



# Balancing Acts – Constitutional Rights v. Meeting Decorum in California Cities

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**Balancing Acts: Constitutional Rights v. Public Meeting Decorum in California Cities**

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## I. INTRODUCTION

What can a city council do if a member of the public flashes a Nazi salute during a public meeting, insists on exceeding their time for public comment, utters hateful words, wears offensive clothing, or engages in speech that councilmembers find offensive and disturbing? Does a city have different options for dealing with a member of the public who accuses the mayor of being a liar during their public statement, versus a citizen who drowns out other speakers with protests and chants for a councilmember to resign? What is a city council able to do to censure an “outlier” councilmember who engages in speech or conduct that the majority of the council dislikes, takes political positions they vehemently oppose, or engages in socially unsavory conduct?

These types of questions and issues – and cities’ efforts to maintain order and decorum during public meetings – implicate a nuanced and evolving area of First Amendment jurisprudence. Indeed, there is a natural tension between the strictures of the First Amendment – which generally guarantees the right of the public to engage in speech unfettered by government regulation – and the significant objective of public entities to maintain decorum and avoid disruptions during public meetings of their governing bodies so that the public’s business can be conducted. This tension has been exacerbated in recent times with the increased polarization of many matters within the public sphere, and the often inflammatory effects of social media. Indeed, social media has extended the virtual boundaries of “public meetings,” forcing courts to apply established First Amendment principles and rules to novel situations.

The purpose of this paper is provide an overview of, and guidance as to how public entities should tread through the factually complex and nuanced issues at play here. We’ll review pertinent rules governing the running of public meetings, and the corresponding rules under which public entities can seek to maintain decorum during public meetings without

running afoul of the First Amendment and subjecting themselves to civil liability under state and federal law. We'll look at the standards that apply to members of the public as well as councilmembers themselves. We'll survey key court rulings, including decisions by the U.S. Supreme Court, the Ninth Circuit, and the District Courts sitting in California. Finally, we'll review how courts have applied these First Amendment principles and rules in the realm of social media use by government officials.

## **II. FIRST AMENDMENT BASICS**

Generally, the First Amendment prohibits the government from restricting speech and punishing speakers for their speech. However, there are certain well-established exceptions to this where speech is not protected under the First Amendment and where the government can regulate, prohibit, and punish citizens for such speech. These include:

- Obscenity
- Libel/slander
- True threats

Outside of these exceptions, the First Amendment's protections are very broad. Although "freedom of speech" is familiar to almost all in this country, many people – including elected officials – are still surprised to learn that the First Amendment's broad protections extend to even speech labeled as "hate speech." Indeed, courts have confirmed that the First Amendment's protections extend to, for example, racist public demonstrations by organizations such as the KKK, Nazi public marches, a fire paramedic's Facebook post expressing violence towards liberals related to gun control, a police officer's Facebook post showing President Obama being

hung and disparaging the Black Lives Matter movement, and the burning of a cross at a political rally.<sup>1</sup>

Even where speech falls under the First Amendment’s protections, governments may still regulate the speech to some degree without offending the First Amendment. The extent to which the government can permissibly regulate speech depends on the setting in which the speech takes place. For example, the government is given less latitude to regulate speech that takes place in public places that were traditionally open to free speech than in specified publicly-owned properties, such as a government office. Courts refer to such settings as “forums” and the system of categorization of such forums as forum classification analysis.

There are four general types of forums for First Amendment categorization:

1. **Traditional Public Forums.** These are spaces, such as public sidewalks or public parks, that have traditionally been open to free speech by any individual. The First Amendment protections for speech occurring in traditional public forums is the strongest and most well-established.
2. **Designated Public Forums.** These are public spaces that do not qualify as a traditional public forum, but that have been opened up by the government for free expression without any stated rules or limitations. The First Amendment protections for speech occurring in designated public forums are akin to those in traditional public forums.
3. **Limited Public Forums.** These are public spaces that have been opened up by the government for expression, but with express limitations. The First Amendment

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<sup>1</sup> See, e.g., *Moser v. Las Vegas Metro. Police Dep’t*, 984 F.3d 900 (9th Cir. 2021); *Grutzmacher v. Howard Cnty.*, 851 F.3d 332 (4th Cir. 2017).

protections for speech occurring in limited public forums is more limited than in traditional or designated public forums.

4. **Non Public Forums.** These are properties owned by the government that have been entirely closed off to expression by members of the public. Examples of nonpublic forums include airport terminals, military bases, and a government's website.

For both traditional public and designated public forums, the government's regulation of speech is generally limited to "time, place and manner" restrictions. Such restrictions cannot concern the content, topics, or views of the speech that will be permitted, but are instead limited to the times of day when speech will be permitted, the locations where speech will be permitted, and the manner of speech permitted. For example, a city might have an ordinance that prohibits amplified speech within residential neighborhoods after a certain time of night. Regulations of the content of speech in traditional and designated public forums is only permitted under the First Amendment where it meets "strict scrutiny," which means the regulation has to be narrowly tailored for achieving a "compelling government interest."<sup>2</sup>

In a limited public forum, the government can impose *content* based regulations – such as restricting speech to certain topics – but cannot impose *viewpoint* regulations. Strict scrutiny, however, does not apply.<sup>3</sup> For example, a city could open up the inside of city hall – a limited public forum – to host an art exhibit about the city, while prohibiting members of the public from getting on a soapbox and speaking about other matters. However, the city could not limit the art

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<sup>2</sup> *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009).

<sup>3</sup> *Hopper v. City of Pasco*, 241 F.3d 1067, 1075 (9th Cir. 2001).

displayed in that exhibit to works that are, say, flattering of sitting officials, while excluding works that are critical of such officials.<sup>4</sup>

In a non-public forum, the government can limit speech to only that which it wishes to convey. For example, a city can use its website to post messages of its choosing without allowing alternative views or additional content to be supplied by the public. The city can exclude all content that it disagrees with and only allow content that it approves of.

### **III. FIRST AMENDMENT AND PUBLIC MEETINGS**

#### **A. Maintaining Order During Public Meetings**

Under First Amendment law, city council public meetings are generally deemed to be limited public forums.<sup>5</sup> As such, a city can regulate not only the time, place, and manner of speech at a public city council meeting, but also the content of speech allowed during the meeting, provided such content-based regulations are viewpoint neutral and enforced consistently the same way.<sup>6</sup> For example, a city council “does not violate the first amendment when it restricts public speakers to the subject at hand.”<sup>7</sup> Thus, a speaker can be interrupted if they insist on addressing a matter that does not fall under the established agenda. However, a speaker cannot be interrupted or curtailed because the council disagrees with the viewpoint the speaker expresses on a matter covered by the agenda item at issue.<sup>8</sup>

Speech at a city council meeting may be stopped by a city, however, if it constitutes an “actual disruption.” “A speaker may disrupt a Council meeting by speaking too long, by being

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<sup>4</sup> *Id.* at 1078.

<sup>5</sup> *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010).

<sup>6</sup> *Id.*

<sup>7</sup> *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

<sup>8</sup> *Id.*

unduly repetitious, or by extended discussion of irrelevancies.”<sup>9</sup> The “actual disruption” standard is relatively low, but a disruption must have occurred. A city cannot pre-determine what type of language or statements will result in a disruption. And, the line between an actual and potential disruption may be difficult to draw. Although disruptive conduct need not rise to the level of a “breach of the peace” or “fighting words,” a mere violation of the council’s rules of decorum does not automatically mean that a speaker has become a disruption such that their speech can permissibly be stopped or the speaker permissibly removed.<sup>10</sup> Actual disruption is also measured by the effect on the audience and the proceedings, not by how the speech is perceived by individual councilmembers. Actionable disruption occurs when the council is prevented from accomplishing its business in a reasonably efficient manner, or where the speaker’s conduct interferes with the First Amendment rights of other speakers.<sup>11</sup>

Court decisions within the Ninth Circuit illustrate how the “actual disruption” standard operates in practice:

- Permissible to remove man who had previously disrupted proceedings when his cohort made an obscene gesture that threatened to re-start a previous disruption.<sup>12</sup>
- Triable issue of fact as to whether a silent Nazi salute caused an actual disruption and thus court reversed grant of summary judgment.<sup>13</sup>
- Actual disruption found where speaker stated “your president is pathetic and hopeless and is not doing a very good job and you need to get together and lose her.”<sup>14</sup>

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<sup>9</sup> *Id.* at 1426.

<sup>10</sup> *Id.* at 1425.

<sup>11</sup> *Id.* at 1426.

<sup>12</sup> *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995).

<sup>13</sup> *Norse*, 629 F.3d at 970.

<sup>14</sup> *Dowd v. City of Los Angeles*, No. CV 09-06731 (SSx), 2013 WL 4039043, \*18 (C.D. Cal. Aug. 7, 2013).



The power to determine when an actual disruption has occurred rests with the public meeting chair or moderator, such as the mayor, and entails a great deal of discretion.<sup>15</sup> It is an abuse of the meeting chair’s discretion to eject speakers simply because of a disagreement with their speech or choice of words. Although a city council can set time limits for public speakers to address agenda items set by the council – and violations of time limits can rise to the level of actual disruptions – the council must enforce such time limits in an even handed manner.<sup>16</sup> Given that the determination of whether particular speech is disruptive may be imprecise, a city may wish to let a disruptive speaker exceed their time limit as a basis to remove them or stop them from speaking rather than basing such decisions on the disruptive impact of their speech. To reduce the risk of liability for improperly stopping speech, the chair of a public meeting should also coordinate with the city attorney and city manager to monitor public comments for purposes of determining if they rise to the level of an actual disruption.

#### **B. Rules of Decorum for Councilmembers**

In addition to regulating the speech of members of the public during public meetings – through time, place, and manner restrictions – city councils are often concerned about, and respond to, the conduct and speech of their own members. Cities may adopt specific “rules of decorum” intended to ensure civility and order during meetings by both members of the governing body as well as the public. Elected bodies, such as councils, may also adopt resolutions in response to specific instances of speech and conduct by individual and specific members of the body. However, such actions must heed the unique First Amendment rules and principles at play.

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<sup>15</sup> See *White*, 900 F.2d at 1426; see *Acosta v. City of Costa Mesa*, 718 F.3d 800, 810 n.5 (9th Cir. 2013).

<sup>16</sup> *Ribakoff v. City of Long Beach*, 27 Cal.App.5th 150 (2018).

Generally, decorum policies addressing aspirational goals for civility – such as using “respectful language” – will not run afoul of the First Amendment. However, a blanket ban on protected speech will generally be found unconstitutional. For example, a policy cannot prohibit a councilmember from commenting on the performance of staff members, or prohibit councilmembers from wearing certain articles of clothing, such as a Blue Lives Matter pin, or a Black Lives Matter mask, etc.<sup>17</sup>

However, the analysis becomes more complex where specific actions taken by a city’s legislative body in response to the speech or conduct of one of its elected members is at play. On the one hand, courts have consistently held that the First Amendment requires that “legislatures be given the widest latitude to express their views on issues of policy.”<sup>18</sup> On the other hand, courts recognize that legislative bodies have greater leeway to censure and criticize the speech and conduct of their peer elected officials due the unique nature of electoral politics.<sup>19</sup> And elected officials are entitled to “a protected interest in speaking out and voting their conscience on the important issues they confront.”<sup>20</sup> Accordingly, evaluating the constitutionality of a council’s actions taken against an individual member of the council for their speech is not analyzed as a typical First Amendment retaliation case, and the bar for finding a public entity’s response as unconstitutional is somewhat higher.<sup>21</sup>

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<sup>17</sup> *White*, 900 F.2d at 1425.

<sup>18</sup> *Bond v. Floyd*, 87 S.Ct. 339, 349 (1966); *Degrassi v. City of Glendora*, 207 F.3d 636, 647 (2000).

<sup>19</sup> *Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 544 (9th Cir. 2010) (“more is fair in electoral politics than in other contexts”); *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 475, 142 S. Ct. 1253, 1259, 212 L. Ed. 2d 303 (2022) (“elected bodies in this country have long exercised the power to censure their members”).

<sup>20</sup> *Id.*

<sup>21</sup> *See Nieves v. Bartlett*, 139 S. Ct. 1715, 1722, 204 L. Ed. 2d 1 (2019).

For example, a council can typically censure a specific councilmember for their speech or conduct, and can, in effect, rebuke a councilmember for their speech and conduct by stripping them of their titular roles and membership on committees.<sup>22</sup> Although similar types of actions might result in a First Amendment violation were they to be taken against, say, a city's employee, courts deem such actions permissible under the First Amendment when undertaken against elected officials due to the nature of the political process. So long as councilmembers retain the full range of rights and prerogatives that come with having been publicly elected (such as voting and attending meetings), actions taken against members by the body at large – even in response to protected speech or conduct – will typically pass constitutional muster.<sup>23</sup> However, attempting to remove a specific councilmember from their elected office, or prohibiting them from voting or attending meetings, *will* violate the First Amendment.

For example, in *Houston Community College System v. Wilson*, plaintiff board member of the community college system disagreed with the other board members about the best interests of the community college, and brought a lawsuit challenging the board's action.<sup>24</sup> In response, the Board publicly reprimanded plaintiff and then publicly, verbally censured him. The Supreme Court held that although the plaintiff had a First Amendment right to speak out on questions of government policy, the other board members also had a First Amendment right to speak out. The Court recognized that the censure at issue did not prevent the plaintiff board member from doing his elected job, nor deny him any privilege of his elected office. In other words, censure is

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<sup>22</sup> *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 475 (2022)

<sup>23</sup> *Blair*, 608 F.3d at 544.

<sup>24</sup> *Houston Cmty. Coll.*, 595 U.S. at 475.

not akin to exclusion from office. Accordingly, the plaintiff board member did not possess an actionable First Amendment claim arising from the board's purely verbal censure.

Similarly, in *Collins v. San Francisco Unified School District*, old "tweets" by school board member Collins resurfaced and were viewed as anti-Asian and racist.<sup>25</sup> In response, the school board passed a resolution calling for Collins's resignation. The school board resolution also removed Collins from her role as vice president of the board and removed all of her committee assignments. Board member Collins then sued the school district for First Amendment retaliation. The District Court for the Northern District of California ruled in favor of the school district on a motion to dismiss for the same reasons at play in *Houston Community College* discussed above.<sup>26</sup>

We've reviewed how purporting to remove an elected official from office, including depriving them of the ability to vote, violates the First Amendment, but that mere verbal censures and stripping a councilmember of titles and committee assignments will typically pass constitutional muster. However, can a council ever eject a councilmember from a public meeting in response to their speech without violating the Constitution? Yes. But removal of a councilmember or stopping them from speaking should only occur where the councilmember's speech constitutes an "actual disruption."<sup>27</sup> To preclude and/or restrict the speech of a sitting councilmember short of an actual disruption is unchartered legal territory and should be avoided by a public entity or its elected body.

#### **IV. SOCIAL MEDIA AND THE FIRST AMENDMENT**

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<sup>25</sup> *Collins v. San Francisco Unified Sch. Dist.*, No. 21-CV-02272-HSG, 2021 WL 3616775, at \*1 (N.D. Cal. Aug. 16, 2021).

<sup>26</sup> *Collins*, 2021 WL 3616775, at \*3.

<sup>27</sup> *Norse*, 629 F.3d at 976.

Public meetings and opportunities for protected speech between elected officials and members of the public are no longer confined to in-person meetings or a physical public space like a sidewalk or council chamber. Today, elected officials and governing bodies frequently address government business, interact with constituents, and allow for public speech using online forums and social media. Although Courts have recognized the need to apply First Amendment principles to social media and other such online environments, this area of jurisprudence is new and developing due to the relative novelty of the technology and platforms at hand. Commentary from the Supreme Court illustrates this:

- The Internet and social media sites are akin to “the modern public square”<sup>28</sup>
- Social media is “perhaps the most powerful mechanism available to a private citizen to make his or her voice heard”<sup>29</sup>
- Anyone can “become a town crier with a voice that resonates farther than it could from any soapbox”<sup>30</sup>
- Twitter enables people to “petition their elected representatives and engage with them in a direct manner”<sup>31</sup>

Whether the First Amendment will apply to a social media account or space will depend on the extent to which the account is being used for official versus merely personal use. If the social media account is for personal use only – for example a mayor’s personal Facebook page that is limited to personal matters – speech on the account can be controlled and limited by the administrator of the account (in this case the mayor), without running afoul of the First Amendment. However, if the account is used for official speech, First Amendment strictures might apply, which will be further addressed below.

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<sup>28</sup> *Packingham v. North Carolina*, 582 U.S. 98, 99 (2017).

<sup>29</sup> *Id.* at 1732.

<sup>30</sup> *Id.* at 1737.

<sup>31</sup> *Id.* at 1735.

Once a social media account is deemed to be used for official purposes, courts will employ the forum selection analysis discussed earlier in this paper to the social media account at issue to determine what level of restriction of speech will be tolerated under the First Amendment.

- Social media is not currently considered a “traditional public forum.” Depending on how social media use and this area of jurisprudence develop, this could potentially change in the future.
- A social media page that is open to the public where members of the public can make comments without any limitations, will be deemed “designated public forum.” As such, only content-neutral time, place, and manner restrictions would be allowed for such social media accounts.
- A social media page open to the public but with limits on the topics for commentary – provided such limits are consistently enforced – will be deemed a “limited public forum.” As such, the content of the speech allowed on the site or account could be limited to certain content or topics provided it does not discriminate based on viewpoint.
- A social media page limited to government speech only would be a non-public forum. This might be, say, a Facebook page for a city where the commenting feature has been turned off.

One of the most dynamic issues concerning the intersection of the First Amendment and social media is whether a particular social media account is official versus personal in nature. For example, in *Knight v. Trump*, the Second Circuit held that then-President Trump’s Twitter account was a public forum – opened to the public – because he communicated about official business through the account and users were allowed to post their comments and reactions. As a result, Trump could not limit speech on the account based on the views expressed by speakers, such as by deleting or banning certain speakers from the account.<sup>32</sup>

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<sup>32</sup> *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 230 (2d Cir. 2019), *cert. granted, judgment vacated sub nom. Biden v. Knight First Amend. Inst. At Columbia Univ.*, 141 S. Ct. 1220 (2021), and *abrogated by Lindke v. Freed*, 601 U.S. 187 (2024). The Supreme Court subsequently vacated the Second Circuit’s decision on mootness grounds because President Trump was no longer in office. *Biden v. Knight First Amend. Inst. At Columbia Univ.*, 141 S. Ct. 1220 (2021).

In *Davison*, the Fourth Circuit ruled similarly to the Second Circuit in *Knight*.<sup>33</sup> There, the chair of a county board of supervisors operated a Facebook page, which provided information about official activities and solicited input from the public. When one user, the plaintiff in the case, made comments about the alleged unethical use of government funds, the board chair deleted the comments and temporarily blocked the user. The Fourth Circuit held that the interactive component of the page was a public forum because it was used for official business, and invoked the “power and prestige of the office.” As such, deleting and blocking critical comments constituted unconstitutional viewpoint restrictions.<sup>34</sup>

The Eight Circuit’s decision in *Campbell v. Reisch* illustrates that not all social media hosted by public officials are protected by the First Amendment.<sup>35</sup> In *Campbell*, the plaintiff sued a lawmaker for blocking her on the lawmaker’s Twitter page. The Eight Circuit explained that the First Amendment only applies to government control of speech, but that action within the ambit of personal pursuits is not protected. The Court held that the lawmaker’s Twitter page – which was focused on campaigning – was not used for a government purpose and was not an action “under color of law.”<sup>36</sup>

Most recently, the Supreme Court clarified the appropriate approach to such issues and the relevant standards at play in *Lindke v. Freed*.<sup>37</sup> Its decision not only clarifies how courts should approach the First Amendment analysis concerning social media accounts, it also illustrates that this inquiry is often going to be highly fact intensive. In *Lindke*, a city manager

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<sup>33</sup> *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019), *as amended* (Jan. 9, 2019).

<sup>34</sup> *Id.* at 681.

<sup>35</sup> *Campbell v. Reisch*, 986 F.3d 822 (8th Cir. 2021).

<sup>36</sup> *Id.* at 825.

<sup>37</sup> *Lindke v. Freed*, 601 U.S. 187, 188 (2024).

operated a Facebook page addressing mostly personal matters but also commenting on aspects of his job and soliciting feedback from the public, including addressing issues related to the Covid 19 pandemic. Plaintiff Lindke would post comments expressing his displeasure with the city’s approach to the pandemic. In response, the city manager would sometimes delete such posts, and eventually blocked Lindke entirely, which resulted in Lindke filing a Section 1983 lawsuit alleging violations of his First Amendment rights. The District Court denied the claim, finding that the city manager operated his Facebook page in his private capacity. The Sixth Circuit affirmed.<sup>38</sup>

The Supreme Court granted cert for the express purpose of clarifying the standards that apply to such cases. The Court explained that “[a] public official’s social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media.”<sup>39</sup> 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.” In the case at hand, the Court stated that if the city manager’s Facebook page was labeled as his “personal page,” he would be entitled to a “strong presumption” that the views expressed were his in a personal capacity and not state action. However, recognizing that there was no such label, the Court noted that as a general matter, a “post that expressly invokes state authority to make an announcement not available elsewhere is official, while a post that merely repeats or shares otherwise available information is more likely personal.”<sup>40</sup> The Court noted that “[l]est any official lose the right to speak about

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<sup>38</sup> *Lindke v. Freed*, 37 F.4th 1199, 1207 (6th Cir. 2022), *cert. granted*, 143 S. Ct. 1780 (2023), and *vacated and remanded*, 601 U.S. 187 (2024).

<sup>39</sup> *Lindke*, 601 U.S. at 188.

<sup>40</sup> *Id.* at 203.



public affairs in his personal capacity, the plaintiff must show that the official purports to exercise state authority in specific posts.” The Supreme Court ultimately reversed and remanded to the lower court to analyze the facts accordingly.

The high court contemporaneously reversed a similar Ninth Circuit decision, *O’Connor-Ratcliff v. Garnier*. In *O’Connor-Ratcliff*, the Ninth Circuit found state action – where a school district trustee deleted and then blocked social media comments from members of the public who were critical of the school board – because there was a “close nexus between the Trustees’ use of their social media pages and their official positions.”<sup>41</sup> The Supreme Court reversed on the grounds that the legal standard employed by the Ninth Circuit departed from the rule the Supreme Court articulated in *Lindke*.

In sum, *Lindke* appears to stand for the proposition that, in the context of social media, the bar for finding the existence of state action is likely higher – due to the First Amendment rights of the official at play – than might be the case in other contexts. This is because, under the approach articulated in *Lindke*, it will not typically be sufficient, for a finding of liability, that the official simply *purports* to act with official authority or under color of law. Rather, the official must have had actual authority to engage in the speech in question, and must have been purporting to exercise such authority in the specific social media post at hand. This means that First Amendment challenges regarding social media are likely to be highly fact specific matters.

## V. CONCLUSION

In the realm of maintaining order and decorum during public meetings, there are well-established First Amendment principles that public entities should be aware of and comply with:

- Viewpoint restrictions are essentially never permitted under the First Amendment.

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<sup>41</sup> *O’Connor-Ratcliff v. Garnier*, 601 U.S. 205, 208 (2024).

- Traditional public forums are subject to time, place, and manner restrictions.
- Content restrictions are permitted only in limited public forums that have established rules regarding the content that will be allowed.
- City council meetings and other similar public entity board meetings are deemed to be limited public forums subject to time, place, and manner restrictions, but where content can also be regulated provided it is viewpoint neutral and consistently enforced.
- A city council *cannot* prevent a citizen from speaking or remove the citizen if their speech falls within the agenda topic and within the timeframe they have been afforded.
- A city council *can* prevent a citizen from speaking or remove the citizen from the meeting if their speech constitutes an actual disruption, including exceeding their allotted time period for public comment.
- Although an elected body can censure one of its members for their speech and conduct – including their speech and conduct undertaken in a personal capacity – the individual councilmember cannot be deprived of the rights of their elected office.

In the realm of social media, courts have not been shy to use established First

Amendment principles to address virtual public spaces and what level of speech regulations will be permissible. The applicable First Amendment rules that will be at play will often result in a highly fact intensive analysis as the Supreme Court's recent decision in *Lindke* illustrates.

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