

The top left corner of the page features a complex, abstract graphic composed of several thin, black, overlapping lines that form various geometric shapes, including triangles and polygons, creating a sense of depth and movement.

LEGAL ISSUES RELATED TO ELECTED OFFICIAL SOCIAL MEDIA ACCOUNTS

MITCHELL PARK, LEGAL COUNSEL
SALT LAKE COUNTY COUNCIL

OVERVIEW

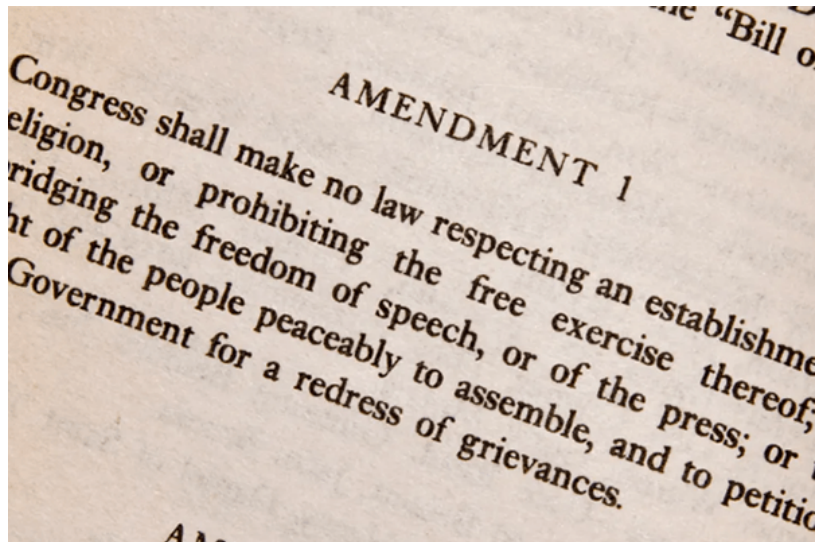
- * The First Amendment and the *Lindke* decision
- * Review of existing Countywide policy
- * Suggested best practices
- * Questions



THE FIRST
AMENDMENT AND
THE *LINDKE*
DECISION

LINDKE V. FREED

US SUPREME COURT, 2024



- City manager, Freed, created a Facebook profile as a college student and continued to use it after graduating, eventually making his posts available to the public. After Freed became city manager, he described himself on his Facebook page as a husband, father, and city manager. His Facebook page also included both a link to city's website and the city's general email address. Although he posted primarily about his personal life, Freed also shared news and announcements from the city and occasionally solicited public feedback.
- Another Facebook user and city resident, Lindke, objects to the city's approach to the COVID-19 pandemic in comments responding to Freed's posts. Freed initially deletes Lindke's comments, then blocks Lindke. Although Lindke could still see Freed's posts, he could no longer comment on them. Lindke sues Freed under federal civil rights law, arguing that:
 - Lindke had the right to comment on Freed's Facebook page because it was a public forum.
 - Freed had engaged in impermissible viewpoint discrimination by deleting unfavorable comments and blocking those who made them, violating Lindke's First Amendment rights.

US SUPREME COURT DECISION

Justice Barrett, writing for a unanimous court:

- First amendment binds government action, not private action
- Residents may be able to pursue federal civil rights claims if the **government** limits their First Amendment rights by deleting their social media comments or blocking them
- However, public officials with authority to act on the government's behalf are also private citizens and have their own constitutional rights
- A public official's social-media activity constitutes government only if the official (1) **possesses actual authority to speak on the government's behalf**, and (2) **purports to exercise that authority when they speak on social media**
- The appearance and function of the social-media activity are relevant at the second step, but they cannot make up for a lack of state authority at the first step
- Case returned to lower courts for additional review and fact analysis



GOVERNMENT ACTION V. PRIVATE ACTION

Government Action

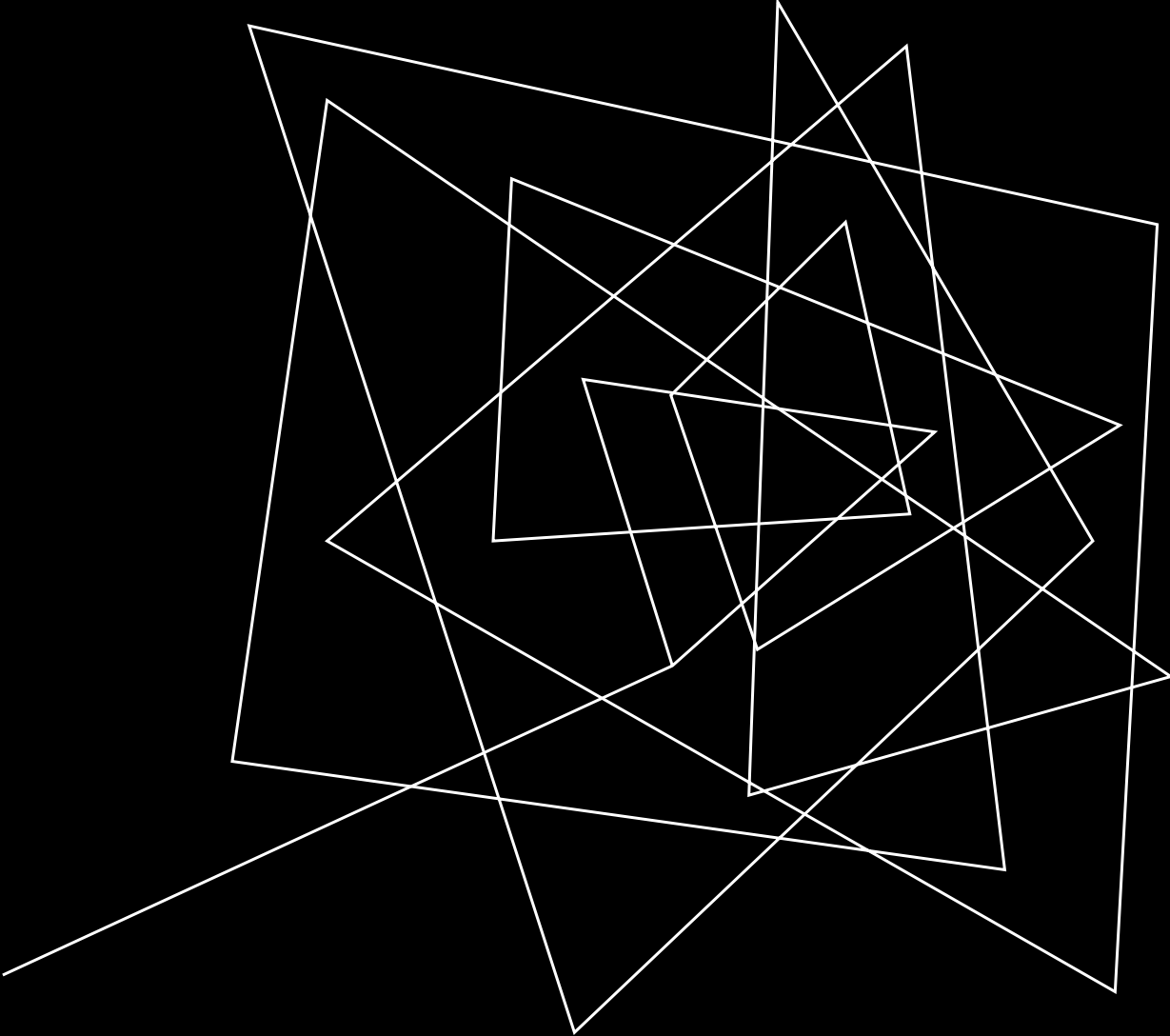
An official's social media activity is attributable to the government if "possessed of state authority":

- The official has at least *some authority to communicate* with residents
- The social media activity relates to the official's authority (by statute, ordinance, regulation, custom, or usage)
- The official must also *purport to use* their actual authority to communicate

Private Action

An official's social media activity is not attributable to the government if it is not possessed of authority, or if it does not purport to use authority:

- Personal opinions or statements not connected to state authority
- Statements on topics that the official does not have actual authority to speak about
- Labels/disclaimers give a heavy but not irrefutable presumption of private activity

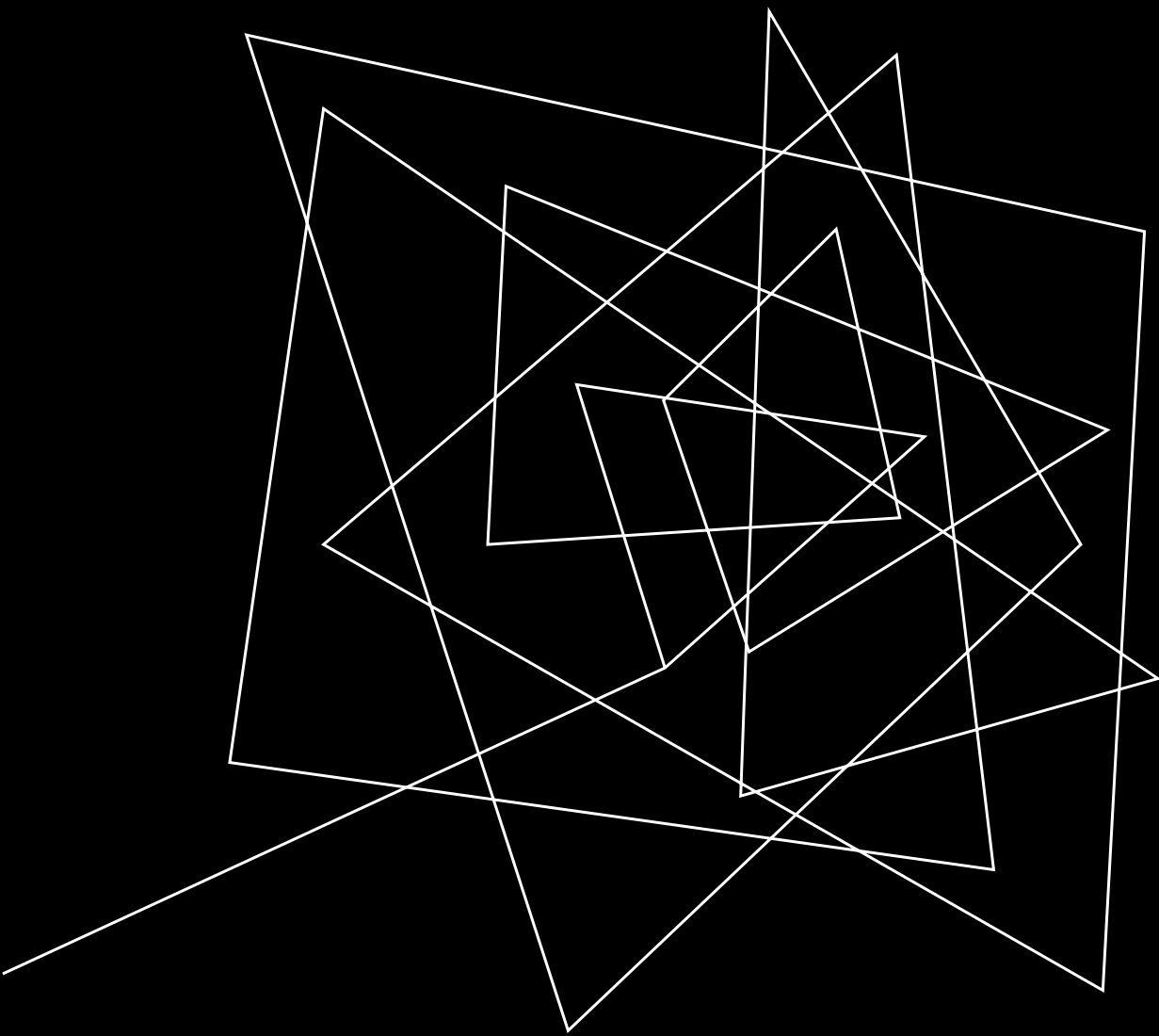


EXISTING
COUNTYWIDE
POLICY

POLICY 1400-6.1, SOCIAL MEDIA MANAGEMENT, 1400-6.2 TERMS OF USE

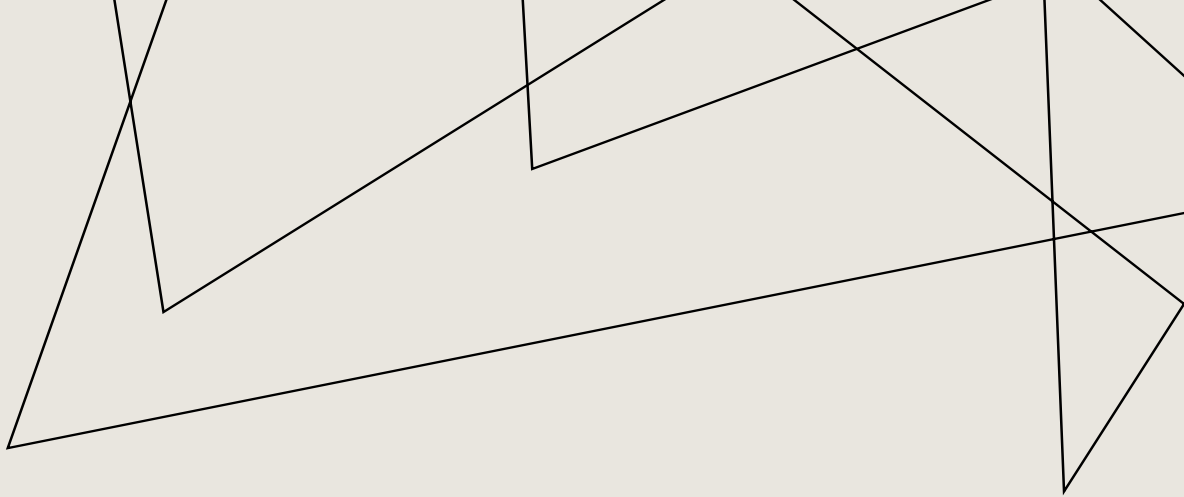
Existing Policy Guidelines for Salt Lake County-sponsored social media accounts:

- The County has a process for establishing and maintaining official social media accounts by county agencies and offices
- County social media sites are limited public forums
- “The County, its elected officials and all County departments, divisions, committees, commissions, and boards do not discriminate based on viewpoint, nor because a comment is posted anonymously or expresses disagreement with County action, policy, custom, or practice.”
- Authorized county users are required to act professionally
- Public users are obliged to comply with published terms of use, and the county may remove or hide inappropriate content, and block users who are repeat offenders
- Notification and appeals process for public users who violate terms of use



RECOMMENDED
BEST PRACTICES

BEST PRACTICES FOR COUNTY COUNCILMEMBERS AND OTHER ELECTED OFFICIALS



Recommend

- Adhere to social media policy guidelines for official accounts and statements
 - Involve staff and attorneys to help manage
- Use disclaimers and labels to distinguish personal accounts
 - “Personal page” / “Political page” / “Campaign page”
- Distinguish what is in your realm of authority from what is not
- Consider deleting comments before resorting to blocking a user on personal accounts

Avoid

- Using Personal Accounts to Make Official Statements
- Using Government Accounts for Personal or Especially Campaign Activity
- Posting before considering consequences or when upset



THANK YOU

Questions?

Feedback for future research and
discussion?