



Developing Enforceable Social Media Policies that Don't Violate the First Amendment

Texas City Attorneys Association Summer Conference 2025

Presented by: Nicole A. Corr

Thursday, June 19, 2025

Introduction

- ▶ Why this matters: legal risk and public scrutiny
- ▶ Social media = official speech in many cases
- ▶ Equip cities to adopt defensible, constitutional policies

The First Amendment & Government Speech

- ▶ Limits government actors, not private citizens
- ▶ Social media blurs public/private lines
- ▶ Key legal risk: deleting, blocking, or disciplining unlawfully

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

- ▶ City Manager was accused of violating a citizen's First Amendment Freedom of Speech when he blocked the citizen on the City Manager's Facebook page
- ▶ City Manager used a Facebook page he had created years before becoming a city manager

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

(continued)

- ▶ City Manager's Facebook page was primarily dedicated to his personal life but he would occasionally post about the City and even answer questions about the City if asked; he also identified himself as the City Manager on his Facebook page
- ▶ Citizen sued the City Manager claiming that the City Manager's Facebook page was a public forum

The Two-Prong Test from *Lindke*

1. Actual Authority – Did the official have legal power to speak for the city?
2. Purported Exercise – Did the official act as if they were exercising that authority?

Both prongs must be met to find 'state action'

Examples Applying *Lindke*

- ▶ City news posted on personal account = likely state action
- ▶ City seal/title used on personal post = red flag
- ▶ Purely personal page = likely not state action

Other Key Cases

- ▶ *O'Connor-Ratcliff v. Garnier* - Remanded post-*Lindke*
- ▶ *Davison v. Randall* - Blocking on official page = violation
- ▶ Trend: courts closely examine how the page is presented

City Liability and Practical Risk

- ▶ Officials must separate official vs. personal speech
- ▶ Cities must not moderate public comments without policy
- ▶ Deleting or blocking critical speech is high risk

What a Defensible Policy Looks Like

- ▶ Defines official vs. personal accounts
- ▶ Sets rules for moderation (neutral, consistent)
- ▶ Includes disclaimers and authority basis

Policy Checklist

- ✓ Clearly separates personal and official use
- ✓ Sets neutral, enforceable comment rules
- ✓ Disclaims personal speech from official action
- ✓ Cites authority and is consistently applied

Council Orientation – Training Content

- ▶ What is and isn't safe to post
- ▶ Visual identity (e.g. logos) = signal of authority
- ▶ Avoid mixing personal opinions with city messaging

The City Attorney's Toolkit

- ▶ Draft & review policies citywide
- ▶ Train officials on *Lindke* and speech boundaries
- ▶ Create social media decision trees for moderation

Closing Thoughts

- ▶ "The Constitution isn't suspended on social media"
- ▶ *Lindke* = roadmap to protect cities and free speech
- ▶ Be deliberate. Be consistent. Be constitutional.

Questions?

Nicole Hamilton Corr
nicole@whflegal.com

907.244.0553