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Removal of Comments and Blocking of Commentors on Social Media Accounts Maintained by Governmental Entities Violates the First Amendment

In an opinion issued by the U.S. Supreme Court (SCOTUS) in March 2024, the Court provided a helpful reminder of the boundaries that exist for governmental entities that use social media as a means of communicating with the public.

In *Lindke v. Freed*[1], SCOTUS was asked whether a public official was permitted to remove comments and block commentors on his private Facebook account or whether such conduct violated the First Amendment. The Court concluded that the public official's Facebook account was personal and not governmental. As a result, the public official was acting in his personal capacity when he removed comments and blocked commenters on his Facebook account. Given that fact, the public official's actions were not "state" action and did not violate the First Amendment.

In order for the public official's actions to violate the First Amendment, the actions needed to constitute "state" action, i.e., action taken by the public official in his official capacity. For example, if the public official had removed comments and/or blocked commenters on a Facebook account maintained by his office or agency, he would be engaging in "state" action. In turn, the removal of comments and/or the blocking of commentors from a Facebook account maintained by a public official's office or agency would constitute the type of "state" prohibited by the First Amendment.

The important message of *Lindke* for governmental entities, including governmental hospitals, is that if they remove comments from or block commentors on their social media accounts, they are engaging in "state" action that is prohibited by the First Amendment. Whether a governmental entity can completely disable the comments

feature from its social media accounts was not addressed by the Court but may be a legally permissible way to thwart unruly commentors on governmental social media accounts.

This blog was drafted by Donn Herring, an attorney in the Spencer Fane St. Louis, Missouri, office, and Alexis Denny, an attorney in the Spencer Fane Overland Park, Kansas, office. For more information, visit www.spencerfane.com.

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1 601 U.S. 187, 144 S. Ct. 756 (2024)

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