, 986 F.3d 822, 827-28 (8th Cir. 2021) (holding that a state representative was not acting under the color of law when she blocked a constituent from a personally run campaign-focused Twitter because, even after being elected, the account was not regularly used to conduct public business).

40. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (quoting Jackson v. Metro. Edison Co., 419 U.S. 345, 351 (1974)); *Garnier*, 41 F.4th at 1170-71; Lindke v. Freed, 37 F.4th 1199, 1203 (6th Cir. 2022), *vacated and remanded*, 601 U.S. 187 (2024).

41. Lindke v. Freed, 601 U.S. 187, 198 (2024).

42. *Id.*

43. *Id.* at 204.

44. *Id.* at 199; *Garnier*, 41 F.4th at 1173.

shared updates about the city, solicited input from citizens, and interacted with citizens who posted comments, Lindke argued that the Facebook page's activity satisfied the state action requirement of Section 1983.[45] Moreover, because Lindke was using the Facebook page as a forum to communicate with a public official, Freed argued his conduct should be free from discrimination.[46]

B. OVERVIEW OF THE DEFENDANT'S ARGUMENT

Freed advocated for the rights of public officials to maintain their First Amendment protections as private citizens.[47] He urged the Court to uphold previous rulings and adopt the Sixth Circuit test offering a "clearly defined, yet flexible, standard" for state action analysis.[48] From Freed's perspective, the lack of official connection to or endorsement by the state indicated that the Facebook page under Freed's name was not a public forum.[49] Freed contended that no additional evidence of his intention to post as an individual rather than a government official was necessary.[50] Since Freed was acting in his capacity as a private citizen—which all public officials maintain—he was acting within his rights when he removed comments and blocked Lindke from making additional comments on his Facebook page.[51]

C. COURT'S DECISION AND RATIONALE

In *Lindke*, the Supreme Court announced the two-pronged test to determine whether a public official has engaged in state action for the purposes of Section 1983.[52] The Court asserted the state action requirement is only satisfied if "the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media."[53] To this end, the Court integrated elements from both the Sixth and Ninth Circuit tests while incorporating relevant Supreme Court precedent.[54]

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45. Brief for the Petitioner at 40-41, Lindke v. Freed, 601 U.S. 187 (2024) (No. 22-611).
46. *Lindke*, 601 U.S. at 193.
47. *See* Brief of Respondent at 1, Lindke v. Freed, 601 U.S. 187 (2024) (No. 22-611).
48. *Id.*
49. *Id.* at 13-14.
50. *Id.* at 46.
51. *Id.* at 44-45, 50.
52. *Lindke*, 601 U.S. at 198.
53. *Id.*
54. *See* Lindke v. Freed, 37 F.4th 1199, 1203 (6th Cir. 2022), *vacated and remanded*, 601 U.S. 187 (2024); Garnier v. O'Connor-Ratcliff, 41 F.4th 1158, 1173 (9th Cir. 2002), *abrogated by* Lindke v. Freed, 601 U.S. 187 (2024).

1. First Prong: Possessing Actual Authority

The first prong of the *Lindke* test states that "state action" necessary for a First Amendment claim exists when the activity in question originates from the authority of the government.[55] The Court reasoned that, although conduct by a public official may be performed in the course of their work, activities that are "in no way dependent on state authority" fall short of the state action requirement.[56] In *Lindke*, the first prong would be satisfied if the State had provided Freed with authority to operate a social media page for sharing city updates and to engage with concerned citizens.[57] Such authority must be proven independently through subjective impressions of the Facebook page.[58]

Authority can derive from "statute, ordinance, regulation, custom, or usage."[59] Thus, beyond what is explicitly codified, "'persistent practices of state officials' that are 'so permanent and well settled' that they carry 'the force of law'" are sufficient to impart a particular power onto a state official.[60] However, the Court found that determining the scope of powers for a public official requires a detailed and fact-intensive inquiry that goes beyond a consideration of broad job duties and whether an action might be listed in a job description.[61]

Moreover, an authority to communicate to the public on some topics does not imply a broad authority to communicate to the public on all issues.[62] If a subject is not included in a public official's commission, the Court asserted that the official has no state-derived authority to speak on the issue and thus could not satisfy the state action requirement.[63]

2. Second Prong: Purporting to Exercise Authority

According to the Court, the second prong of the *Lindke* test states that even if a public official is empowered with the authority to speak on behalf of the State, the official must also purport to exercise that authority.[64] Public officials maintain their rights as private citizens, and their private speech is protected when they are not acting "in furtherance of [their] official

55. *Lindke*, 601 U.S. at 198.
56. *Id.* at 198-99 (quoting Polk Cnty. v. Dodson, 454 U.S. 312, 318-19 (1981)).
57. *See id.* at 199.
58. *See id.* at 199-200.
59. 42 U.S.C. § 1983.
60. *Lindke*, 601 U.S. at 200 (quoting Adickes v. S.H. Kress & Co., 398 U.S. 144, 167-68 (1970)).
61. *Id.* at 201.
62. *See id.* at 199.
63. *See id.*
64. *Id.* at 201.

responsibilities."[65] Only when acting as an empowered public official can authority be invoked.[66]

In *Lindke*, the line is blurred because Freed's Facebook page was mixed use—it contained posts that were clearly personal as well as announcements tied to Freed's authority as city manager.[67] The Court acknowledged the potentially complicated applications of this new test under different factual circumstances.[68] The opinion notes there are conceivable circumstances where a privately operated social media profile could satisfy this prong of the test for state action and that even a disclaimer that the views expressed are privately held would not protect a public official from liability under Section 1983.[69] The Court defended this blurred line as a means of protecting the right of public officials, as citizens, to "speak about public affairs in their personal capacities."[70]

3. Applying the Test

The Court did not apply the new test on the *Lindke* facts.[71] Instead, it vacated and remanded the case for the lower court to apply the new test.[72] The Court clarified that separate analyses must be performed pertaining to the actions of removing comments and page-wide blocking.[73]

IV. IMPACT OF THE DECISION AND APPLICATION TO NORTH DAKOTA LAW

The Court emphasized the widespread importance of state action as it pertains to social media.[74] It noted the vast scale of the issue, pointing out that there are "approximately 20 million state and local government employees across the Nation, with an extraordinarily wide range of job descriptions."[75] With increasing popularity, many of these employees "use social media for personal communication, official communication, or both."[76] In the digital age, engaging with constituents and citizens via social media is an indispensable tool for personal communication and community connection.

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65. *Id.*
66. *Id.*
67. *Id.* at 202.
68. *Id*. at 202-03.
69. *Id.*
70. *Id.* at 203.
71. *Id.* at 204.
72. *Id.*
73. *Id.*
74. *Id.* at 197.
75. *Id.*
76. *Id.*

A. MIXED-USE SOCIAL MEDIA IN NORTH DAKOTA

For state actors, the line between personal life and official duties is "often blurred," even in the highest levels of government.[77] The lines are likely even more blurred in smaller communities.[78] In North Dakota, where nearly every state legislator has full-time private employment outside of their role as a public official, this issue is particularly relevant.[79] Mayors, city council members, and other public officials have robust personal and professional lives outside of their public official capacity, making it difficult to determine when they are acting as private individuals or in their official capacities.[80] If the account only bears an individual's name, who is to say if the mayor of a town of 5,000 is sharing an update on the town square's construction in his capacity as a public official or as a proactive neighbor?

Lindke v. Freed has already been referenced before the North Dakota Supreme Court.[81] On September 9, 2024, oral arguments were heard in *Sanderson v. Myrdal*, an appeal from Walsh County District Court that began with First Amendment claims against state Senator Janne Myrdal, who blocked constituent Mitchell Sanderson on Facebook.[82] During oral argument, the defendant cited *Lindke*, stating that the case "absolutely, on all fours, addresses the issue" raised by the plaintiff.[83]

Indeed, the North Dakota Supreme Court applied the two-pronged *Lindke* test and found that Sanderson's Section 1983 "claim fail[ed] as a matter of law."[84] Where the first prong of the *Lindke* test requires that a public official "possess[] actual authority to speak on the State's behalf," Myrdal had no such authority.[85] Sanderson did not dispute this essential fact, eliminating the need for any further analysis by the court.[86]

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77. *Id.*; Knight First Amend. Inst. at Columbia Univ. v. Trump, 928 F.3d 226, 239 (2d Cir. 2019) (holding that "the President violated the First Amendment when he used the blocking function to exclude the Individual Plaintiffs because of their disfavored speech"), *judgment vacated by* Biden v. Knight First Amend. Inst. at Columbia Univ., 141 S. Ct. 1220 (2021) (mem.).

78. Brief of Respondent, *supra* note 47, at 50.

79. *See 68th Legislative Assembly All Members*, N.D. LEGIS. BRANCH, https://ndlegis.gov/assembly/68-2023/regular/members [https://perma.cc/7B45-TXCZ] (last visited Nov. 11, 2024).

80. *See Lindke*, 601 U.S. at 197.

81. Oral Argument at 30:56, Sanderson v. Myrdal, 2024 ND 202 (No. 20240091) https://portal-api.ctrack ndcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/c24d7c66-5e09-41db-8300-3c726abb426b/docketentrydocuments/b8aec42d-ac3f-4127-b584-45a8219c1731 [https://perma.cc/8RZY-AECE].

82. April Baumgarten & Jay Dahl, *A Walsh County Man Sued a North Dakota Senator Who Blocked Him on Facebook. Now He Has to Pay Her $4,975.*, INFORUM (Sept. 9, 2024, 6:45 PM), https://www.inforum.com/news/north-dakota/a-walsh-county-man-sued-a-north-dakota-senator-who-blocked-him-on-facebook-now-he-has-to-pay-her-4-975 [https://perma.cc/D4H8-ZGER].

83. Oral Argument, *supra* note 81, at 32:07.

84. Sanderson v. Myrdal, 2024 ND 202, ¶ 23.

85. *Id.*; Lindke v. Freed, 601 U.S. 187, 191 (2024).

86. *Sanderson*, 2024 ND 202, ¶ 23.

Regardless of the strength of the argument put forward by the plaintiff in *Sanderson*, the reference to *Lindke* before the North Dakota Supreme Court within five months of publication of its decision demonstrates the material and far-reaching impact of the ruling on social media related First Amendment claims across North Dakota.[87]

B. LINDKE'S RELEVANCE TO NORTH DAKOTA PRACTITIONERS

Over the course of an election year and an overall increase in the use of social media in all sectors, North Dakota practitioners may be asked to advise clients with state-derived authority to speak on particular topics on the risks of mixed-use social media accounts.[88] When there is ambiguity about whether an individual is speaking as a private citizen or a public official, the potential for liability increases.[89] To that end, the nuances of applying the *Lindke* test are largely uncharted. The test was recently considered for the first time by the North Dakota Supreme Court, only just introducing *Lindke* to the state and resolving the issue on undisputed facts.[90] As additional cases come before the court and factual scenarios become more complex, the boundaries of the *Lindke* test will undoubtedly be tested and clarified. Practitioners will need to stay attuned to how North Dakota courts interpret and apply the test in order to provide accurate advice regarding this developing area of law, which remains full of uncertainties.

In addressing these uncertainties before more cases reach the courtroom, North Dakota practitioners may develop practical strategies to mitigate risks for public officials navigating mixed-use social media accounts. One recommendation may be for public offices and officials to adopt clear social media policies that explicitly distinguish appropriate conduct on personal and official accounts. Though their weight and application would have to be addressed by North Dakota courts, such policies may provide judges with evidence to determine whether an individual's speech should be considered private or public.

In First Amendment cases stemming from conduct on mixed-use social media pages, practitioners may rely on the *Lindke* decision and its protections of public officials from undue limitations on First Amendment rights when they are speaking outside their official authority.[91] *Lindke* can aid practitioners looking to ensure that public officials are not exposed to liability for

87. *See id.*
88. *See Lindke*, 601 U.S. at 204.
89. *See id.*
90. *See Sanderson*, 2024 ND 202, ¶ 23.
91. *See Lindke*, 601 U.S. at 196.

participating in public discourse.[92] In doing so, practitioners can help guide the courts as they navigate the challenges of mixed-use social media in a way that respects both free speech and accountability.

It will ultimately be the responsibility of the courts to balance the First Amendment rights of public officials when they step out of their official roles with those of citizens who deserve to be free of speech discrimination for all the same reasons. Cases like *Sanderson v. Myrdal* are especially instructive as the North Dakota Supreme Court becomes one of the first to consider and apply the new *Lindke* test.[93] As the legal landscape on this issue evolves, proactive guidance will be crucial to minimizing risks and navigating potential liabilities.

C. LINDKE BEYOND FACEBOOK

Beyond resolving the dispute based on the facts of the *Lindke* case, there are various additional potential impacts across different social media platforms. The Court acknowledges the "bluntness" of Facebook's blocking feature compared to other options for limiting interactions on social media.[94] If blocking a user on Facebook requires a distinct analysis from simply removing a comment, then similar scrutiny may be necessary for other actions, such as muting users on Twitter or restricting visibility on Instagram.[95] Each platform's unique features and functionalities could lead to varied legal analyses, requiring practitioners and courts to adapt the *Lindke* framework to address the complexities of modern digital interactions.

92. *See id.* at 204 ("A public official who fails to keep personal posts in a clearly designated personal account therefore exposes himself to greater potential liability.").

93. *Sanderson*, 2024 ND 202.

94. *Id.* at 204.

95. *See* Garnier v. O'Connor-Ratcliff, 41 F.4th 1158, 1164 (9th Cir. 2022) (discussing the distinct methods of interaction available to public officials on Facebook and Twitter), *abrogated by* Lindke v. Freed, 601 U.S. 187 (2024).

V. CONCLUSION

The test outlined in *Lindke v. Freed* aims to protect First Amendment rights. The decision is informed by precedent aiming to strike the balance between protecting the rights of public officials and citizens interacting with those officials. Moreover, the landscape of the state action doctrine has been blurred by the growing impact of social media accounts for private individuals and public officials. The impact of the decision will certainly affect North Dakota, where public officials are more likely to engage in mixed social media use due to the interrelation of their public and personal lives. Awareness of the application and development of the *Lindke* test will be important for practitioners to best advise their clients throughout North Dakota.

Erin Cummings[*]

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