

## Overly Broad Cyberbullying Law Found Unconstitutional

A New York county cyberbullying law is unconstitutional because it was too broad and violated the right to free speech under the First Amendment.

Albany County in New York outlawed cyberbullying against “any minor or person” situated within the county. Specifically, the law criminalizes “any act of communicating . . . by mechanical or electronic means . . . with no legitimate . . . personal . . . purposes, with the intent to harass [or] annoy . . . another person.”

A 15-year-old high school student anonymously posted on a Facebook page “photographs of high-school classmates and other adolescents, with detailed descriptions of their alleged sexual practices and predilections, sexual partners and other types of personal information. The descriptive captions, which were vulgar and offensive, prompted responsive electronic messages that threatened the creator of the website with physical harm,” the appeals court wrote.

The student was charged under the law, pled guilty, but reserved the right to challenge the law as being unconstitutional under the First Amendment.

The appellate court noted that cyberbullying “is not conceptually immune from government regulation, so we may assume, for the purpose of this case, that the First Amendment permits the prohibition of cyberbullying directed at children, depending on how that activity is defined.” The problem with the statute, the appellate court wrote, is that it criminalizes “a broad spectrum of speech outside the popular understanding of cyberbullying, including, for example: an email disclosing private information about a corporation or a telephone conversation meant to annoy an adult.”

Albany County argued that the appellate court could simply delete the overly broad language and “declare that the remainder of the law survives strict scrutiny.” The appellate court declined, finding “it is not a permissible use of judicial authority for us to employ the severance doctrine to the extent suggested by the County or the dissent.”

“There is undoubtedly general consensus that defendant’s Facebook communications were repulsive and harmful to the subjects of his rants, and potentially created a risk of physical or emotional injury based on the private nature of the comments,” the court said. “Although the First Amendment may not give defendant the right to engage in these activities, the text of Albany County’s law envelops far more than acts of cyberbullying against children by criminalizing a variety of constitutionally-protected modes of expression. We therefore hold that Albany County’s Local Law No. 11 of 2010—as drafted—is overbroad and facially invalid under the Free Speech Clause of the First Amendment.”

*People v. Marquan M.*, New York Court of Appeals No. 139, issued July 1, 2014.