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Supreme Court Says Sex Offenders Can't Be Banned From Social Media

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On June 19, the Supreme Court struck down a North Carolina law that had made it illegal for a sex offender to use any social media site that also allowed minors to create personal pages, effectively barring them from Facebook, Twitter, LinkedIn and more. Over 1,000 people had been prosecuted under this law, which the Supreme Court ruled was an unconstitutional violation of the First Amendment.

The Court's decision, one of the first regarding the internet and the First Amendment, highlighted the vital role social media plays in modern communication. "Today, one of the most important places to exchange views is cyberspace, particularly social media, which offers 'relatively unlimited, low-cost capacity for communication of all kinds,'" the decision said. Barring sex offenders from these platforms, the Court reasoned, would prevent them from accessing "to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge."

The case concerned Lester Gerard Packingham, who in 2002 had sex with a 13-year-old girl. Upon pleading guilty to taking indecent liberties with a child, he was required to register as a sex offender. After a state court dismissed a traffic ticket Packingham had earned in 2010, he logged onto Facebook and posted a status praising the dismissal. A police officer researching sex offenders violating the North Carolina statute eventually found his status. North Carolina never accused Packingham of trying to contact a minor, the decision noted.

"Here, in one of the first cases the Court has taken to address the relationship between the First Amendment and the modern Internet, the Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium," the Court noted.

Because the decision did not meet the Court's standard of being "narrowly tailored to serve a significant governmental interest," the law was struck down. "The statute here enacts a prohibition unprecedented in the scope of First Amendment speech it burdens. Social media allows users to gain access to information and communicate with one another about it on any subject that might come to mind," the decision said.

The Electronic Frontier Foundation, along with Public Knowledge and the Center for Democracy and Technology, had filed an *amicus* brief asking the Court to strike down the ban. Adam Schwartz, one of EFF's senior staff attorneys, argued that digital libraries are fundamental human rights that extend to sex offenders, that technological bans intended for "the worst of the worst" are often expanded later to broader populations, and that the government to continues to extended the crimes that trigger lifetime sex offender registration. Amicus briefs were also filed on behalf of the Association for the Treatment of Sexual Abusers, the Reporters Committee for Freedom of the Press, the National Association of Criminal Defense Lawyers, the Cato Institute and the Electronic Privacy Information Center.

Justices Roberts, Alito and Thomas issued a concurring judgment. Justice Neil Gorsuch, recently nominated by President Donald Trump and confirmed by the Senate, did not contribute to the decision.