# Indiana Sex Offender Social Website Ban Law Is Unconstitutional

An Indiana statute prohibiting most registered sex offenders from using social networking websites is unconstitutional because it is an overly broad infringement of First Amendment rights.

The Indiana law prohibited certain sex offenders from using a "social networking web site" or "an instant messaging or chat room program" that "the offender knows allows a person who is less than eighteen years of age to access or use the web site or program."

The statute was challenged in a "John Doe" lawsuit filed by a person who was convicted in 2000 of two counts of child exploitation. He was released from prison in 2003 and is not on any form of supervised release. However, under another Indiana law, he must register on the state's sex offender registry.

The trial court found the social networking statute valid. The trial court observed that sex offenders have alternatives to communicating on social networking sites, including "the ability to congregate with others, attend civic meetings, call in to radio shows, write letters to newspapers and magazines, post on message boards, comment on online stories that do not require a Facebook [account], email friends, family, associates, politicians and other adults, publish a blog, and use social networking sites that do not allow minors."

The Seventh Circuit reversed and declared the statute unconstitutional as being overly broad. The appellate court found the statute was content neutral because it restricts speech without reference to the expression's content. However, because the statute is not narrowly tailored, it is overly broad.

The Seventh Circuit also noted that Indiana agreed that there is nothing dangerous about Doe's use of social media as long as he does not improperly communicate with minors. "Further, there is no disagreement that illicit communication comprises a minuscule subset of the universe of social network activity. As such, the Indiana law targets substantially more activity than the evil it seeks to redress," the appellate court wrote. The appellate court noted that "Indiana has other methods to combat unwanted and inappropriate communication between minors and sex offenders." Thus "with little difficulty, the state could more precisely target illicit communication" through other laws.

In rejecting the Indiana statute, the appellate court was careful to state that "we do not foreclose the possibility that keeping certain sex offenders off social networks advances the state's interest." For example, the court said it is appropriate to include restrictions in "fashioning terms of supervised release."

*Doe v. Prosecutor, Marion County, Indiana*, Seventh Cir. No. 12-2512, issued January 23, 2013.