

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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KEVIN LINDKE,

*Petitioner,*

*v.*

JAMES R. FREED,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable Brett M. Kavanaugh, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Petitioner Kevin Lindke respectfully requests a 60-day extension of time, to and including Monday, January 2, 2023, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Sixth Circuit issued its opinion on June 27, 2022. A copy of the opinion is attached as Exhibit A. The Sixth Circuit denied Petitioner's timely rehearing petition in an order issued on August 5, 2022. A copy of the order is attached is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on November 3, 2022. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns whether a public official maintaining his Facebook page is acting in his official capacity such that he could be subject to liability under 42 U.S.C. § 1983, including when the official deletes his constituents' comments or blocks them from access to his Facebook page. Other than the court below, every circuit court to have addressed this question (the Second, Fourth, Eighth, and Ninth Circuits) has held that, when determining whether a public official's social-media activity constitutes state action, courts should look at the purpose and appearance of the webpage to discern whether the page is connected with the official's position. See *Knight First Amend. Inst. v. Trump*, 928 F.3d 226, 236 (2d Cir. 2019), *vacated as moot sub nom. Biden v. Knight First Amend. Inst.*, 141 S. Ct. 1220 (2021); *Davison v. Randall*, 912 F.3d 666, 680–81 (4th Cir. 2019); *Campbell v. Reisch*, 986 F.3d 822, 826–27 (8th Cir. 2021); *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158, 1177 (9th Cir. 2022).

4. In this case, the Sixth Circuit created a division of appellate authority by instead applying a “state-official test,” which asks “whether the official is performing an actual or apparent duty of his office, or if he could not have behaved as he did without the authority of his office.” Exhibit A at 4 (quotation marks omitted).

5. This case raises an important question of constitutional law, particularly in an age where social media plays a central role in political discourse. The Sixth Circuit's

decision, which splits from those of other circuits, creates inconsistency and confusion in an already complex area of the law.

6. Petitioner respectfully requests an extension of time to file a petition for a writ of certiorari. Petitioner recently engaged undersigned counsel, who was not previously involved in the case. A 60-day extension would allow counsel sufficient time to fully examine the decision below and case record, research and analyze the issues presented, and prepare the petition for filing. Additionally, undersigned counsel has a number of other pending matters with proximate due dates that will interfere with counsel's ability to file the petition on or before November 3, 2022.

*Wherefore*, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including Monday, January 2, 2023.

October 4, 2022

Respectfully submitted,



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