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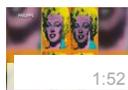
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Facebook Tells Court 'Like' Feature Vital to Free Speech

By Tom Schoenberg - May 16, 2013 4:20 PM ET

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Q QUEUE

Facebook's "Like" feature is vital to 500 million people who share ideas on the social network and must have free-speech protection under the U.S. Constitution, a lawyer for the company told a federal appeals court.

"Any suggestion that such communication has less than full constitutional protection would result in chilling the very valued means for communication the Internet has made possible," Aaron Panner, [Facebook Inc. \(FB\)](#)'s lawyer, told a three-judge panel today in Richmond, Virginia.

Enlarge image



Facebook is seeking to reverse a lower-court ruling, which came in a retaliation lawsuit brought by six people fired from the Hampton, Virginia, sheriff's department, that a Facebook "Like" isn't First Amendment speech. Photographer: Duncan Chard/Bloomberg

Facebook is seeking to reverse a lower-court ruling, which came in a retaliation lawsuit brought by six people fired from the Hampton, Virginia, sheriff's department, that a Facebook "Like" isn't First Amendment speech.

The case involves Danny Carter, a former Hampton jailer, who claims he was fired after he posted a picture of his boss's opponent in the sheriff's race on his Facebook page, along with a link to the contender's website.

The post, made almost four years ago because Carter clicked the "Like" button on the "Jim Adams for Hampton Sheriff"

Facebook [page](#), was the subject of arguments today over how to view one-click, online endorsements of a person, idea or product.

'Liked Something'

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“Carter clicked the Like because he liked something,” U.S. Circuit Judge Stephanie Thacker said to a lawyer for Hampton Sheriff [B.J. Roberts](#) during the 40 minute hearing. “How is that any different than perhaps putting a sign in the yard saying ‘I Like Ike?’” she asked.

Thacker’s question backed Facebook’s contention in legal briefs that hitting the ‘Like’ button on a candidate’s website or Facebook account is no different from a yard sign, which were ruled protected speech by the U.S. Supreme Court in 1994.

The Menlo Park, California-based company was given three minutes of argument time today and received no questions from the judges.

Carter, 40, joined by five others, sued Roberts when they were fired after the sheriff won re-election in 2009. They claim Roberts retaliated against them for supporting Adams, violating their rights to political affiliation and to speak as citizens on issues of public concern.

U.S. District Judge Raymond Jackson in Norfolk, [Virginia](#), on April 24, 2012, dismissed the lawsuit, rejecting the plaintiffs’ First Amendment claims.

‘Substantive Statement’

He ruled that simply “liking” a Facebook page didn’t amount to “a substantive statement” that warrants constitutional protection.

In his decision, Jackson said two federal court decisions in 2011 that held constitutional protections extended to Facebook involved actual statements posted on a user’s page.

“The court will not attempt to infer the actual content of Carter’s posts from one click of a button on Adams’s Facebook page,” Jackson, appointed by Democratic President Bill Clinton, wrote in his decision. “For the court to assume that the plaintiffs made some specific statement without evidence of such statements is improper.”

Jackson’s ruling was criticized by constitutional lawyers who said he ignored the fact that other protected speech on the Internet, such as uploading a video or donating money to a campaign, are done with one click of a button.

“You are expressing the relevance of a message and that’s good enough,” Eugene Volokh, a law professor at the University of California at Los Angeles, said in an interview.

Performance Issues

Roberts said in a deposition that he doesn’t use Facebook, and found out about Carter’s online support for Adams from someone else. He contends Carter and the other employees weren’t fired for their opposing him. Rather, they were let go for performance or other reasons, he said.

Jeff Rosen, a lawyer for Roberts, argued that “liking” a Facebook page means many things and was too obscure an act to warrant protection. People may “like” Target’s page to get a coupon or because they’re curious about something that can only be seen by hitting the feature, he said.



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“It’s like opening a door into a room,” Rosen, of Pender & Coward PC in Virginia Beach, Virginia, said. “You can’t see what’s in there until you click on the button. That’s not speech.”

Billion Clicks

“Facebook has 3 billion ‘like’ clicks a day,” he said. “Is each one of those speech? I don’t think so.”

Rosen said one of the plaintiffs in the case had liked Adams’s page accidentally, and asked how that could be considered protected speech.

“That’s the problem with Facebook,” he said. “You don’t know what your actions will do or the consequences they will have.”

James Shoemaker, a lawyer for the fired employees, countered that an e-mail or note inadvertently sent to the wrong person about a political candidate would still be protected speech.

The case is Bland v. Roberts, 12-1671, U.S. Court of Appeals for the Fourth Circuit (Richmond).

To contact the reporter on this story: Tom Schoenberg in federal appeals court in Richmond, Virginia, at tschoenberg@bloomberg.net.

To contact the editor responsible for this story: Michael Hytha at mhytha@bloomberg.net.

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