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NCLA Amicus Brief Asks Appeals Court to Nix NY Law Dictating Social Media Sites' Speech Policies

Eugene Volokh, Locals Tech. Inc., Rumble Canada Inc. v. Letitia James, Att'y-General, in her Official Capacity

Washington, DC (September 27, 2023) — A New York state law would force social media companies to create and display a policy on their websites detailing how they will respond to “hate speech” on their platforms. The New Civil Liberties Alliance has filed an *amicus curiae* [brief](#) in *Volokh, et al. v. James*, calling on the U.S. Court of Appeals for the Second Circuit to uphold a lower court’s decision, prohibiting the enforcement of this law.

Passed in 2022, [N.Y. Gen. Bus. Law § 394-CCC](#) requires social media networks which operate platforms that allow users to publicly share content to develop a mechanism for flagging “hateful conduct” and a procedure for how they will respond to complaints over such activity. The First Amendment’s Framers carefully designed it to protect against abridgement of free speech, but New York’s law violates that. The statute runs afoul of the First Amendment by compelling social media networks to endorse the State’s beliefs, mandating that they publish a “hate speech” policy in line with the New York government’s specific definition of “hateful conduct.”

New York argues that the Second Circuit should apply less-than-strict scrutiny to the statute’s speech restrictions under the “commercial speech doctrine.” However, the policy expression that the statute mandates for social media networks is not commercial speech at all. Commercial speech is defined as “factual and uncontroversial information,” but what constitutes “hate speech” is a topic of contentious debate that can hardly be described as uncontroversial. Besides, even commercial speech is subject to heightened scrutiny under more recent precedents.

NCLA is a national leader in defending Americans’ First Amendment rights, especially where state or federal governments order speech bans or speech mandates. The U.S. District Court for the Southern District of New York granted a preliminary injunction blocking the statute’s enforcement in February, and the Second Circuit should embrace that wise ruling.

NCLA released the following statement:

“New York is attempting to be the arbiter of moral right and wrong by dictating *what* social media companies should define as ‘hate speech’ and *how* they should fight it. This role finds no home in the First Amendment.”
— **Kaitlyn Schiraldi, Staff Attorney, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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