IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

AMJAD MASAD, *Plaintiff,* **v.** **RANDALL FINE,** *in his official capacity as a member of the U.S. House of representatives and his individual capacity,* *Defendant.*	Case No. 6:26-cv-00442 **PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS**

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

I. Introduction

Defendant's Motion to Dismiss should be denied for three separate reasons. First, contrary to his claims, this case is not moot because Defendant's decision to unblock Plaintiff after this lawsuit was filed and adopt a new moderation policy does not eliminate the live controversy before the Court. Defendant continues to defend the constitutionality of the challenged blocking, retains unilateral control over the @RepFine account and its moderation, and remains free to reimpose the challenged restrictions absent a court order. Indeed, Defendant's newly adopted policy expressly characterizes the account

as a "moderated online discussion site" and reserves Defendant's authority to restrict users' access and interactions. Fine Decl., Ex. A.

Second, Defendant makes much of the fact that Plaintiff invoked Section 1983 as a cause of action although Defendant is a federal official, claiming that this error warrants dismissal of the entire case. First, as explained at the hearing, Plaintiff invoked another basis for jurisdiction—specifically, federal question jurisdiction. *See* 28 U.S.C. Section 1331. And the Court is empowered to grant declaratory relief (as well as injunctive relief) to prevent future violations of Plaintiff's First Amendment rights under 28 U.S.C. 2201.

Assuming *arguendo* Plaintiff relied on an incorrect procedural vehicle, dismissal remains unwarranted because "the ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity," *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015), and any pleading defect is readily curable through amendment. *See* Fed. R. Civ. P. 15(a)(2).

Finally, Defendant argues that as a legislator, as opposed to executive branch official, he is not subject to the constraints the Supreme Court has recognized some government actors are subject to when excluding individuals from interacting with their official social media accounts. *See Lindke v. Freed*, 601 U.S. 187 (2024). This contention is largely predicated on the nonbinding decisions of various district courts. But Defendant is wrong for several reasons. The existing precedent in the Eleventh Circuit rejects the logically flawed

reasoning of those district courts, and therefore the authority to which Defendant is actually subject prohibits him from blocking people from his official social media account based on their expressed viewpoints. The reasoning in *Lindke*, as well as other courts that have addressed the matter, further establishes that Defendant's position is erroneous. The Complaint plausibly alleges state action, as it posits that Defendant uses the @RepFine account as an official channel to communicate legislative activities, governmental affairs, and constituent services. Having opened that interactive forum for public participation, Defendant may not exclude speakers based on viewpoint.

In sum, Defendant's Motion to Dismiss should be denied.

II. Background

As alleged in the Complaint, Defendant Randall Fine represents Florida's Sixth Congressional District in the United States House of Representatives. Complaint, ECF No. 1, ¶¶ 9, 14. In that role, he operates an X account with the handle @RepFine and the name "Congressman Randy Fine." Compl. ¶ 10. Defendant uses that account to communicate with constituents and members of the public about legislation, governmental affairs, policy positions, constituent services, and official activities. Id. ¶¶ 10–16. The account also links directly to Defendant's official congressional webpage and allows members of the public to reply to posts, repost content, and participate in public discussion threads. *Id.*

On February 15, 2026, Defendant posted from the @RepFine account: "If they force us to choose the choice between dogs and Muslims is not a difficult one." *Id.* ¶ 19.[1] Defendant's statement did not arise in isolation. As alleged in the Complaint, Defendant had recently—in X posts--referred to Palestinians as "evil," accused Muslims of promoting "Muslim terror," and called for the denaturalization and deportation of a Muslim public official. *Id.* ¶ 20. Plaintiff, Amjad Masad, who is a Palestinian-Muslim American immigrant replied: "Are you talking about what's for lunch?" Id. ¶ 21. Shortly thereafter, Defendant blocked Plaintiff from the @RepFine account and hid Plaintiff's reply from the discussion thread. *Id.* ¶¶ 23–27. As a result, Plaintiff could no longer reply to Defendant's posts, participate in discussion threads, repost Defendant's content, or otherwise engage with the account's interactive features available to other users. *Id.*

On February 25, 2026, Plaintiff filed this action alleging that Defendant's viewpoint-based exclusion from the @RepFine account violated the First Amendment. *Id.* On March 3, 2026, Plaintiff moved for preliminary injunctive relief requiring Defendant to unblock him during the pendency of this litigation. Motion and Memorandum of Law in Support of Preliminary Injunction, ECF No. 10.

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[1] Defendant's remarks received substantial national attention and criticism. Following the May 2026 shooting at the Islamic Center of San Diego, Muslim advocacy organizations, religious leaders, and commentators publicly identified anti-Muslim rhetoric by elected officials, including Representative Fine's statements, as contributing to a broader climate of hostility toward Muslims. *See* Najib Jobain & Ali Harb, *After San Diego Shooting, Muslim Americans Want to Turn Grief Into Action*, Al Jazeera (May 24, 2026); Khaled A. Beydoun, *How Islamophobia Influencers Are Shaping the FBI's Response to the San Diego Shooting*, The Hill (May 30, 2026).

After litigation commenced, Defendant unblocked Plaintiff from the @RepFine account on April 13, 2026. Def.'s Mot. to Dismiss at 4. Defendant now claims for the first time that he adopted a new social media moderation policy governing the account, and no longer blocks anyone based on viewpoint. *Id.* at 5–6. Defendant nevertheless continues to defend his prior conduct as lawful, retains control over the @RepFine account and its moderation, and now moves to dismiss Plaintiff's First Amendment claim in its entirety as moot, procedurally defective, and unsupported on the merits.

III. Legal Standard

Defendant moves to dismiss under Rule 12(b)(1) on mootness grounds and under Rule 12(b)(6) on the grounds that § 1983 does not provide a cause of action against federal officials and that Plaintiff has failed to allege governmental action under *Lindke*. When assessing a Rule 12(b) motion to dismiss, whether for lack of jurisdiction or failure to state a claim, the Court must accept the Complaint's allegations as true and construe them in the light most favorable to the Plaintiff. *McElmurray v. Consol. Gov't of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007); *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). To survive a Rule 12(b)(6) motion, a complaint need only contain sufficient factual matter, accepted as true, to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A case is moot under Rule 12(b)(1) only when it is impossible for a court to grant any relief whatsoever to the prevailing party. *Chafin v. Chafin*, 568 U.S.

165, 172 (2013). Where a defendant bases his mootness claim on voluntarily cessation of challenged conduct, he bears the “formidable burden” of demonstrating that it is “absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000).

Finally, leave to amend—as opposed to dismissal--should be freely granted when justice so requires and should ordinarily be denied only for reasons such as undue delay, bad faith, undue prejudice, or futility. Fed. R. Civ. P. 15(a)(2); *Foman v. Davis*, 371 U.S. 178, 182 (1962).

In the event the Court concludes that Plaintiff improperly invoked 42 U.S.C. § 1983, dismissal with prejudice is unwarranted. Plaintiff has never amended the Complaint, there has been no undue delay or bad faith, and Defendant identifies only a purported pleading defect concerning the procedural vehicle through which Plaintiff seeks relief. Amendment would neither prejudice Defendant nor be futile. Moreover, "[g]enerally, where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (quoting *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991)). Accordingly, if the Court concludes amendment is necessary, the appropriate remedy is leave to amend rather than dismissal with prejudice.

IV. Argument

A. This Case Is Not Moot Because Absent a Court Order, Defendant May Simply Resume the Challenged Conduct

Defendant principally argues that this case is moot because, after Plaintiff filed suit and sought preliminary injunctive relief, Defendant unblocked Plaintiff from the @repfine account and adopted a new social media moderation policy. (he only informed Plaintiff of this development the day before the hearing on the preliminary injunction motion). That argument fails.

Defendant's mootness argument is governed by the voluntary-cessation doctrine. As the Supreme Court has explained, a defendant cannot automatically moot a case "simply by ending its unlawful conduct once sued." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). The doctrine applies with particular force where a defendant remains free to resume the challenged conduct. *See City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). Likewise, the Eleventh Circuit has recognized that post-litigation policy changes do not moot a case where uncertainty remains regarding whether the challenged conduct has genuinely been abandoned. *Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525, 531–32 (11th Cir. 2013). Defendant cannot satisfy that standard here, because the circumstances suggest that he may simply resume his unlawful conduct once the lawsuits against him are tossed. *See Aladdin's Castle,* 455 U.S. at 289 (rejecting mootness where the government remained free to "reenact [] precisely the same provision" and there was "no certainty" the challenged conduct would not recur).

There are a few reasons this conclusion is warranted. Defendant blocked Plaintiff after Plaintiff criticized Defendant's anti-Muslim statement on the platform and restored Plaintiff's access only after filing of this lawsuit and the motion for preliminary injunctive relief, as well as filing of a lawsuit in another case.[2] Defendant continues to maintain that his conduct was lawful, has never disavowed the constitutionality of excluding Plaintiff based on viewpoint, and retains complete authority over the @repfine account as of this time. *See Aladdin's Castle,* 455 U.S. at 289 (rejecting mootness where the government remained free to reenact the challenged practice after litigation ended). The record contains no indication that Defendant publicly announced the policy through a post on the @RepFine account (though he did link to it in his bio, which draws less attention) or otherwise explained the purported change in moderation practices to the users affected by those practices.

Moreover, the policy expressly preserves Defendant's authority to moderate and restrict access to the account. Defendant characterizes the @repfine account as "a moderated online discussion site and not an unlimited public forum" and expressly reserves authority to hide or remove comments and impose "temporary limitation[s]" on a user's ability to interact with the account. Fine Decl., Ex. A. Because Defendant remains free to determine how the policy will be interpreted and enforced, his unilateral promise of future compliance is insufficient to moot Plaintiff's claims. These circumstances belie the claim that he

[2] *Baker v. Fine*, No. 6:26-cv-01031 (M.D. Fla. filed Apr. 29, 2026).

has actually abandoned the policy, but suggest he is simply trying to avoid litigation—which is not valid grounds for a mootness determination. *See Aladdin's Castle*, 455 U.S. at 289.

Defendant's reliance on *Coral Springs*, *Jews for Jesus*, *Saladin*, *City of Miami*, and *Atheists of Florida* is misplaced. Those cases involved governmental action showing that the challenged practice had been genuinely abandoned, such as formal amendments, codified replacement policies, consistent implementation over time, or express representations that the challenged conduct would not resume. See, e.g., *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328–30 (11th Cir. 2004); *Jews for Jesus, Inc. v. Hillsborough Cnty. Aviation Auth.*, 162 F.3d 627, 629–30 (11th Cir. 1998); *Saladin v. City of Milledgeville*, 812 F.2d 687, 689 (11th Cir. 1987); *Atheists of Fla., Inc. v. City of Lakeland*, 713 F.3d 577, 580–85 (11th Cir. 2013). By contrast, Defendant relies on a self-imposed social-media policy adopted after litigation commenced, subject to his sole control to revise, abandon, interpret, and enforce.

This case instead resembles the line of Eleventh Circuit decisions rejecting mootness claims where government defendants altered challenged conduct only after litigation is underway. Courts are especially skeptical of post-litigation policy changes because such changes tend to reflect an effort to evade judicial review rather than a genuine abandonment of the challenged conduct. *See Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1268–69 (11th Cir. 2020) (acknowledging that the agency's rescission of the challenged policy shortly after suit was filed was likely

motivated, at least in part, by a desire to "rid itself of this litigation" and emphasizing that courts examine whether a policy change reflects substantial deliberation or strategic conduct undertaken during litigation); *Martin v. Houston*, 226 F. Supp. 3d 1283, 1291–92 (M.D. Ala. 2016) ("Post-suit cessation of conduct is more likely a response to the suit than a true change of heart by the defendant."); *id.* at 1289 (warning that treating repeal as an external cause of mootness would permit governments to "dodge judicial review willy-nilly, simply by repealing challenged laws").

For example, in *Rich*, the Eleventh Circuit held that a post-suit policy change did not moot the case because the government had not "unambiguously terminated" the challenged conduct. 716 F.3d at 531–32. The court emphasized that the timing of the policy shift—coming only after appellate briefing and related litigation had commenced—created ambiguity regarding whether the change reflected a genuine abandonment of the challenged practice or an attempt to manipulate jurisdiction. *Id.* at 531–32. The court emphasized that the challenged policy was changed "late in the game" after substantial litigation activity had already occurred and concluded that the circumstances suggested an effort to "manipulate jurisdiction." *Id.* at 532. As in *Rich*, the timing of Defendant's actions and other circumstances discussed above raise substantial doubt that the conduct in question has been genuinely abandoned.

Defendant's reliance on *Saladin* is misplaced. In *Jager v. Douglas County School District*, the Eleventh Circuit distinguished *Saladin* because the

government there had represented that it would not resume the challenged conduct and there was "no indication that the City would break its word." 862 F.2d 824, 833–34 (11th Cir. 1989). By contrast, the *Jager* defendants had "never promised not to resume the prior practice" and continued to maintain its constitutionality. *Id.* That same reasoning applies here. The Eleventh Circuit's decision in *American Civil Liberties Union v. Florida Bar* is especially instructive. There, the court held that the ongoing constitutional injury was not merely past enforcement, but "the continued assertion" that the challenged restriction was constitutional because defendants were "not bound to their pronouncements" disclaiming future enforcement. 999 F.2d 1486, 1495 (11th Cir. 1993). That reasoning applies here. Defendant continues to assert that the challenged viewpoint-based exclusion from his official governmental communications forum was lawful while simultaneously retaining complete authority to repeat the same conduct in the future. As in *ACLU v. Florida Bar*, Defendant "is not bound by [his] court statements" or present litigation assurances. *Id.*

Further, this case is not moot because Plaintiff does not seek relief solely for a completed historical injury. Rather, he seeks prospective declaratory and injunctive relief prohibiting future viewpoint-based exclusion from Defendant's official governmental communications forum. Because Defendant remains free to resume the challenged conduct, this case remains live. *See Aladdin's Castle,* 455 U.S. at 289.

B. Defendant's Motion Fails Both Procedurally and on the Merits

Defendant's motion rests on two other flawed premises. First, Defendant contends that because he is a federal official rather than a state official, Plaintiff's invocation of 42 U.S.C. § 1983 requires dismissal of the Complaint. But even assuming § 1983 is unavailable to Plaintiff, federal courts possess longstanding authority to award prospective equitable relief against federal officials alleged to be violating the Plaintiff's constitutional rights. Second, Defendant argues that his operation of the @RepFine account does not constitute governmental action under *Lindke*. The Complaint's allegations and the governing precedent demonstrate otherwise.

1. Defendant overstates Plaintiff's invocation of Section 1983

Defendant repeatedly argues that Plaintiff's alleged reliance on Section 1983 as a cause of action in this case is erroneous and warrants dismissal. That argument misconstrues the Complaint and elevates form over substance. In the Complaint's jurisdictional section, Plaintiff explicitly relied upon 28 U.S.C. 1331 for federal court jurisdiction and the Court's authority to grant declaratory and injunctive relief under 28 U.S.C. 2201.

Defendant's position belies centuries of Supreme Court jurisprudence recognizing the authority of federal courts to grant equitable relief against federal officers who violate a plaintiff's constitutional rights. As the Supreme Court has

explained, "where legal rights have been invaded," federal courts may "use any available remedy to make good the wrong done." *Bell v. Hood*, 327 U.S. 678, 684 (1946).

Likewise, the Court has expressly recognized "the availability of such equitable relief" against federal officials alleged to be acting unconstitutionally. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010). Indeed, *Free Enterprise Fund* itself involved claims for declaratory and injunctive relief against federal actors brought under 28 U.S.C. § 1331. *Id.* at 489–91. More recently, the Supreme Court has continued to adjudicate constitutional claims seeking prospective relief against government officials without suggesting that § 1983 is a prerequisite to such suits. *See Murthy v. Missouri*, 603 U.S. 43 (2024); *FBI v. Fikre*, 601 U.S. 234 (2024); *NRA of Am. v. Vullo*, 602 U.S. 175, 186–89 (2024). Accordingly, even assuming arguendo that § 1983 is unavailable against federal officials, dismissal would be unwarranted because Plaintiff's claims independently arise under the Constitution and fall within this Court's longstanding equitable authority under § 1331 to enjoin unconstitutional federal action. That separate basis of jurisdiction is contained in the Complaint. *See* Compl. ¶¶ 5–6.

The Eleventh Circuit likewise recognizes the availability of prospective equitable relief against federal officials. In *Bolin v. Story*, the court explained that "[i]n order to receive declaratory or injunctive relief, plaintiffs must establish that there was a violation, that there is a serious risk of continuing irreparable injury if

the relief is not granted, and the absence of an adequate remedy at law." 225 F.3d 1234, 1242–43 (11th Cir. 2000). The court further reaffirmed that "[t]here is no basis for according[] federal officials a higher degree of immunity" than applies in comparable constitutional actions against state officials. *Id.* at 1241–42 (quoting *Butz v. Economou*, 438 U.S. 478, 500 (1978)).

Defendant therefore conflates two distinct questions: whether § 1983 provides the proper enforcement mechanism and whether Plaintiff states a viable First Amendment claim. Plaintiff seeks prospective declaratory and injunctive relief prohibiting future viewpoint-based exclusion from Defendant's official governmental communications forum. The constitutional injury alleged in the Complaint—and the core equitable relief sought—remain the same regardless of the procedural vehicle through which relief is pursued; any dispute regarding attorneys' fees under § 1988 concerns the scope of available remedies, not the viability of Plaintiff's constitutional claim.

Topping v. U.S. Department of Education, 510 F. App'x 816, 818–19 (11th Cir. 2013), which Defendant cites in support of his argument, is entirely inapposite. *Topping* held that federal agencies and officials acting under color of federal law are not subject to liability under 42 U.S.C. § 1983. The case had nothing to do with whether a plaintiff alleging a federal official violated his First Amendment rights may bring claims for equitable relief (he may).

Defendant likewise mischaracterizes Plaintiff's statements during the preliminary injunction hearing. Plaintiff did not concede that his First Amendment

claim fails as a matter of law. Rather, counsel explained that the Complaint independently invoked 28 U.S.C. §§ 1331 and 2201. *See* Hearing Tr., ECF No. 39, 10:10–13. Nor did counsel refuse amendment if necessary. Instead, counsel argued only that "there's no need to amend the complaint because we raised this under the First Amendment, Section 2201 ... and 1331." *Id.* 32:4–11.

To the extent the Court concludes amendment is necessary, Plaintiff respectfully requests leave to amend rather than dismissal. Moreover, the Court emphasized that "the only motion before the Court is a preliminary injunction, not a motion to dismiss the case," and deferred the issue, stating: "All right. So we will wait on that." Hearing Tr. 8, 10. Thus, the transcript does not support Defendant's assertion that Plaintiff was offered leave to amend and refused to do so. Neither *Henderson v. JP Morgan Chase Bank, N.A.*, 436 F. App'x 935 (11th Cir. 2011) nor *D.P. ex rel. E.P. v. School Board of Broward County*, 483 F. App'x 403 (11th Cir. 2012) support dismissal: *Henderson* involved a plaintiff who failed to amend after an express court order directing amendment, while *D.P.* merely recites the Rule 12(b)(6) standard and says nothing about dismissing a constitutional claim because a plaintiff invoked an incorrect procedural vehicle in addition to a correct one.

Defendant's remaining arguments elevate form over substance. Plaintiff does not dispute that the Complaint identified § 1983, referenced § 1988, and relied on *Lindke*. But those allegations establish only that Plaintiff initially invoked an incorrect enforcement mechanism along with appropriately ones. They do not

establish that Plaintiff lacks a viable First Amendment claim or a jurisdictional basis for the Court to decide his claims.

2. Plaintiff plausibly alleges governmental action under *Lindke*

Defendant also argues that Plaintiff fails to allege governmental action under *Lindke* because a federal legislator does not speak for the state. Defendant's reading of the applicable case law is wrong. Under *Lindke*, the state-action inquiry for an official's social media activity contains two components. A public official acts under color of law when he "possessed actual authority to speak on the State's behalf" and "purported to exercise that authority when he spoke on social media." *Lindke*, 601 U.S. at 198. That inquiry does not turn on labels alone; courts must consider whether the official's social media activity is actually connected to authority entrusted to the official. Some factors to be considered, which are not exhaustive, is whether the account is used to announce official business, communicate with constituents, or otherwise perform governmental functions. *Id.* at 201. Although "appearance and function" cannot substitute for actual authority, they are relevant to assessing whether the official exercised authority through the account in question. *Id.* at 198–201.

Eleventh Circuit precedent is similar. In *Attwood v. Clemons*, the Eleventh Circuit held that allegations concerning a legislator's official social-media accounts plausibly supported the inference that he acted in his official capacity. 818 F. App'x 863, 867–69 (11th Cir. 2020). The court emphasized that the legislator allegedly

used the accounts as an extension of his public office: the accounts bore the "trappings" of office, were used to make official statements, shared information about legislative activities and government functions, communicated with the public, and directed constituents to official legislative contact information. *Id.* at 868–69. While *Attwood* predates *Lindke*, its reasoning remains persuasive at the pleading stage because it applies the same practical principle: where a legislator uses a social-media account to perform official functions and communicate with constituents in his official capacity, governmental action is plausibly alleged. The Eleventh Circuit has never indicated that it has overruled *Attwood* or otherwise considers it defunct.

The Complaint alleges that Defendant operates an account titled "Congressman Randy Fine," links the account directly to his official congressional webpage, and uses the account to communicate with constituents regarding legislation, governmental affairs, policy positions, constituent services, and official activities. Compl. ¶¶ 10–16. Defendant's own social-media policy likewise confirms that the account is used to communicate with residents of Florida's Sixth Congressional District regarding public meetings, policy positions, and constituent services. These allegations plausibly support the inference that Defendant uses the @RepFine account as an instrument of his congressional office rather than as a purely personal account.

Defendant argues that Plaintiff must plead that Defendant possessed authority to speak on behalf of the entire House of Representatives or the federal

government. This claim finds no support in the law. *Lindke* requires only that the official possess actual authority to speak on behalf of the government in the relevant context and purport to exercise that authority through the challenged account. 601 U.S. at 198. Plaintiff plausibly alleges both. More fundamentally, the First Amendment injury in cases such as this arises from a government official's decision to open a forum for public discussion and then exclude speakers because of their viewpoint. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46–47 (1983); *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985). Defendant cannot use his account to announce legislation, communicate with constituents, and invite public engagement regarding governmental affairs, while simultaneously excluding critics who challenge his views. That is precisely the type of viewpoint discrimination the First Amendment forbids.

Defendant's reliance on several nonbinding decisions applying *Lindke* is misplaced. Those decisions are from other district courts from jurisdictions outside the Eleventh Circuit, and so are of no authoritative value. In any event, they do not establish a categorical rule that legislators are incapable of exercising governmental authority through social media accounts. *Cf. Fox v. Faison*, 798 F. Supp. 3d 809, 817–20 (M.D. Tenn. 2025) (granting summary judgment after discovery where plaintiff failed to establish that a Tennessee legislator possessed authority to speak on behalf of the State); *Detiege v. Jackson*, 2025 WL 2380730, at *7–9 (W.D. La. Aug. 15, 2025) (granting summary judgment based on the developed factual record and concluding a Louisiana state senator lacked authority

to speak on behalf of the State under *Lindke*); *Freeman v. Epps*, 2025 WL 2948598, at *5–8 (D. Colo. Sept. 19, 2025) (dismissing complaint that failed to allege facts showing a legislator possessed actual authority to speak on the State's behalf); *DeVore v. McCombie*, 2025 WL 2696304, at *3–4 (N.D. Ill. Sept. 22, 2025) (dismissing complaint that failed to identify any law, custom, or specific posts demonstrating the exercise of state authority through the challenged account). None lays down a categorical rule to the effect that legislators may block individuals from their official social media accounts.

Defendant's effort to elevate *Clyburn*, a single district court decision from another jurisdiction over *Attwood* is unpersuasive. Nor does *Lindke* suggest that elected legislators are categorically incapable of exercising governmental authority through official social media accounts. To the contrary, *Lindke* instructs courts to consider whether the official possessed authority to speak on the government's behalf and purported to exercise that authority through the challenged account. 601 U.S. at 198. The Court further emphasized that the relevant inquiry is whether the challenged communications were "actually part of the job that the State entrusted the official to do." *Id.* at 201. Moreover, *Lindke* recognized that "context can make clear that a social-media account purports to speak for the government." *Id.* at 202. Communicating with constituents regarding legislation, governmental affairs, policy positions, and constituent services—as Defendant Fine used his account to do--falls squarely within the responsibilities of a member of Congress.

For the above-described reasons, Plaintiff plausibly alleges governmental action sufficient to survive a motion to dismiss.

V. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss should be denied. In the alternative, Plaintiff respectfully requests leave to amend pursuant to Federal Rule of Civil Procedure 15(a)(2).

Dated: June 5, 2026

Respectfully submitted,

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