

*the*  
**FEDERALIST**

A DIVISION OF FDRLST MEDIA

## **Supreme Court Strikes Law Banning Sex Offenders From Much Of The Internet**

**The temptation to remove fundamental liberties from an unpopular minority is exactly why the Constitution protects such liberties from the legislature's whim.**

Kyle Sammin

June 21, 2017

In *Packingham v. North Carolina*, the Supreme Court took up the thorny problem of how to deal with sex offenders after they have served their time and been released from prison. In a unanimous opinion Tuesday, they ruled that however justified a state may be in protecting potential future victims from recidivist offenders, those justifications do not override the protections all Americans have under the First Amendment. The court left open the debate as to what other means governments may use to protect children from sex offenders deemed likely to repeat their crimes.

### Why We Have a Bill of Rights

Free speech is one of those civic ideals that everyone agrees to in theory. In practice, when the speech (or the speaker) is particularly offensive, many are tempted to cast aside the liberties that are every American's birthright. In North Carolina, that led the state legislature to enact a law banning registered sex offenders from accessing social media where minors might have accounts. Effectively, this bars anyone convicted of a sex crime from using Facebook, Twitter, or almost any other of the websites that are the town square for twenty-first-century communication.

To be fair the legislature: it is easy to see what they were concerned about. People who commit sex crimes against minors breach one of the most sacred parts of our social contract, harm the most vulnerable victims, and have a high rate of recidivism. Almost from the birth of the Internet, perverts have used it to make contact with unwitting potential victims. Banning them from communicating there seems one way to combat the problem. For children's safety, it is easy to imagine even someone committed to civil liberties saying "better safe than sorry."

But the temptation to remove fundamental liberties from an unpopular minority is exactly why the Constitution protects such liberties from the legislature's whim. As Justice Anthony Kennedy said in [his opinion](#), "A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once

more.” In his view, and that of the rest of the Supreme Court, the principle applies to ex-offenders, too.

### Limits to Punishment

Of course, ex-cons have their rights restricted all the time. In some states, felons cannot vote for several years after their release. Felons lose their right to own guns, too, based on the principle that former criminals are likely to become future criminals. But even given those precedents, the Supreme Court found that North Carolina lacked a reasonable, narrowly tailored basis for depriving sex offenders of all access to social media.

The court deemed the restriction to be unduly broad. While the statute contained narrow exceptions for websites used solely for email or photo-sharing, it was still so sweeping as to bar people on the sex offender registry from a wide swath of the Internet. As Ilya Shapiro of the Cato Institute noted in an amicus brief in the case, the ban could even include even such sites as Amazon and the *Washington Post*. Sex offenders deserve to be punished for their crimes and prevented from re-offending where possible, but neither buying a novel nor reading a newspaper can be said to be reasonably related to those goals.

The Supreme Court admits that more narrow laws, such as those preventing registered sex offenders from contacting minors online, might be permissible. But banning offenders completely from half the Internet goes too far. Criminals lose some of their rights when they go to prison, and do not necessarily regain them all upon release, but there are limits to how much someone who has served his time may continue to be made a pariah under the law.

### The Larger Question

This brings up the larger question of what is to be done about a class of people who have committed horrible crimes against children but who, because they have served their sentences, are now allowed to walk among us as free men. That we have sex offender registries at all suggests we have recognized that these crimes are different in nature from those that usually land a person in jail: theft, assault, drugs, etc. These are deviant crimes committed by aberrant persons whom we expect to reoffend with some frequency.

So society faces a conundrum. On the one hand, we judge these kinds of offenders to have been punished to the proper degree by the law. On the other, we still view them as ticking time bombs of depravity. The Supreme Court tells us today that chipping away at our basic civil liberties cannot be the way we choose to square the circle.

It remains to be seen whether other options—such as extended imprisonment, continuous monitoring, or something else altogether—will be considered, and whether they will be effective in finding the balance between maintaining a free society and protecting that society’s most vulnerable members.