



Written by [R. Cort Kirkwood](#) on February 20, 2023

## Federal Judge Nixes New York's "Hateful Conduct Law"

A federal judge has yet again slapped down a blatantly unconstitutional law passed by the totalitarian leftists who run New York.

This time, it was an anti-hate-speech law that required websites and applications to police their commentary boxes by providing a complaint device and posting their guidelines.

Constitutional law professor Eugene Volokh filed the federal lawsuit to shut down the Legislature's attempt to crush speech New York's leftists don't like. That means anything that offends them, hateful or not.



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But more significant than the decision to stop New York from muzzling dissidents is what the attempt shows. As liberal law professor Jonathan Turley observed, leftists are comfortable targeting free speech as a harmful threat to "democracy."

### The Law

Leftists in New York moved against free speech after the [mass murder](#) of ten blacks in Buffalo, New York, last year.

"Hate speech," leftists said, must be stopped.

Thus came the Hateful Conduct Law, and afterward, Volokh's lawsuit.

"Hateful conduct," the [law declared](#), is the "use of a social media network to vilify, humiliate, or incite violence against a group or a class of persons on the basis of race, color, religion, ethnicity, national origin, disability, sex, sexual orientation, gender identity or gender expression."

The law continued:

A social media network that conducts business in the state, shall provide and maintain a clear and easily accessible mechanism for individual users to report incidents of hateful conduct. Such mechanism shall be clearly accessible to users of such network and easily accessed from both a social media networks' application and website, and shall allow the social media network to provide a direct response to any individual reporting hateful conduct informing them of how the matter is being handled.

Each social media network shall have a clear and concise policy readily available and accessible on their website and application which includes how such social media network will respond and address the reports of incidents of hateful conduct on their platform.

Those who refused to comply were to be fined \$1,000 a day until they did.

### Volokh Sues



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Volokh, who blogs for *Reason* at “[The Volokh Conspiracy](#),” stated the obvious. This doesn’t pass muster with the First Amendment. The Foundation for Individual Rights in Education represented him.

“New York tried to single out particular ideological viewpoints by requiring me and other platform operators to have policies for dealing with those viewpoints,” [he said](#). “That’s just as unconstitutional as the government targeting ‘unpatriotic’ speech or anti-police speech or whatever else. I’m grateful that this decision makes clear that such viewpoint-based attempts at government regulation are unconstitutional.”

On February 14, [U.S. District Judge Andrew Carter struck down](#) the law.

“The Hateful Conduct Law does not merely require that a social media network provide its users with a mechanism to complain about instances of ‘hateful conduct,’” [Carter ruled](#),

The law also requires that a social media network must make a “policy” available on its website which details how the network will respond to a complaint of hateful content. In other words, the law requires that social media networks devise and implement a written policy — i.e., speech.

Aside from compelling speech, though, the law also compelled Volokh to agree with New York’s definition of hate speech, and further “compels Plaintiffs to speak about ‘hateful conduct.’”

That’s not all, but Carter’s ruling is clear: The law trespasses Volokh’s protected right to free speech.

### **Turley: Voters Won’t Care**

Yet more disturbing than New York’s disregard of the federal Constitution’s First Amendment is that voters won’t think anything of it. “It will not matter to voters,” [he wrote](#).

Leftist Governor Kathy “Hochul and state legislators [know] that there will be no political costs for passing laws that violate the First Amendment. Today, free speech is often portrayed as harmful and even a threat to democracy.”

Despite that, New Yorkers don’t seem to care that their elected officials are trying to curtail their constitutional rights. Though one would think Empire Staters would be outraged, Turley wrote, “the opposite will be true. This stinging loss will be met with the appreciation of many in the public for having tried to limit free speech in the name of fighting hate.”

Turley has also observed that the case is yet another example of New York’s continuing losses in federal court when the state passes patently crazy laws.

In November, a federal judge shot down a law that banned guns from any private property that did not explicitly permit them. It was a preposterous statute that would have made traveling almost anywhere in New York impossible if one carried a gun.

The result of that loss, [Turley observed](#), was that New York inadvertently strengthened gun rights with a pro-Second Amendment decision.

As for the Hateful Conduct Law, conservative New Yorkers will be safe from prosecution when they crack wise about “Sleepy Joe” Biden’s continuing slide into dementia.



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