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## Supreme Court Justices Skeptical Of North Carolina Law Banning Sex Offenders From

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A convicted sex offender may get his Facebook privileges back if arguments before the U.S. Supreme Court today are any indication.

The justices in *Packingham v. North Carolina* repeatedly asked questions suggesting they felt the North Carolina law that prohibited Lester G. Packingham from using Facebook is too broad to survive challenge under the First Amendment. That law prohibits anyone convicted of a sex crime, regardless of whether it involved a minor, from using social networking sites that allow them to look up information about other people and contact them over the Internet.

"The point is these people are being cut off from a very large part of the marketplace of ideas," Justice Ruth Bader Ginsburg told attorney Robert Montgomery, arguing for North Carolina. "And the First Amendment includes not only the right to speak, but the right to receive information."

Justice Elena Kagan asked Montgomery if Packingham would be prohibited from going on the President Trump's Twitter account "to find out what the President is saying today?"

"That's correct, Your Honor."

Justice Anthony Kennedy followed up by comparing modern social media sites to the public square. Only they "are greater than the communication you could ever had, even in the paradigm of public square," he said.

Justice Stephen Breyer also expressed doubts about the sweep of the law. First Amendment precedent requires laws restricting speech to be narrowly tailored to achieve a public goal.

"I suspect my law clerks, in the space of half an hour, would find many cases" that would "say it is hornbook law" you can't make such a general law, Breyer told Montgomery.

The state lawyer tried to argue the social-networking law is more like the ban on politicking within 100 feet of a polling place the court upheld in the 1992 decision *Burson v. Freeman*. Kennedy disagreed, saying *Burson* applied to everyone and left ample room for political speech outside the 100-foot zone.

“I think that’s – does not help you at – at all,” he said, to laughter. “If you cite *Burson*,” he said, “I think you lose.”

The National Association of Criminal Defense Lawyers, Reporters Committee for Freedom of the Press and the Electronic Frontier Foundation, as well as the libertarian Cato Institute, all filed briefs in support of Packingham.

The NADCL said the North Carolina law is “one of a growing number of federal and state laws that effectively impose criminal punishments outside the normal, individualized criminal sentencing process, categorically stripping citizens of constitutional rights.” The EFF said there is “no clear relationship between the statutory prohibition and the harm that the state is attempting to prevent.”

During arguments the more conservative justices made a game attempt at playing devil’s advocate, getting Stanford lecturer [David T. Goldberg](#), who argued for Packingham, to admit the state could impose similar conditions on parolees. Even the liberals asked pointed questions. States also strip convicts of arguably equally important rights, Ginsburg noted, including voting and possessing firearms. Justice Sonia Sotomayor also asked why Packingham used an alias on Facebook if he didn’t intend to “lurk” anonymously.

Packingham used his initials in his alias and linked to his father, Lester G. Packingham, Sr., Goldberg said (which is in fact how a police detective found his Facebook page). Facebook [also prohibits convicted sex offenders](#) from using the site.

Ultimately it looks like the justices will rule in favor of free speech in this one, finding that North Carolina could find a less restrictive way to keep sex offenders from using social media to find their victims. North Carolina argued it couldn’t feasibly monitor convicted offenders’ computer use to prevent them from contacting minors, but the state may be forced to figure out a way to do it anyway.

In a sign of how the law is struggling to keep up with rapid changes in technology, the justices pondered the fact that before 2003, there wasn’t even a Facebook to bar a sex offender from viewing. They also questioned whether Snapchat would be on North Carolina’s banned list. Montgomery said the law is designed to prevent the “harvesting of information anonymously,” so Snapchat might be allowed. At the end of arguments, however, Goldberg said the state has already prosecuted somebody for using the disappearing-video site.