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PACKINGHAM V. NORTH CAROLINA

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Ohio Northern University Law Review

Student Case Notes

Packingham v. North Carolina 137 S. Ct. 1730 (2017)

I. INTRODUCTION

The First Amendment¹ ensures the freedom of speech which may not be abridged by the United States government. However, there are particular instances in which it is necessary and proper for the legislature to enact laws restricting speech in order to protect other liberties.² These permissible restrictions on speech vary based on several factors, including the forum in which the restriction is imposed.³ In the traditional public forum, the state typically may enforce a content-neutral restriction on speech, restricting the time, place, and manner of speech, so long as the regulations “are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”⁴

Traditionally, the rule regarding the traditional public forum was that a street or a park is a quintessential forum for the exercise of First Amendment rights.⁵ While these places are still essential in the spatial context of where one might have access to exercise these rights, arguably a fairly limited amount of speech is exercised on streets or parks in our current culture. Instead, perhaps the most significant forum for the exchange of information and individual opinions is the Internet, and more specifically, social media.⁶ This inexpensive and instantaneous method of

1. U.S. CONST. amend. I.

2. U.S. CONST. art. I, § 8, cl. 18.

3. Bd. of Airport Comm’rs v. Jews for Jesus, 482 U.S. 596, 672 (1987) (citing Perry Educ. Assn. v. Perry Local Educators’ Assn., 460 U.S. 37, 45-46 (1983)).

4. *Perry*, 460 U.S. at 45.

5. See *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989) (discussing when the government may regulate speech in a traditional public forum).

6. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017) (citing *Reno v. ACLU*, 521 U.S. 844, 868 (1997)).

communication allows for users to engage in a variety of activities, most of which are protected by the First Amendment, just as they would be protected in the traditional public forum.⁷ Applying the same standard used in the established traditional public forum for content-neutral speech, the Supreme Court in *Packingham v. North Carolina* found North Carolina's statute⁸ banning the use of commercial social networking sites by registered sex offenders unconstitutional.⁹

Packingham is one of the initial Supreme Court cases to address the relationship between the First Amendment and the Internet.¹⁰ Using the already established standard of intermediate scrutiny to assess the constitutionality of this statute, the Court has made the first step in determining what parameters are to be set around Internet speech.¹⁰ However, the concurrence cautions the Court that this may be too broad of a ruling, and with the Internet being a vast and expansive place, the implications of such a ruling may not yet be known.¹¹

II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

In 2008 the North Carolina legislature enacted N.C. Gen. Stat. § 14-202.5, which made the use of “commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages” a felonious offense.¹² The expansive criteria include the site being operated by a person who derives revenue from the site, facilitating social introductions between two or more persons, allowing personal profiles to be created containing personal information that may be accessed by other users, and providing a mechanism for communication with other users.¹³ The statute allows for two exceptions: where the site's primary purpose is to facilitate commercial transactions or the site involves only one discreet service, such as email or photo-sharing.¹⁴

One affected registered sex offender was Lester Gerrard Packingham (hereinafter “Packingham”) from North Carolina.¹⁵ In 2002 Packingham pled guilty to “taking indecent liberties with a child,” an offense which required him to register as a sex offender in accordance with the state's

7. *Reno*, 521 U.S. at 870.

8. N.C. GEN. STAT. § 14-202.5 (2009).

9. *Packingham*, 137 S. Ct. at 1738.

10. *Id.* at 1736.

11. *Id.* at 1738 (Alito, J., concurring).

12. *Id.* at 1733.

13. *Id.*

14. *Packingham*, 137 S. Ct. at 1734.

15. *Id.*

registration statute.¹⁶ About eight years after Packingham’s plea and required registration, an officer within the Durham Police Department was tasked with investigating registered sex offenders who were believed to be violating the statute prohibiting membership and use of commercial social networking sites.¹⁷ Under a false alias, Packingham was a member of Facebook, a commonly used commercial social networking website within the meaning of the statute.¹⁸ It was under this alias account where Packingham posted a public message about a court appearance he had in which the judge dismissed his parking ticket.¹⁹ By matching up the false name and the time of the post with the true identity and the time of the dismissed parking ticket, the Durham Police Department was able to show enough cause to obtain a warrant and was able to connect the alias on Facebook to Packingham.²⁰

A grand jury indicted Packingham for his violation of the commercial social networking site statute and the trial court denied a motion to dismiss for violation of Packingham’s First Amendment rights.²¹ The court of appeals reversed the trial court’s ruling, stating the statute was “not narrowly tailored to serve the State’s legitimate interest.”²² The North Carolina Supreme Court reversed the court of appeals’ decision, ruling that the sex offender ban from the commercial social networking site statute was constitutional because it was carefully tailored and allowed for alternative means of communication on the Internet.²³ The Supreme Court granted certiorari.²⁴

III. COURT’S DECISION AND RATIONALE

A. The Majority Opinion – Justice Kennedy

Justice Kennedy delivered the majority opinion in which Justices Ginsburg, Breyer, Sotomayor, and Kagan joined.²⁵ Justice Alito wrote separately, concurring in judgment with which Chief Justice Roberts and Justice Thomas joined.²⁶ Newly appointed Justice Gorsuch took no part in

16. N. C. GEN. STAT. §§ 14-208.6(a), 14-208.7 (referring to lifetime and general registration requirements for criminal offenders residing in North Carolina).

17. *Packingham*, 137 S. Ct. at 1734.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Packingham*, 137 S. Ct. at 1735 (quoting *State v. Packingham*, 229 N.C. App. 293, 304 (2013)).

23. *Id.*

24. *Id.*

25. *Id.* at 1733.

26. *Id.*

the consideration of the case.²⁷ The majority utilized the intermediate scrutiny standard of review on the basis that the statute in question constituted a content-neutral limitation on speech.²⁸ This standard calls for a statute to be “narrowly tailored to serve a significant government interest” and it may not burden substantially more speech than is necessary to prevent whatever act the state is trying to prevent.²⁹ Applying this intermediate scrutiny test, the Court held that the statute was unconstitutional as the state was unable to show a legitimate government interest, failed to carry its burden of proof that the statute was narrowly tailored to directly advance its interest, and that the regulation was the least restrictive means to accomplish the state’s interest.³⁰

The state argued that the broad restrictions in the statute were required to achieve its preventative purpose, namely, that it must prevent the sexual predation of children.³¹ Even under intermediate scrutiny, the regulation of the time, place, and manner in which the speech occurred was not overly broad.³² The state cited *Burson v. Freeman* in which this Court upheld a prohibition on political campaigns continuing to campaign within 100 feet of a polling place.³³ Finding that *Burson* did not support the present case, Justice Kennedy distinguished the two, noting that *Burson* involved a limited speech restriction, the burden of which was outweighed by the need to protect another fundamental right, rather than a restriction that is burdensome for a particular state interest.³⁴ *Burson* was a constitutional compromise, balancing the right to vote with the right to freedom of speech.³⁵ This analogy failed against *Packingham*, as there was not another constitutional right being balanced here.³⁶

Justice Kennedy then postulated that a better analogy for the present case would derive from the reasoning in *Bd. of Airport Comm’rs of Los Angeles v. Jews for Jesus, Inc.*³⁷ In *Jews for Jesus*, the Court found that the total ban of “First Amendment activities” at the Los Angeles International Airport was not constitutional because the ordinance covered all protected and non-disruptive speech.³⁸ Being a single private location and not allowing for such a broad ban on speech, it naturally follows that in the

27. *Packingham*, 137 S. Ct. at 1733.

28. *Id.* at 1736.

29. *Id.*

30. *Id.* at 1737.

31. *Id.*

32. *Packingham*, 137 S. Ct. at 1737.

33. *Id.* at 1738 (citing *Burson v. Freeman*, 504 U.S. 191 (1992)).

34. *Id.* at 1738.

35. *Id.*

36. *Id.*

37. *Packingham*, 137 S. Ct. at 1738 (citing *Jews for Jesus*, 482 U.S. at 569).

38. *Jews for Jesus*, 482 U.S. at 574.

present case, where the state attempted to ban speech from virtual locations, which exist nowhere and everywhere at once, the ban is far too broad.³⁹

Additionally, the majority equated the Internet with that of traditional and quintessential public forums, such as public streets and parks.⁴⁰ The Internet, and social media more specifically, is the fastest and most prevalent way for people to find jobs, debate current matters of the day, and engage directly and instantaneously with elected officials.⁴¹ Due to the nature of the Internet, it provides people with a way to make their voices heard more than ever before.⁴² This ability to access “vast realms of human thought and knowledge” is important for all Americans, but can be especially important for those who are convicted criminals, as a way for them to reintegrate into the society in which we live and gives them the ability to connect to a world of ideas.⁴³ A total ban from this vast network of thought and communication is unprecedented, yet gives an outer boundary for what Internet speech may be regulated by a state.⁴⁴

Though not presently before the Court, Justice Kennedy noted that a state may enact more specific laws than this one in order to prevent the sexual abuse and exploitation of minors.⁴⁵ The Court cited *Brandenburg v. Ohio* stating that, “[s]pecific criminal acts are not protected speech even if speech is the means for their commission.”⁴⁶ This must be balanced, however, with the notion that “[t]he Government may not suppress lawful speech as the means to suppress unlawful speech.”⁴⁷ Essentially, the Court stated that a state may have a legitimate interest in suppressing speech that may result in the sexual predation of children, and that such speech may be trammled, yet the state’s regulations must be narrowly tailored to restrict specific speech acts, and not entirely close a vast arena for speech completely.⁴⁸

B. The Concurring in Judgment – Justice Alito

The concurrence delivered by Justice Alito, in which Chief Justice Roberts and Justice Thomas joined, supported the majority in the judgment,

39. *Packingham*, 137 S. Ct. at 1738.

40. *Id.* at 1735.

41. *See Packingham*, 137 S. Ct. at 1735 (citing Brief for Electronic Frontier Foundation et al. as *Amici Curiae* Supporting Petitioner) (using governors of all 50 states and members of Congress as examples of the extent the Internet has on the ability to communicate with elected officials).

42. *Id.* at 1737 (“They allow a person with an Internet connection to ‘become a town crier with a voice that resonates farther than it could from any soapbox.’” (quoting *Reno*, 521 U.S. at 870)).

43. *Id.*

44. *Packingham*, 137 S. Ct. at 1737.

45. *Id.*

46. *Id.*; *see Brandenburg v. Ohio*, 395 U.S. 444, 447-49 (1969).

47. *Id.* at 1738 (quoting *Ashcroft v. Free Speech Coal.*, 535 U.S. 239, 255 (2002)).

48. *Id.* at 1737.

but warned against interpreting the “undisciplined dicta” too broadly.⁴⁹ Justice Alito primarily expressed concern with the “loose rhetoric” of the majority.⁵⁰ In equating the whole of the Internet with that of the traditional public forum, the majority failed to address the specificity that is involved within the Internet.⁵¹ Justice Alito noted key differences between the virtual world and the physical world, namely the visibility of the latter.⁵² In the physical world, it is much easier to prevent criminals from attempting their crimes due to the visibility in its occurrence.⁵³ The Internet however, provides a veil under which a sexual predator may cloak himself or herself in virtual anonymity that may not be a possibility in reality.⁵⁴ Because the majority fails to make this distinction, the concurrence warned that there should be more specificity in the sites that are off limits to registered sex offenders.⁵⁵

Justice Alito would have the Court define more specific parameters for websites that are unlawful for sex offenders to access.⁵⁶ The current statute would broadly include such a range of benign websites that are “unlikely to facilitate the commission of a sex crime against a child,” namely sites such as Amazon.com, WebMD, and the Washington Post online.⁵⁷ The concurrence listed those sites as ones that fit within the definition of a commercial social networking website under the North Carolina statute, yet due to the purpose and usage of these sites, they are “ill suited for use in stalking or abusing children.”⁵⁸

The danger that must be identified here is that the Internet, if it is to be equated with the traditional public forum, should not be viewed simplistically as one large space within which a state cannot restrict speech; rather, the Internet must be further subdivided.⁵⁹ According to Justice Alito, there is a difference between sites such as Amazon.com and social media sites that are geared toward a minor audience.⁶⁰ The majority fails to distinguish between the variety of sites, giving an overarching statement that a state may enact more specific laws regarding the restriction of sex offenders access to social media without further defining the types of sites

49. *Packingham*, 137 S. Ct. at 1738 (Alito, J., concurring).

50. *Id.* at 1743.

51. *Id.* at 1738.

52. *Id.* at 1743.

53. *Id.*

54. *Packingham*, 137 S. Ct. at 1743 (Alito, J., concurring).

55. *Id.*

56. *Id.*

57. *Id.* at 1741-42.

58. *Id.* at 1743.

59. *Packingham*, 137 S. Ct. at 1741 (Alito, J., concurring).

60. *Id.* at 1743.

that could be restricted.⁶¹ The overall argument made by the concurrence was that while First Amendment protections on the Internet are necessary, there should be caution in applying the Court's free speech precedents to the Internet as a whole.⁶² Because the full dimensions of the Internet are unknown at the present time, Justice Alito warned the Court that too broad of a protection within cyberspace may not reflect the circumstances for which protections are meant to be afforded.⁶³

IV. ANALYSIS

A. Introduction

The Supreme Court has generally been hesitant to address the relationship between the Internet and the First Amendment.⁶⁴ Very few cases decided by the Supreme Court have analyzed the issue of what Internet speech may be regulated and when such regulation may occur. As the Internet is a vast and virtual space, it is difficult to stricture boundaries by which speech can or should be limited. As the Internet has evolved over the past few decades, the commercial nature of the Internet has created a virtual marketplace and social forum.⁶⁵ This evolution changes the ways in which people interact with and on the Internet. The Court realized that the "Cyber Age is a revolution of historic proportions" and due to this realization, are unwilling to make a determination that may soon be obsolete.⁶⁶

In spite of this stance typical of the Supreme Court, the decision in *Packingham* does address current concerns in the relationship between the Internet and the First Amendment, setting a standard by which the government may regulate content-neutral Internet speech.⁶⁷ The decision in *Packingham* required the Court take a stance on Internet speech, the repercussions of which are many. The globalization of the Internet and the new parameters by which the government may regulate American's online speech is unprecedented. This note will discuss the Court's previous stance on regulating Internet speech, where *Packingham* might lead the Court and other governmental bodies going forward, and a state's interest in protecting minor children by offering solutions that do not trammel protected speech.

61. *Id.* at 1738.

62. *Id.* at 1744.

63. *Id.*

64. *Packingham*, 137 S. Ct. at 1736.

65. Boundless, *Global Marketing and the Internet*, BOUNDLESS MKTING (Aug. 30, 2017, 10:41 AM), <https://www.boundless.com/marketing/textbooks/boundless-marketing-textbook/global-marketing-7/global-marketing-mix-56/global-marketing-and-the-internet-286-6895/>.

66. *Packingham*, 137 S. Ct. at 1736.

67. *Id.*

B. Expansion Of Prior Law

The Court has been cautious in its review and application of First Amendment restrictions in relation to the Internet, *Packingham* being one of the first in this arena to be granted certiorari.⁶⁸ *Packingham* effectively expanded the Court's current stance on Internet speech restrictions, having previously ruled on content-based Internet speech restrictions.⁶⁹ The Court generally ruled on cases involving legislation protecting minors from being exposed to indecent material on the Internet such as the Communications Decency Act, Child Pornography Prevention Act, and the Child Online Protection Act.⁷⁰ All of these laws are related to children and pornographic material on the Internet.⁷¹ While those laws were enacted in order to protect children, the laws were subjected to strict scrutiny, the highest standard of review, because they contained content-based restrictions.⁷² While in the same vein as the speech discussed in *Packingham*, strict scrutiny review is just that, strict, making it difficult for government actors to achieve their goal of restricting Internet speech.⁷³

Most restrictions on speech on the Internet do not emanate from the government, but from private corporations that own and regulate users of their social media sites.⁷⁴ These privatized restrictions on Internet speech are favored due to a "presumption in favor of the enforceability of a contract."⁷⁵ By contracting over terms of use, rather than terms being delineated by a governmental entity, the commercial and marketplace nature of the Internet thrives within its own structure.⁷⁶ Many social media sites require the user to agree to terms of service in order to fully access the benefits of the site. These social media sites have built into their user agreements specific rules regarding speech acts their users are allowed to engage in, as well as provided a mechanism for the site to remove an

68. *Id.*

69. See generally *Ashcroft*, 535 U.S. 234 (holding that provisions in the Child Pornography Protection act were too broad under a strict scrutiny standard, and therefore unconstitutional); see also *Reno*, 521 U.S. at 239 (holding that breadth of the provisions in the Communications Decency Act "lack[] the precision that the First Amendment requires" and ultimately the State did not meet its burden for regulating content-based speech).

70. *Ashcroft*, 535 U.S. at 239; see *Reno*, 521 U.S. at 858-59.

71. Communications Decency Act, 47 U.S.C. 230 (1998); Child Pornography Prevention Act, 18 U.S.C. 2251 (1996); Child Online Protection Act, 47 U.S.C. 231 (1998).

72. Communications Decency Act, 47 U.S.C. 230 (1998); Child Pornography Prevention Act, 18 U.S.C. 2251 (1996); Child Online Protection Act, 47 U.S.C. 231 (1998).

73. *Reno*, 521 U.S. at 879.

74. Alice E. Marwick, *Are There Limits To Online Free Speech?*, DATA & SOC'Y: POINTS (Jan. 5, 2017), <https://points.datasociety.net/are-there-limits-to-online-free-speech-14dbb7069aec>.

75. Jacquelyn E. Fradette, *Online Terms of Service: A Shield for First Amendment Scrutiny of Government Action*, 89 NOTRE DAME L. REV. 947, 949 (2014).

76. *Id.*

uncooperative person's access to an account. For example, the social media site Facebook prohibits users from engaging in "hate speech" and removes accounts containing this prohibited content.⁷⁷ The social media site Twitter recently suspended accounts linked to a neo-Nazi website.⁷⁸ The privatization of Internet speech regulation is essential in a free market as it allows companies to dictate their own business practices. The decision in *Packingham* adopts a new avenue for government regulation, allowing the government to interfere with individual social media entities and their ability to regulate speech that occurs on their websites.

The Court has also cautiously side-stepped recent cases involving student Internet speech, denying certiorari in many recent cases.⁷⁹ In several instances, schools have enacted regulations that limit off-campus Internet speech by students.⁸⁰ Many lower courts have relied on and expanded the Supreme Court's ruling in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*⁸¹ In *Tinker*, the Court held that students' on-campus speech could be regulated under specific circumstances, namely the substantial disruption standard which stated a school may regulate a student's on-campus speech if it can be reasonably forecasted that a substantial disruption or material interference would occur in the school, and some disruption did in fact occur.⁸² This substantial disruption must interfere with the operation of the school, and not be a mere desire to avoid discomfort and unpleasantness in the school environment.⁸³ Several lower courts have tried to expand this substantial disruption test to *off*-campus discourse based on the proposition that speech that originates off-campus nevertheless simultaneously exists on-campus because of the invasive virtual nature of the Internet.⁸⁴ This paradoxical viewpoint could lead to increasingly absurd results, such as campuses attempting to regulate the off-campus Internet speech of non-students on the theory that all Internet communications are reasonably forecasted to breach the borders of the campus causing disruption; a result the Court has aimed to avoid through its lack of review of off-campus speech cases.

77. David Ingram, *Twitter Shuttters Accounts of U.S. White Supremacy Website*, REUTERS (Aug. 16, 2017, 9:35 PM), <https://www.reuters.com/article/virginia-protests-tech-idUSL2N1L21N5>.

78. *Id.*

79. *See generally* Bell v. Itowamba, 799 F.3d 379 (2015), *petition for cert. filed*, (15-666), 2016 LEXIS 475.

80. Dunkley v. Bd. Of Educ., 216 F. Supp. 3d 485, 492 (2016) (citing Kowalski v. Berkeley Cty. Sch., 652 F.3d 565, at 568-69 (4th Cir. 2011)) (referring to school-implemented policy for harassment, which reaches students' off-campus speech).

81. *Tinker*, 393 U.S. 503.

82. *Id.* at 512-13.

83. *Id.* at 509.

84. *See generally* C.R. v. Eugene Sch. Dist. 4J, 835 F.3d 1142 (9th Cir. 2016) (considering whether a school can regulate students' off-campus speech).

The cases and ideals of the Court pre-*Packingham* show a Court resistant to deciding the extent to which a state has the ability to regulate Internet speech. *Packingham* has carved out a new direction for the Court, sending forth a definitive standard by which governmental bodies may now tailor their laws in order to gain more control and power over speech disseminated over the Internet.⁸⁵

C. Forecasted Effect On Future Decisions

In this relatively new realm of cyberspace, and the new potential government influence and dominion in limiting speech within it, creates difficulty in pinning down and defining the depth with which the government may regulate the online speech of an individual. The test placed before us by the *Packingham* Court gives the outer perimeter, but how far wide the reach is to that perimeter is not yet known. The virtual, nontangible nature of the Internet adds to the difficulty of determining just where a governmental body may reach out and attempt to take hold.⁸⁶ Under the intermediate scrutiny test, a government agent need only put into effect a law that is both narrowly tailored to and includes a substantial government interest.⁸⁷ The low threshold of this standard paired with a multitude of state actors who may implement new laws under the guise of substantial government interest or of being narrowly tailored may be detrimental to individuals' speech protections. Individuals should be on notice that these laws might come into being and courts must prepare for an influx of claims against laws restricting Internet speech. The Internet is a different world than our physical world.⁸⁸ The vastness yet closeness of it in our daily lives creates a difficult task for government actors desiring to help protect the rights of some individuals, while ousting others.

Under the privatized "terms of use" contract system, access to the Internet as a public forum exists in a "take it or leave it" situation. Just as a person need not enter a business she does not like nor enter a park where she witnesses people demonstrating their First Amendment rights, the same is true with the Internet. If she does not like the "terms of use" for a particular site, she may find another one or even create her own website, giving her a place within the expanse of the Internet to exercise her right to protected speech.

85. *Packingham*, 137 S. Ct. at 1736.

86. *Id.* at 1744 (Alito, J., concurring).

87. *Perry*, 460 U.S. at 45.

88. *Packingham*, 137 S. Ct. at 1744 (Alito, J., concurring).

The troubling issue that arises out of the holding in *Packingham* occurs when a state meets the intermediate scrutiny standard.⁸⁹ When this occurs, there is no longer a “take it or leave it” option to access the particular forum on an individual’s own volition. Under this standard, access is barred from this forum. The Court in *Packingham* failed to give further examples of classification for what status an individual might need in order to be prevented from access to certain Internet sites. The only status addressed in *Packingham* was a criminal status.⁹⁰

The Court briefly mentioned in dicta an issue with the state’s attempt to enforce severe restrictions on Internet speech for persons who have already served their sentences for their crimes.⁹¹ While not binding authority, it is important to note the Court’s dislike and caution in identifying a status of people in which the state may restrict access to an Internet forum. The state seemed to equate the status of registered sex offender to someone who is still under the supervision of a court through this additional restriction on speech.⁹² Persons who are currently incarcerated are not afforded the same protections as those who are outside a court’s supervision.⁹³ However, once a person has completed her sentence, she is not under the control of a court and has expanded access to her fundamental rights, including the freedom of speech. While Second Amendment rights are quelled post-incarceration by felonious status, the First and Fourth Amendments do not loosen their grasp due to felonious status.⁹⁴ This Court has not held that a person’s First Amendment right is trammled by this status, and in fact encourages the use of the Internet as a way of integrating back into society and finding a job.⁹⁵

The idea of not restricting a person’s rights post-incarceration is welcome amidst the vast possibilities of speech restrictions available after this case. Looking forward in light of the *Packingham* decision, there are other ways a state may serve its legitimate interest in protecting children without quelling a registered sex offender’s (or any other status offender’s) right to free speech.

89. *Packingham*, 173 S. Ct. at 1736.

90. *Id.* at 1737.

91. *Id.*

92. *Id.*

93. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (“[W]e have held that even when an institutional restriction infringes a specific constitutional guarantee, such as the First Amendment, the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security.”).

94. *District of Columbia v. Heller*, 554 U.S. 570, 579 (2008).

95. *Packingham*, 173 S. Ct. at 1737.

D. Alternatives To Restricting Registered Sex Offenders' Internet Speech

The Court in *Packingham* recognized that the state had a legitimate interest in protecting minor children from potential sexual predators on the Internet.⁹⁶ However, as an alternative to the denial of full access to commercial social media sites,⁹⁷ states enacting laws with the goal to protect minor children from sex offenders could amend their registration statutes to include a requirement for those who must register to provide a list of any social media site they are a member of, as well as requiring their full legal name to be used on the site.⁹⁸ The legal name requirement allows members of the forum, in which the registered sex offender is also a member, the ability to look up that person's already published registration status. As registered sex offenders are already required to publish publicly their status as such,⁹⁹ the additional name requirement online does not infringe on their ability to access and engage in the forum in which speech is freely exchanged.¹⁰⁰ Rather, it fosters a state's interest in protecting minor children from predation, as the name of whomever may come into contact with them is easily searchable in order to discover any suspicious or mal intent.

In light of the *Packingham* decision, a state may decide to restrict Internet speech in order to achieve its interest. However, the decision by this Court to allow Internet speech regulation by the government as long as it meets the test of intermediate scrutiny is not the only way a state may further its legitimate interest. The Court does not foreclose on a state's ability to add or alter its current statutes to include more elements. This alternative would allow a state to both protect children and protect the speech rights typically afforded to individuals in a public forum.

V. CONCLUSION

The future of the government's restriction on Internet speech is as expansive as the Internet itself. The need to balance multiple constitutional protections between individuals and those who a state has a substantial interest in specially protecting is not an easy task. To prevent a person or status of people from accessing what has quickly become the most

96. *Id.* at 1739 (Alito, J., concurring) (quoting *New York v. Ferber*, 458 U.S. 747, 757 (1982)).

97. N.C. GEN. STAT. § 14-202.5 (defining commercial social media sites).

98. *See generally* *Commonwealth v. Peebles*, No. 72 MDA 2017, 2017 Pa. Super. Unpub. LEXIS 2927 (Aug. 4, 2017).

99. N. C. GEN. STAT. § 14-208.7 (detailing general registration requirements for criminal sex offenders residing in North Carolina).

100. *See Peebles*, 2017 LEXIS 2927, at n.2 (citing *Packingham*, 137 S. Ct. at 1733).

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significant forum for exchange of thought¹⁰¹ is averse to the fundamental American belief that government should not abridge the right to freedom of speech.¹⁰² However, the result in *Packingham* has opened the door to a state's ability to determine what interest is substantial enough for them to regulate Internet speech.

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101. *Packingham*, 137 S. Ct. at 1735 (citing *Reno*, 521 U.S., at 868).

102. U.S. CONST. amend. I.