

Ex parte Claycomb, No. 07-20-00238-CR (Tex. App.-Amarillo, Nov. 22, 2022)

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Issue & Answer. Texas Penal Code 33.07(a) provides in relevant part: "A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm . . . uses the name . . . of another person to: (1) create a web page on a commercial social networking site or other Internet website" Is this prohibition facially invalid under the First Amendment? **No.**

Facts. The State alleged that the defendant uploaded a video on a porn website using another person's name with the intent to harm that person. The defendant filed a pretrial writ of habeas corpus challenging the constitutionality of the statute criminalizing the statute prohibiting the fraudulent use of another person's name to create a website or web posting.

Analysis. "We construe the relevant portion of section 33.07(a) as prohibiting one from employing the name of another without permission for the purpose of creating a website or web post." This does not necessarily involve the expression of ideas, opinions, or information and thus does not implicate the First Amendment.