



Written by [Selwyn Duke](#) on December 5, 2022

Almost No One Noticed the Hate Speech Law That Just Took Effect — or the Lawsuit Against It

It was already the case that certain conservative websites have had to eliminate their comment sections under threat from Big Tech, which has the ability to take those sites offline (as it did with Parler). Now the New York state government has gotten in on the act, instituting a “hate speech” law that compels any site allowing comments to police its users’ speech — or face punishment. As law professor Eugene Volokh puts it, the state wants to “conscript” us to “violate the Constitution.”



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The law, which took effect Saturday, sparked an 11th-hour lawsuit filed by the nonprofit group Foundation for Individual Rights and Expression (FIRE) on behalf of three plaintiffs: Volokh, who runs the Volokh Conspiracy legal blog; Peter Thiel-backed video site Rumble; and the crowdfunding entity Locals.

Bloomberg [reported](#) on the story Thursday:

In a federal lawsuit filed Thursday against New York Attorney General Letitia James, the plaintiffs sought to stop the new state law from taking effect.... They claim New York “cannot regulate disfavored online speech by compelling online [services] to ‘mouth support for views they find objectionable’ in hopes of deterring or eliminating hate speech.”

The law requires social-media networks to “provide and maintain a clear and easily accessible mechanism for individual users to report incidents of hateful conduct” and a “direct response to any individual reporting hateful conduct informing them of how the matter is being handled.”

...The New York Attorney General’s Office didn’t immediately respond to a request for comment.

The new law “hangs like the Sword of Damocles over a broad swath of online services,” Volokh and Rumble claimed in their lawsuit. “There can be no reasonable doubt New York will enforce the Online Hate Speech Law to strong-arm online services into censoring protected speech.”

Law & Crime [added](#) to the story:

“New York politicians are slapping a speech-police badge on my chest because I run a blog,”



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Volokh wrote in a statement. “I started the blog to share interesting and important legal stories, not to police readers’ speech at the government’s behest.”

Passed in the wake of a white supremacist’s [Payton Gendron’s] mass shooting of Black shoppers at a grocery store in Buffalo, New York, the law forces social media networks to publish a policy explaining how they will clamp down on speech perceived to “vilify, humiliate, or incite violence against a group or class of persons” based on race, color, religion, or other protected categories. FIRE notes that those platforms will be required to create a mechanism to report such speech — and must respond to those complaints....

“In something of a First Amendment ‘double whammy,’ the Online Hate Speech Law burdens the publication of disfavored but protected speech through unconstitutionally compelled speech — forcing online services to single out ‘hate speech’ with a dedicated policy, a mandatory report & response mechanism, and obligatory direct replies to each report,” the professor’s lawyer Darapana M. Sheth writes in the complaint. “If a service refuses, the law threatens New York Attorney General investigations, subpoenas, and daily fines of \$1,000 per violation.”

A study years ago already found that New York is the union’s least free state, beating out left-wing bastions such as California and Massachusetts. As such, it’s an indicator of what Big Brother puppeteers would like to do nationally.

Volokh elaborated on the anti-First Amendment law in a Thursday *Wall Street Journal* [piece](#). “I don’t want to moderate such content and I don’t endorse the state’s definition of hate speech,” he wrote. “By obligating me to do the state’s bidding with regard to viewpoints that New York condemns, the law violates the First Amendment.”

“The Supreme Court has carved out several narrow categories of unprotected speech, but hate speech isn’t one of them,” law expert Volokh then elaborated. “Speech is protected except in the case of fighting words, true threats, defamation or incitement, and these exceptions are applied without regard to whether the speech in question is hateful. The court has wisely recognized that each of us has a different idea of what constitutes good or bad speech — and we can’t trust the government to decide which viewpoints are too hateful to merit legal protection.”

This point cannot be made enough. Reading internet comments, I’ve observed that an increasing number of Americans believe that “‘hate speech’ isn’t protected under the Constitution.” This is absolutely incorrect, but also predictable. In fact, I did predict it in my 2006 piece [“How We Will Lose Our Freedom of Speech.”](#)

Introducing the topic, I wrote that as “a dissenting justice in the 1958 *Baer v. Kolmorgen* case, one Judge Gallagher is quoted as having warned that ‘if the court does not stop talking about the separation of church and state, people are going to start thinking it is part of the Constitution.’”

“But the courts didn’t stop, and the result is that four decades later this ‘fact’ is imprinted upon the American mind.”

I then pointed out that in the wake of this process relating to freedom of religion, we were witnessing the same process relating to the freedom of speech. Pseudo-elites in media, politics, academia, and elsewhere would repeatedly use the term “hate speech” and also often “contrast” it with “free speech,” as if they’re two totally different species of expression. The result?



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“Not only will this strategy persuade many legislators and judges that hate speech isn’t protected under the Constitution and therefore can be criminalized, it will also influence the man on the street,” I wrote. “And this harks back to the old advice, *‘If you really want something, act like you already have it.’* As long as you continually condemn ‘hate speech’ and juxtapose it with ‘free speech,’ more and more people will assume that it already is illegal. And once enough Americans believe this, all that is left is to make it official.”

And now New York has done just that, at least within one dimension. Of course, if it strikes anyone as odd that the people who once claimed everything was relative now assert that they absolutely can define and identify what “hate” is, know that hate speech laws are and always will be applied tendentiously. A big clue is that it wasn’t the 2017 congressional baseball-practice shooting by a Bernie Sanders supporter, the 600-plus 2020 BLM/Antifa riots, or one of the multitude of other violent left-wing acts that inspired the new law, but an event (Buffalo shooting) that could be blamed on the “Right.”

In other words, it’s very easy to know how hate will be defined under the Empire State’s law. As it always is: as anything the Left hates.



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