

## Supreme Court Adopts New Test to Determine When a Public Official's Social Media Use Constitutes State Action For First Amendment Purposes

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On March 15, 2024, in *Lindke v. Freed*, the United States Supreme Court addressed when a public official's use of social media constitutes state action for purposes of triggering protections under the First Amendment. In a unanimous decision, the Court held that a public official's censorship of critical comments on the official's social media page only constitutes state action for First Amendment purposes if the official both (1) possessed actual authority to speak on the State's behalf and (2) purported to exercise that authority. The Court emphasized that this is a post-by-post, fact-specific inquiry, particularly when applied to accounts that are used for both personal and official purposes and the distinction between personal and public posts is often unclear. In so holding, the Court curtailed public officials' ability to block people from commenting on their social media pages if the blocking operates on a page-wide basis, because if a single post on a social media page falls under the category of state action, a public official may not prevent individuals from commenting or viewing the post.

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