No. 25-30514

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MAYA DETIEGE; DAYNE SHERMAN,
Plaintiffs-Appellants,

v.

KATRINA R. JACKSON,
Defendant-Appellee.

On Appeal from the United States District Court for the Western District of Louisiana, No. 3:23-cv-175

BRIEF OF *AMICI CURIAE* FIRST AMENDMENT ADVOCATES AND SCHOLARS IN SUPPORT OF PLAINTIFFS-APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

No. 25-30514
Maya Detiege v. Katrina R. Jackson

The undersigned counsel of record certifies that—in addition to those already listed in the parties' briefs—the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

Person or Entity	Connection to Case
American Civil Liberties Union of Louisiana	*Amicus curiae*
Duke Law First Amendment Clinic	*Amicus curiae*
Electronic Frontier Foundation	*Amicus curiae*
First Amendment Clinic at Southern Methodist University Dedman School of Law	*Amicus curiae*
Lafayette Citizens Against Censorship	*Amicus curiae*
The Media Institute	*Amicus curiae*
The National Coalition Against Censorship	*Amicus curiae*
Clare R. Norins	*Amicus curiae*
The Pelican Institute for Public Policy	*Amicus curiae*
Amanda Reid	*Amicus curiae*

The Rutherford Institute	*Amicus curiae*
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Pursuant to Fed. R. App. P. 26.1(a), *amici curiae* are all either non-profit organizations or individuals committed to upholding the values of the First Amendment. No party to this filing has a parent corporation, and no publicly held corporation owns 10% or more of the stock of any of the parties to this filing.

Respectfully submitted,

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

Amici have a strong interest in preserving the ability of citizens to hold their elected representatives accountable while maintaining a clear, workable framework for evaluating state action arising from private conduct on social media. *Amici* agree that the district court's conceptualization of state action under *Lindke* undermines First Amendment principles that foster open dialogue and criticism of elected officials on social media.

American Civil Liberties Union of Louisiana is the local affiliate of the American Civil Liberties Union, a nationwide, nonprofit, nonpartisan membership organization with approximately two million members that, from its founding in 1920, has been devoted to protecting and expanding the civil liberties and civil rights of all Americans, including their individual right under the United States and Louisiana Constitutions. Indeed, the ACLU of Louisiana has actively opposed government policies and procedures in Louisiana that transgress individual liberties, particularly free speech and the protections afforded by the First Amendment to the United States Constitution. The ACLU of Louisiana joins Plaintiffs' free speech arguments and has further interest in the vindication of the rights of all

[1] This brief is submitted under Federal Rule of Appellate Procedure 29(b) with the consent of all parties. Undersigned counsel for Amici Curiae certifies that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than Amici and their counsel has contributed money for this brief.

Louisianans. For more than 60 years, the ACLU Foundation of Louisiana has fought to defend all people, particularly Black Louisianans, from government abuse and overreach through litigation, policy, and advocacy. Where, as here, government officials refuse to abide by their obligations under the United States and Louisiana Constitutions, the rights of all Louisianans are thereby threatened. Allowing such conduct directly harms the interests, values, and quality of life of its members.

The Duke Law First Amendment Clinic engages in research, scholarship, and *pro bono* legal representation in matters that implicate the First Amendment. Amicus has authored numerous briefs concerning free speech and social media blocking by government officials and draws on a wealth of expertise and knowledge relevant to this case.

The Electronic Frontier Foundation ("EFF") is a member-supported nonprofit organization devoted to protecting civil liberties in the digital age. EFF has worked for over 35 years on behalf of its more than 30,000 dues-paying members to protect the rights of users to transmit and receive information online. EFF has written extensively on the issues presented in this appeal and has filed *amicus* briefs in similar cases, including in the Supreme Court's consideration of *Lindke v. Freed*, 601 U.S. 187 (2024).

The First Amendment Clinic at Southern Methodist University Dedman School of Law defends and advances the freedoms of speech, press, assembly, and

petition through litigation, public advocacy, and education. The Clinic serves as a resource on the liberties guaranteed by the First Amendment, and provides students with real-world practice experience to prepare them to become leaders on First Amendment issues when they become licensed attorneys. The Clinic engages in advocacy and representation across the country, including in this Court, and thus has a special interest in promoting the sound interpretation of the First Amendment.

Lafayette Citizens Against Censorship oppose any policies which attempt to infringe upon our citizens' First Amendment rights, as we believe that freedom of speech, expression, and information are the cornerstones of our Republic. We have fought to defend free speech, intellectual freedom, and the free exchange of ideas here in Acadiana. It is not the business of individuals to limit access for the rest of the community.

The Media Institute is a nonprofit organization specializing in communications policy issues. The Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. The Media Institute is one of the country's leading organizations focusing on the First Amendment and speech-related issues.

The National Coalition Against Censorship ("NCAC") is an alliance of more than 50 national non-profit literary, artistic, religious, educational, professional, labor, and civil liberties groups. NCAC was founded in 1974 in

response to the United States Supreme Court's landmark decision *Miller v. California*, 413 U.S. 15 (1973), which narrowed First Amendment protections for sexual expression and opened the door to obscenity prosecutions. The organization's purpose is to protect freedom of thought, inquiry, and expression and to oppose censorship in all its forms. NCAC engages in direct advocacy and education to support free expression rights of authors, readers, publishers, booksellers, teachers, librarians, artists, students, and others. NCAC has long recognized—and opposed—attempts to censor or limit access to speech, including great works of literature and art, under the guise of labeling it as obscene, pornographic, or sexually explicit. It therefore has a longstanding interest in assuring the continuance of robust First Amendment protections for all. The positions advocated in this brief do not necessarily reflect the views of NCAC's member organizations.

Clare R. Norins is a clinical associate professor and director of the First Amendment Clinic at the University of Georgia School of Law. Her scholarship has focused on the importance of maintaining First Amendment protections against social media blocking by government officials. *See Stitch Incoming:* Lindke v. Freed*'s Impact on Social Media Blocking Litigation*, 82 Wash. & Lee L. Rev. 172 (2024) (with M. Bailey); Campbell v. Reisch: *Dangers of the Campaign Loophole in Social Media Blocking Litigation*, 25 U. Pa. J. Const. L. 146 (2023) (with M. Bailey). She joins this brief in her individual capacity.

The Pelican Institute for Public Policy is a non-profit, non-partisan research institute whose mission is to research and develop policy solutions that advance individual liberty, free enterprise, and opportunity for all Louisianans. Founded in 2008, the Pelican Institute believes that every Louisianan should have the opportunity to flourish in communities where good opportunities abound and economic prosperity is achievable through hard work and ingenuity. To that end, the Pelican Institute advocates for the removal of government barriers to economic mobility.

Amanda Reid is a professor of media law at The University of North Carolina School of Journalism and Media and an adjunct professor at The University of North Carolina School of Law. Her work focuses on law's intersection with technology, emphasizing freedom of expression, intellectual property, privacy, and technological governance. *See, e.g.*, *Fructifying the First Amendment: An Asymmetric Approach to Constitutional Fact Doctrine*, 11 Fed. Cts. L. Rev. 109 (2019); *Safeguarding Fair Use Through First Amendment's Asymmetric Constitutional Fact Review*, 28 Wm. & Mary Bill Rts. J. 23 (2019); *Copyright Policy as Catalyst and Barrier to Innovation and Free Speech*, 68 Cath. U. L. Rev. 3 (2019). She joins this brief in her individual capacity.

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John

W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 2024, the Supreme Court's decision in *Lindke v. Freed* clarified that a public official's activity on social media constitutes state action if the official (1) possessed actual authority to speak on the state's behalf, and (2) purported to exercise that authority when they spoke on social media. This new test has already raised concerns in the rare instances courts have applied it to elected officials in multimember representative bodies.

Amici respectfully request that this Court reverse the district court's summary judgment order finding that Appellant's case failed to establish state action. *Amici* advance three reasons in support.

First, insofar as the district court's holding suggests that collective action is required for legislators to speak with state authority, such a requirement should be rejected. Such a requirement would effectively bar plaintiffs from successfully bringing First Amendment claims against representatives of multimember bodies absent collective action. However, legislators operate their offices and social media accounts individually, and they have authority to speak on behalf of their offices even if they are not speaking on behalf of the legislature as a whole. Therefore, the district court's narrow interpretation of state authority grants widespread immunity to legislators for constitutional violations they commit on social media. This wide-reaching immunity allows legislators to silence dissenting voices with no recourse.

Second, a collective action requirement conflicts with precedential and persuasive authority. *Lindke* held that state authority rests on an official's substantive functions and warned against determining state authority from categorical labels. Furthermore, the Supreme Court has repeatedly conceived of individual actions taken pursuant to state authority that reach beyond acts of the entire representative body. As this Court has itself reinforced, legislators perform their official non-legislative acts—such as constituent services and outreach—individually and under state authority. A sister circuit recognized this principle and properly applied *Lindke* in a similar case involving social media activity by representatives on an elected body.

Third, because state authority should rest on a representative's substantive function, this Court should look specifically to custom and usage, which is particularly informative in this case. Legislators' communication practices most often derive from custom rather than written law. But courts employing the *Lindke* test have not adequately grappled with the widely established custom among elected representatives of communicating with constituents via social media. The longstanding practices of Louisiana state legislators demonstrate that these officials consistently expend state resources on public outreach through social media—a crucial indication of speaking on the state's behalf. Therefore, these legislators

possess the authority to speak on behalf of the state on their individual social media accounts—particularly when they use social media to facilitate public outreach.

ARGUMENT

I. The District Court's Decision Gives State Representatives License to Suppress Speech on Their Social Media Accounts Without Consequence, Contravening the First Amendment's Democratic Principles.

"Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United v. FEC*, 558 U.S. 310, 339 (2011). "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Id.* Therefore, "[t]he First Amendment protects speech and speaker, and the ideas that flow from each." *Id.* at 341. Suppression of speech by government officials "cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure." *Id.* at 349.

Yet the district court's decision effectively bars plaintiffs from successfully bringing claims alleging First Amendment violations on social media by representatives of multi-member bodies, such as legislators, city council members, and school board members. The district court's conclusion that Senator Jackson-Andrews did not possess state authority mistakenly suggested that individual state legislators are never authorized to speak on their state's behalf, even in their official capacities. *See Detiege v. Jackson*, 2025 WL 2380730, at *8 (W.D. La. Aug. 15,

2025). The court held: "[W]hile the Louisiana government is intended to be representative, that does not mean *individual* legislators have authority to solicit input or make announcements on the State's behalf." *Id.* (emphasis added). This holding necessarily indicates that representatives of multi-member bodies do not inherently possess state authority to speak individually in their official capacities.

Pursuant to this reasoning, a successful § 1983 claim would require the entire representative body to have taken the social media action at issue. But representatives operate their offices and social media accounts individually. *See, e.g.*, *Fox v. Faison*, 2025 WL 2406432, at *3 (M.D. Tenn. Aug. 19, 2025) (describing a post on the Facebook page titled "State Representative Jeremy Faison" that included posts about "legislative initiatives and efforts" and was controlled by the individual legislator and his staff); *Pinkhasov v. Vernikov*, 2024 WL 2188356, at *2 (E.D.N.Y. May 15, 2024) (describing an account on X, formerly Twitter, managed entirely by New York City Councilmember Vernikov and comprised of tweets "of both a public and political nature"). Following the district court's logic would allow representatives to suppress speech on their official social media accounts with complete impunity.

This cannot be. The United States Supreme Court has repeatedly "refused to extend absolute immunity" beyond "very limited" circumstances. *Hafer v. Melo*, 502 U.S. 21, 29 (1991). This case exemplifies why. Absolute immunity warrants

unfettered violations of constitutional rights. Here, it licenses government actors to silence dissenting voices, contravening the First Amendment's protections of "civic discourse." *See Citizens United*, 558 U.S. at 349. Without viewpoint neutrality protections on social media accounts operated by government actors in their official capacities, dissenting voices can find their speech removed from the platform or their access to content blocked. For this reason, the district court's decision impedes free speech and fails to protect First Amendment rights. Thus, this Court should clarify the scope of state action and reverse the district court's holding.

II. The District Court Incorrectly Tethered Representatives' State Authority to Collective Legislative Action.

Supreme Court precedent establishes that legislators possess state authority when they act individually. Furthermore, precedential authority from this Court and a sister circuit establishes that elected representatives are authorized to individually speak under state authority. This Court should define state action consistently with this formulation of state authority.

A. The Collective Action Requirement Contradicts Binding Supreme Court Precedent.

First, the district court's reasoning runs counter to the Supreme Court's mandate in *Lindke v. Freed*—the case that governs § 1983 claims against state officials for their social media activity. 601 U.S. 187 (2024). The Court instructed

that "[t]he distinction between private conduct and state action turns on substance, not labels . . . Categorizing conduct, therefore, can require a close look." *Id.* at 197.

The collective action requirement evades the "close look" required by the Court because it "categoriz[es] conduct" by representatives as not authorized by the state unless taken collectively. *See id.* The requirement forces courts to categorically restrict the state authority of representatives based on their titles, a mere "label," and to ignore the "substance" of their roles—many of which, as demonstrated below, legislators exercise individually. *See id.* Therefore, the district court impermissibly contravened the Supreme Court's instructions in *Lindke*.

Second, the Court has held that non-legislative acts can still be done in a legislator's official capacity.

For example, in *Gravel v. United States*, the Court stated: "That [legislators] generally perform certain acts *in their official capacity* does not necessarily make all such acts legislative in nature." 408 U.S. 606, 625 (1972) (emphasis added). The Court opined that acts that are "legislative in nature" are those that are "generally done in a session of the House." *Id.* at 624. In other words, they involve the collective legislative body. In so reasoning, the Court held that a United States Senator's arrangement to publish classified Pentagon Papers did not enjoy legislative immunity under the Speech and Debate Clause but were still official actions by the Senator. *Id.* at 624–27. The Court explained that, although "Senators generally

perform certain acts in their official capacity," these actions were non-legislative, and so not immunized. *Id.* at 625. Individual legislators, therefore, take actions that are within their "official capacity" even if those actions are not legislative in nature. *See id.*

The Court echoed these notions in *Hutchinson v. Proxmire*, 443 U.S. 111 (1979). In *Hutchinson*, Congressman Proxmire issued a press release allegedly defaming the plaintiff for wasteful government spending. *Id.* at 114–15. Proxmire published the release as part of his office's effort to expose perceived government waste, and his legislative assistant drafted the materials and contacted the plaintiff. *Id.* at 114–15. In finding that Proxmire was not entitled to legislative immunity, the Court distinguished conduct merely "'related to the due functioning of the legislative process'" from conduct that "constitutes the legislative process entitled to immunity." *Id.* at 131 (quoting *United States v. Johnson*, 383 U.S. 169, 173 (1966)). In so distinguishing, the Court acknowledged that legislators "'engage in many activities other than the purely legislative activities protected by the Speech or Debate Clause.'" *Id.* (quoting *United States v. Brewster*, 408 U.S. 501, 512 (1972)). Favorably citing *Gravel*, the Court considered the press release at issue to be the sort of individual, non-legislative act that a legislator "generally perform[s] . . . in their official capacity," *Gravel*, 408 U.S. at 625, but is not entitled to legislative immunity. *See Hutchinson*, 443 U.S. at 130–31.

The Supreme Court has stated that when government officials act within their official capacity, they do so under state authority. *See Hafer*, 502 U.S. at 28. In *Hafer*, recently terminated employees sued a newly elected state auditor general under § 1983. *Id.* at 23. The Court concluded that state officials can face individual liability for their official actions. *Id.* at 28. In dismissing a theory of legislative immunity that distinguished whether official acts were essential to governmental operations, the Court reasoned: "[The Petitioner's] theory would absolutely immunize state officials from personal liability for *acts within their authority*." *Id.* (emphasis added). That authority comes from the state. It is precisely because official acts—such as terminating employees in one's capacity as auditor general—are authorized by the state that individual liability must attach to such acts. *Id.* at 27–28.

Hafer established that the question of state authority is distinct from the question of legislative immunity. *Id.* So, statements made during the legislative session and statements made outside of the legislative session are subject to different analyses for legislative immunity purposes, even when each still implicates state authority. Although the Court in *Hafer* dispelled the notion that state authority immunizes state officials during their official acts, it reinforced the principle that officials carry out their official acts pursuant to state authority. *See id.* at 28. Taken together, the Court's jurisprudence on state authority and legislative

immunity indicates that a legislator can, in certain cases, act under state authority in performing non-legislative, official acts that are outside the scope of legislative immunity. *Id.*

In sum, legislators take official acts—both collectively and individually—under state authority. *See id*. Legislators perform their many official non-voting acts, such as soliciting public input on bill drafts or helping constituents navigate agency bureaucracies, individually. *See United States v. Brewster*, 408 U.S. 501, 512 (1972) (listing examples of official non-legislative acts taken individually like "'errands' performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called 'news letters' to constituents, news releases and speeches delivered outside the Congress"). Legislators act in their official capacities even when they do so individually in non-legislative actions. To conclude otherwise is clear error.

B. This Court Has Stated that Individual Representatives Can Speak on Behalf of the State.

This Court has reinforced the proposition that representatives have state authority to take non-legislative acts in their official capacities outside legislative sessions.

In *Williams v. United States*, this Court held that a United States Congressman's allegedly defamatory statements given during a press interview addressing Congress's appropriation of money "fell well within the course and scope

of his position as a Member of Congress." 71 F.3d 502, 507 (5th Cir. 1995). This Court stated that "the legislative duties of Members of Congress are not confined to those directly mentioned by statute or the Constitution." *Id.* It reasoned that "[b]esides participating in debates and voting on the Congressional floor, a primary obligation of a Member of Congress in a representative democracy is to serve and respond to his or her constituents." *Id.* It described these activities as "duties" that legislators "take[] in the course and scope of [their] position as a Member of Congress." *Id.* And of course, members of Congress are imbued with state authority to engage in their duties. *Cf. Hafer*, 502 U.S. at 29 (describing acts done in the course of elected officials' duties as acts within the officials' authority endowed by the state). Based on this Court's reasoning that the Congressman's individual non-legislative action was an official act taken under state authority, this Court granted a motion to substitute the United States as the defendant in place of the Congressman. *Id.* at 503.

Thus, if this Court were to affirm the district court's state action holding, it would contradict legal precedent established thirty years ago in *Williams*.

C. Applying *Lindke*, a Sister Circuit Recognized that Representatives Can Possess State Authority Individually.

The Ninth Circuit has applied the reasoning in *Williams* to the same issue presently before this Court—whether elected representatives possess authority to

individually speak on behalf of the state. Unlike the district court here, the Ninth Circuit reached the correct conclusion on state action.

In *Garnier v. O'Connor-Ratcliff*, the Ninth Circuit held that members of a public school's board of trustees who were posting on their social media pages possessed authority to speak on the state's behalf. 136 F.4th 1181, 1190 (9th Cir. 2025), *on remand from O'Connor-Ratcliff v. Garnier*, 601 U.S. 205, 206–08 (2024) (considered together with *Lindke*, 601 U.S. 187), *vacating Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158 (9th Cir. 2022). The Ninth Circuit rejected the idea that "school board members do not possess *individual authority* to speak on behalf of the state." *Id.* at 1189 (emphasis added). It instead reasoned that "the duties of elected representatives extend beyond 'participating in debates and voting.'" *Id.* (quoting *Williams*, 71 F.3d at 507).

"*Lindke* instructed that, to determine whether a public official possesses authority to speak on behalf of the state, courts are to look to the sources listed in § 1983: 'statute, ordinance, regulation, custom, or usage.'" *Id.* (quoting *Lindke*, 601 U.S. at 200). "'The alleged censorship' challenged as unconstitutional 'must be connected to speech on a matter within [the official's] bailiwick,'" *id.* at 1188 (quoting *Lindke*, 601 U.S. at 199), and "[a]n official need only have authority to speak for the state generally, not on social media specifically." *Id.* at 1188 (quoting *Lindke*, 601 U.S. at 200). State legislators are also "elected representatives," and

their duties extend beyond "participating in debates and voting." *See id.* They "possess *individual authority* to speak on behalf of the state" because, like school board members, the duties of their offices include non-voting activities, such as soliciting public feedback and communicating with constituents. *See id.* (emphasis added); *see also id.* ("O'Connor-Ratcliff's posts were overwhelmingly geared toward provid[ing] information to the public about the PUSD Board's official activities and solicit[ing] input from the public on policy issues' relevant to Board decisions.") (internal quotations omitted)).

Accordingly, this Court should not disregard the binding and persuasive authority recognizing that official, non-legislative duties taken by individual legislators are imbued with state authority.

III. Custom and Usage Authorize Louisiana Legislators to Speak on Behalf of the State on Their Social Media Accounts.

Under *Lindke*, state authority may stem from written law or, as the Court explained, from "persistent practices of state officials that are so permanent and well settled that they carry the force of law." 601 U.S. at 200 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167 (1970)). Because legislators can possess state authority outside of collective legislative action, this Court should clarify the source of this authority and look specifically to custom and usage.

Courts must rely on custom and usage when determining the state authority of legislators, whose communication practices derive mostly from tradition rather

than written law. The Supreme Court has already acknowledged this fact. In *Hutchinson*, the Court recognized that there could be a "duty of [legislators] to tell the public about their activities," without identifying a source of written law for this practice. 443 U.S. at 133. Similarly, in *Brewster*, the Court noted that public engagement of this nature has "come to be expected by constituents" due to legislators' longstanding communicative practices like "news releases and speeches." 408 U.S. at 512. A "state legislator arguably acts in furtherance of [their] official duties when [they] engage[] with [their] constituents." *Fox*, 2025 WL 2406432, at *10–11.

Louisiana is a salient example of this reality. Written law vests legislators with the authority to propose and vote on legislation as representatives of the people. *See* La. Const. Ann. art. III, § 1; Louisiana Civil Law Treatise, 20 LACIVL § 2.1; *see also* La. Const. Ann. pmbl.; La. Const. Ann. art I; La. Const. Ann. art. III, § 10. The written law does not encompass the public engagement practices of legislators. The Louisiana legislator has traditionally communicated with the public through such methods as press releases, media engagement, and social media. *See, e.g.*, *Member Services*, Legislative Communications Office, https://lco.legis.la.gov/services (last visited Oct. 12, 2025); Press Release, State Representative Jim Tucker, Representative Jim Tucker Disappointed in Ethics Board Delay; Senator Katrina R. Jackson, *District 34 Black History Spotlight*, Facebook (Feb. 1, 2024)

https://www.facebook.com/photo.php?fbid=884017783731622&set=pb.10006370 2254958.-2207520000&type=3.

But lower courts have rarely analyzed custom and usage. "Few courts have had the opportunity to apply *Lindke*'s state action test. Even fewer have applied it to actions taken by local, state, or federal *legislators*, as opposed to executive-branch officials." *Fox*, 2025 WL 2406432, at *8 (emphasis in original). Given the novelty of the *Lindke* doctrine, this Court should clearly acknowledge that different governmental positions have unique characteristics relevant to the state authority inquiry. To that end, analysis of a legislator's capacity to speak on behalf of the state must include an examination of custom and usage.

This examination requires identifying the custom subject to inquiry. Here, that custom is public outreach. In *Lindke*, the Court emphasized that the city manager needed state authority to "post city updates and register citizen concerns," indicating that defining custom depends on the action, not the medium. *See* 601 U.S. at 203. Indeed, the Court reasoned that "if an official has authority to speak for the State, [they] may have the authority to do so on social media." *Id.* Therefore, the proper inquiry is whether custom and usage establish authority to engage in public outreach on behalf of the state. *See id.* at 200.

To establish that a state official possesses authority through custom and usage, courts must look to the longstanding activity of other officials with the same title.

See id. at 200. In *Lindke*, the Court reasoned that if prior city managers purported to speak on the state's behalf for long enough that the practice had become "permanent and well settled," then the current city manager would have the same authority, even in the absence of written law. *Id.*

If officials with the same title have a longstanding practice of employing government resources for certain activities, then those officials have likely established a custom that falls under state authority. *Id.* at 203. The *Lindke* Court reasoned that "an official who uses government staff to make a post will be hard pressed to deny that [they] w[ere] conducting government business," implying that expending government resources places conduct within the scope of official duties. *Id.* The Court's reasoning here concerned the second prong—whether the official purported to use state authority—but the expenditure of state resources also provides a crucial indicator of when a legislator acts under color of state law.[2] *Id.* at 203. And when a legislator takes an official action pursuant to their state authority, they speak on behalf of the State. "'[G]enerally, a public employee' purports to speak on behalf

[2] Although courts have cautioned that the mere receipt or use of state resources does not automatically transform private conduct into state action, those cases generally involved private actors who obtained state funds through grants, contracts, or other monetary benefits. *See, e.g.*, *Rendell-Baker v. Kohn*, 457 U.S. 830, 839–40 (1982) (holding that receipt of state funds was insufficient for a private school to act under color of state law). When the defendant is a public employee acting in their official capacity, this factor is more dispositive. *Cf. West v. Atkins*, 487 U.S. 42, 50 (1988) ("[A] defendant . . . acts under color of state law when [they] abuse[] the position given to [them] by the State.").

of the State while speaking 'in his official capacity or' when he uses his speech to fulfill 'his responsibilities pursuant to state law.'" *Id.* at 201 (quoting *West*, 487 U.S. at 50).

In sum, this Court should look for evidence that officials with the same title—in this case, Louisiana state legislators—expend government resources for public outreach. This inquiry will reveal a custom of public outreach among the Louisiana legislature taken in their official capacities and under state authority. Louisiana state legislators utilize government resources and institutional support to conduct routine public outreach on behalf of the State. Three discrete practices in Louisiana illustrate this custom.

First, the Legislative Communications Office provides writing, editing, graphic design, direct mail, newsletters, *social media support*, and constituent letters for legislators. *Member Services*, *supra*.

Second, individual members regularly issue press releases on official letterhead with office contact information, demonstrating a custom of public outreach using state resources. *See, e.g.*, Press Release, State Representative Jim Tucker, *supra*.

Third, the state gives Louisiana legislators resources to establish and maintain a district office. *Legislators' Election & Compensation*, PAR Louisiana https://parlouisiana.org/resources/guide-to-louisiana-legislature/additional-

information (last accessed Oct. 12, 2025). A district office is not a personal or campaign expense. It is a publicly funded extension of the state legislature designed to facilitate access between citizens and their elected representatives. These offices are reimbursed with state funds, confirming that outreach, constituent assistance, and dissemination of legislative information are treated by the state as part of the legislator's official functions. *See id.*; *see also Lindke*, 601 U.S. at 203.

Because public outreach of this nature is a "persistent practice[]" of Louisiana state legislators "that [is] so permanent and well settled that [it] carr[ies] the force of law," Louisiana state legislators possess authority to speak on behalf of the state on their individual social media accounts—particularly when they use social media to facilitate public outreach. *Lindke*, 601 U.S. at 200. This is why Senator Jackson-Andrews acknowledged her duties include maintaining an open dialogue with the public, stating that "the public has a right to know . . . what I'm doing in Baton Rouge." (Pl.'s Mem. Supp. Mot. Summ. J. 36.)

CONCLUSION

The *Lindke* doctrine has created confusion when applied to multimember bodies. The *Fox* court stated: "*Lindke* may not be the final word on the intersection of public officials, social media, and the First Amendment. The opinion does not acknowledge critical distinctions between executive branch officials and legislative

branch officials." 2025 WL 2406432, at *11. In short, the *Lindke* doctrine sorely needs clarification.

This Court should provide that guidance. The district court's interpretation of state authority prevents plaintiffs from establishing First Amendment violations by representatives on social media, contravening the United States Constitution. The court's notion of state authority contradicts *Lindke* itself, which held that state authority rests on the substantive functions of an official, rather than categorical labels of the official's role. It also contradicts Supreme Court precedent that this Court recognized thirty years ago and that a sister circuit drew upon in a proper application of *Lindke*. The scope of state authority should rest on a representative's function, and longstanding custom and usage establish one such function of state legislators like Senator Jackson-Andrews: public outreach on social media on behalf of the state.

For these reasons, *amici* join Appellants in urging this Court to reverse the district court's decision.

Dated: November 17, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that we have electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

DATED: November 17, 2025

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,043 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

DATED: November 17, 2025

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