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COURT OF APPEALS
STATE OF NEW YORK

VOLOKH,

Appellant,

-against-

NO. 58

JAMES,

Respondent.

20 Eagle Street
Albany, New York
May 21, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Bobby Hodges
Official Court Transcriber

1 CHIEF JUDGE WILSON: First case on the calendar
2 is Volokh v. James.

3 MS. COCO: May it please the court. Sarah Coco
4 for the Attorney General. May I please reserve four
5 minutes for rebuttal?

6 CHIEF JUDGE WILSON: Yes.

7 MS. COCO: Thank you. General Business Law
8 section 394-ccc imposes two straightforward requirements on
9 for profit social media networks doing business in New
10 York. The statute's requirements may be satisfied by a
11 tool to accept user reports, and a policy about responding
12 to reports that do not explicitly reference or address the
13 statutory definition of hateful conduct. And as the Second
14 - - -

15 JUDGE RIVERA: Well, why would the legislature
16 pass such a piece of legislation, if that is indeed the
17 case? Weren't they trying to address hateful conduct?

18 MS. COCO: So Your Honor, the legislative purpose
19 is tied to hateful conduct in the sense that the
20 legislature was responding to the specific incident of the
21 Buffalo shooting where the crime was livestreamed on social
22 media, and the shooter specifically intentioned the crime
23 to be live streamed to encourage others to do the same.
24 And a user report did play a role in that because it
25 interrupted the live stream. And that's - - -

1 JUDGE RIVERA: And isn't that what at least one
2 member of the legislature indicated? That indeed is that
3 people don't even know how they can report this kind of
4 conduct. So wouldn't you need to have reference to the
5 particular conduct that you want to be covered by the
6 reporting mechanism that the platform sets up?

7 MS. COCO: So Your Honor, I would agree with the
8 first part of that.

9 JUDGE RIVERA: Okay.

10 MS. COCO: That the statutory purpose is very
11 much connected to hateful conduct, but the statute's
12 requirements can be satisfied without explicitly
13 referencing the statute's - - -

14 JUDGE GARCIA: By why didn't they define it - - -

15 MS. COCO: - - - definition.

16 JUDGE GARCIA: - - - at all then? Why didn't
17 they put a definition in if they don't need to use it?

18 MS. COCO: So the definition is playing a role in
19 our interpretation, because it sets the floor of reports
20 that must be accepted. So if you had a report mechanism
21 that said we will accept only reports of obscene content,
22 that wouldn't be sufficient because the user couldn't use
23 that to make reports of hateful conduct. And that's what
24 the legislature was trying to achieve.

25 JUDGE GARCIA: So you could just get rid of that

1 line, and then you would be okay? Even - - -

2 MS. COCO: If you had a general reporting tool
3 that accepted any - - - any reports about content, that
4 would be sufficient because that would achieve the
5 legislative purpose. And we can see that in the example of
6 the Buffalo shooting, where Twitch had a user report
7 mechanism and that did not reference the statutory
8 definition of hateful conduct. The statute had not been
9 enacted yet, but it was still effective at interrupting
10 that live stream more quickly than had occurred in previous
11 crimes that were live streamed. So I think the - - -

12 JUDGE TROUTMAN: So is it more focused on an
13 opportunity of the consumer to have contact with the
14 platform owners if they are concerned?

15 MS. COCO: That's exactly correct, Your Honor.
16 So it can be - - - so a network, of course, could have a
17 tool dedicated to reports of hateful conduct. We're just
18 saying that one way to satisfy the statute's requirements
19 is to have a general tool. And as I said - - -

20 JUDGE RIVERA: And if they define hateful conduct
21 differently - - - perhaps this is part of what Judge Garcia
22 and you were discussing a moment ago - - - what - - - would
23 the AG be able to pursue some action against that platform?

24 MS. COCO: So no, Your Honor. The statute does
25 not empower the Attorney General to require networks to

1 remove any content. It doesn't empower the Attorney
2 General to go after the networks for failing to comply with
3 their own policies.

4 JUDGE RIVERA: Can't they fine them?

5 MS. COCO: So the Attorney General can pursue
6 enforcement - - - an enforcement action if the network
7 fails to accurately disclose its policy and fails to
8 actually have the reporting tool.

9 JUDGE CANNATARO: Well, wouldn't accurate
10 disclosure of the policy include an accurate definition of
11 what hateful conduct would be? In other words, is the
12 platform free to make up its own definition of hateful
13 conduct in articulating its policy?

14 MS. COCO: Yes, Your Honor. So with respect to
15 the policy disclosure, the only thing that is required is
16 that the network give the user information about what
17 they're actually going to do with user reports of hateful
18 conduct. And they're free to say, we are not going to
19 respond to any reports of hateful conduct. They're free to
20 say, we are not going to - - -

21 JUDGE CANNATARO: I'm not talking about the
22 response. I'm talking about telling people what hateful
23 conduct is.

24 MS. COCO: So the statute does not require the
25 networks at all to tell people what hateful conduct is.

1 JUDGE GARCIA: But the legislature wants people
2 to be able to report this type of conduct. And they've
3 defined the type of conduct that they want people to be
4 able to report. So there's two ways you can do that,
5 right? It's kind of like go fish. Like don't say
6 anything. And we hope that you'll report this type of
7 conduct and that would be okay under your version. Or you
8 can tell them what types of conduct they could report.

9 MS. COCO: So - - -

10 JUDGE GARCIA: Why would we want the first one?

11 MS. COCO: So - - -

12 JUDGE GARCIA: And why would the - - - more
13 important, why would the legislature want the first one?

14 MS. COCO: So Your Honor, I think the legislative
15 history does reflect that that's what the legislature
16 intended. They were trying to impose modest requirements
17 on social media networks. And I think the legislature
18 recognized that there are serious limits imposed by the
19 First Amendment on what they could do here. So they said,
20 we're not trying to tell the networks what their policy
21 must be. We're not telling them any content they have to
22 leave up or take down. We're just trying to ensure that
23 they have a way to report that content and that they
24 disclose - - -

25 JUDGE HALLIGAN: While they - - -



1 JUDGE GARCIA: But it was a specific content they
2 wanted reported, right? It could have been - - - and just
3 - - - they could have said hateful conduct and left it.
4 But they wanted specific things and they defined those
5 things. So it seems difficult for me to say, okay, but
6 you're all right if you just don't say anything and you put
7 a button on there and you can report.

8 MS. COCO: So Your Honor, I think the legislative
9 history does reflect that that's what they intended. So
10 for example, during the Senate debate, one of the
11 supporters said, this just says if you need to reach us and
12 flag something for us, here is how you do it. This doesn't
13 say anyone has to do anything other than say where you can
14 report it. It really is a modest requirement.

15 JUDGE RIVERA: Yeah. But it's what - - - report
16 what?

17 JUDGE GARCIA: Yeah. What's the - - -

18 JUDGE RIVERA: It's report it, and the it - - -

19 MS. COCO: So - - -

20 JUDGE RIVERA: - - - is in the title, hateful
21 conduct.

22 MS. COCO: So the it is content that the user
23 identifies as hateful conduct. But it's fine to have - - -

24 JUDGE CANNATARO: So it's all in the eye of the
25 beholder?

1 MS. COCO: It's in the eye of the user.

2 JUDGE CANNATARO: But doesn't that make the
3 definition completely irrelevant? Why even include a
4 definition of the term if it's purely subjective to the
5 user?

6 MS. COCO: It doesn't, Your Honor, because the
7 definition of - - - is setting the floor of reports that
8 must be accepted. So again, you can't refuse to have a
9 reporting mechanism at all, and you can't refuse to have a
10 reporting mechanism that doesn't accept reports of hateful
11 conduct. So if you only want - - -

12 JUDGE RIVERA: As defined by New York.

13 MS. COCO: As defined by the statute. But in
14 order to comply with that, you don't have to speak about
15 the statutory definition, which is what the Second Circuit
16 thought - - -

17 JUDGE HALLIGAN: But here's what I'm struggling
18 with. If we look at the two provisions, they both say, you
19 know, clear and concise, which includes addressing reports
20 of hateful conduct. And in the second provision, clear and
21 easily accessible mechanism to report hateful conduct. It
22 might be that one can use a generic button to report
23 anything on a website, but a requirement that users be able
24 to report anything they are dissatisfied or satisfied with,
25 for that matter, sounds to me a lot more like the kind of

1 broad consumer protection obligations you see, for example,
2 in GBL 349.

3 And so why shouldn't we assume that when the
4 legislature writes something that is targeted at a very
5 specific species of content that it means for it to be
6 implemented that way, as opposed to, you know - - - I think
7 you're reading is no different than if the legislature had
8 said websites must post their policies, period. And
9 websites must provide a mechanism for users to communicate.

10 MS. COCO: So I think it is a little bit
11 different, Your Honor, in the sense that websites could
12 comply with both laws in the same way, but they can comply
13 with this law in another way, which is having a specific
14 mechanism. So the legislature - - -

15 JUDGE HALLIGAN: Yeah. But why shouldn't the
16 different approaches, one generic take GPL 349, and the
17 other focused on a very specific type of content, suggest
18 to us that what the legislature meant was either a policy
19 or a reporting mechanism that the user perceives as
20 targeted at that specific type of content?

21 MS. COCO: Well, again, Your Honor, I think a
22 generic reporting mechanism does achieve the legislature's
23 purpose, going back to that Twitch example where it was
24 used to report hateful conduct. And I would also refer the
25 court to Professor Bullock's blog post, which is - - -

1 JUDGE HALLIGAN: But then why wouldn't the
2 legislature have said that? In other words, has to have a
3 reporting mechanism, including for this type of content or
4 - - - or similar, you know, provision with respect to the
5 policy.

6 MS. COCO: I think that would have been one way
7 to write the statute. And we don't dispute that the
8 legislature was responding to this specific incident and
9 that its specific concern was about hateful conduct. We're
10 just saying one way to satisfy the statute's requirements
11 is with this more general reporting mechanism. And I'd
12 refer the - - -

13 JUDGE CANNATARO: Can I ask you a question about
14 the mechanics of the reporting mechanism?

15 MS. COCO: Please.

16 JUDGE CANNATARO: I've been on websites where
17 there's a button that usually says something like report.
18 And when you hit report, you get a menu of boxes you can
19 check for what it is you want to report. Would this law
20 require these networks, these platforms, if they were so
21 inclined to use boxes - - - and I think many of them do - -
22 - to have one that says hateful conduct, or does the law
23 not even require that?

24 MS. COCO: So it doesn't require that. I think
25 if they only had two boxes like obscene content and I don't

1 know, antisemitic content and no other boxes and nothing
2 else you could report, I think that would be a problem.

3 JUDGE CANNATARO: Okay.

4 MS. COCO: But otherwise, as long as the
5 categories are broader or there's some catch all for
6 reporting.

7 JUDGE CANNATARO: Could it be folded into maybe
8 like an other box?

9 MS. COCO: Absolutely. Certainly. We think
10 that's definitely consistent with the law. And - - -

11 JUDGE RIVERA: If you - - - if we adopt your
12 view, then it strikes me that the - - - if we'll call it a
13 legislative factual finding that no one knows how to report
14 this because it's not clear is nonsensical, because most of
15 these platforms have some mechanism by which you can report
16 whatever you want to report about content. Where would be
17 the need? The need is based on the horrific events that
18 occurred in Buffalo where people were massacred. And it's
19 that response. So it's indeed an interest in dealing with
20 a reporting - - - having a reporting mechanism by which
21 someone can address content, hateful conduct as defined by
22 New York.

23 MS. COCO: So Your Honor, the legislative history
24 actually reflects that some networks don't have this
25 reporting mechanism. That's in the joint appendix at 170.

1 The sponsor was asked this question and she said, yes. You
2 know, the larger and more established networks generally do
3 have a report mechanism, but some of the newer networks may
4 not. So I think that's one piece of it that some may not
5 have it, and then another - - -

6 JUDGE RIVERA: So may not being then not a fact
7 finding because there's uncertainty underlying that
8 statement?

9 MS. COCO: Well, Your Honor, I want to be clear
10 about what she said. She didn't list specific networks
11 that don't have it. So that's kind of what we have in the
12 legislative history is - - -

13 JUDGE RIVERA: It's speculative in nature that
14 way?

15 MS. COCO: - - - is a concern that some may not
16 have it. That's also reflected in the sponsor's memorandum
17 where it says it refers to that slogan see something, say
18 something. And it says on social media networks, say
19 something is confusing at best and impossible at worst. So
20 the impossible is you have no reporting mechanism
21 whatsoever. And then confusing goes to the clearly and
22 easily accessible part of the statute where not only do we
23 want to make sure it's there - - -

24 JUDGE RIVERA: One could also read it as yes, the
25 big one - - - the big networks have it, some of them may

1 not have it, the smaller ones may not have it. But we're
2 concerned that none of them really have a mechanism for
3 reporting hateful conduct as we define it. And so now we
4 want to be clear that you need to have such a mechanism.

5 MS. COCO: I think that that's one way of looking
6 at it. But again, we think that that that statutory
7 requirement that the legislature was trying to impose could
8 be satisfied with a general reporting mechanism. And I do
9 want to - - - I do want to point the court - - -

10 JUDGE CANNATARO: Do you think - - - I'm sorry, I
11 don't mean to interrupt you. And you can do that - - -

12 MS. COCO: Please.

13 JUDGE CANNATARO: - - - thing, but do you think
14 the legislature was of the opinion, when it enacted this
15 statute, that there was no platform that provided a means
16 for reporting hateful conduct? Or were they just trying -
17 - -

18 MS. COCO: No, no, Your Honor. I think, you
19 know, as the example of Twitch shows that some platforms
20 did have a mechanism for reporting hateful conduct, because
21 during the Buffalo shooting, that video was stopped because
22 of a user report. So there clearly were platforms that had
23 it.

24 JUDGE CANNATARO: I don't mean to report - - - a
25 lot of them have some kind of reporting mechanism, but they

1 - - - there must have been at least some that had like a
2 hate speech or whatever, hateful conduct, hateful content -
3 - -

4 MS. COCO: That's true.

5 JUDGE CANNATARO: - - - option before this law
6 came into effect, right?

7 MS. COCO: That's correct. Yes.

8 JUDGE CANNATARO: It's not groundbreaking in that
9 regard, is it?

10 MS. COCO: No. There are many of the major
11 platforms that do prohibit essentially different categories
12 of hateful speech.

13 JUDGE SINGAS: Yeah. But when the platforms have
14 to then respond or come up with a plan for what they're
15 going to do with these hateful reports, doesn't that in and
16 of itself have - - - don't they have to look at something
17 and make a determination of whether it's hateful conduct or
18 not?

19 MS. COCO: They do not, because the law does not
20 require them to respond to hateful conduct or to remove
21 hateful conduct. That's not part of what the law is doing.
22 It's just saying you have to disclose to users what you're
23 actually going to do with actual user reports. So you
24 could have a policy of not responding to any user reports.
25 That would be consistent with the law. There's nothing in

1 the law that requires you to do anything with user reports.
2 And the - - -

3 JUDGE RIVERA: But do you have to say, we're not
4 going to respond?

5 MS. COCO: You have to disclose to the user what
6 you're going to do. So if your policy is to not respond,
7 you do have to say you're not going to respond.

8 JUDGE RIVERA: Why isn't that forcing speech?

9 MS. COCO: Your Honor, the Second Circuit
10 concluded that that would be a compelled commercial
11 disclosure under the Zauderer relaxed scrutiny. And so
12 simply requiring the network to say what it's - - -

13 JUDGE RIVERA: Are we bound by that?

14 MS. COCO: I'm sorry?

15 JUDGE RIVERA: It's not the U.S. Supreme Court,
16 right?

17 MS. COCO: So that's correct, Your Honor. As a
18 formal matter, this - - -

19 JUDGE RIVERA: We could decide differently?

20 MS. COCO: So I think we would urge the court not
21 to do that for a couple of reasons. In the context of this
22 certified question, this court's - - - you know, if this
23 court were to reconsider the federal constitutional issues,
24 those wouldn't be binding on the Second Circuit. The
25 Second Circuit has already reached a determination of the

1 constitutional issues, and the majority said that was
2 necessary to their decision to certify. And so - - -

3 JUDGE RIVERA: Understood. But what they've done
4 is certified to us how would one interpret this statute,
5 which means we, under our rules, have to determine not only
6 what's the legislature's intent, but can it be indeed
7 interpreted in a way that does not run afoul of the
8 constitution, both the state and the federal?

9 MS. COCO: So Your Honor, I think in the context
10 of this - - -

11 JUDGE RIVERA: And in that sense, on the federal
12 side, we're only bound by the Supreme Court's
13 interpretation.

14 MS. COCO: That's correct, Your Honor, and we
15 don't dispute that. So I think if a new case were coming
16 to this court, it could consider the federal constitutional
17 issues.

18 JUDGE RIVERA: Well, no. I'm saying, why can't
19 we do that here?

20 MS. COCO: I think the court, as a matter of its
21 formal authority, could. We would just urge the court not
22 to, because I think it really would create an untenable
23 situation to have these competing constitutional
24 interpretations of the statute.

25 JUDGE HALLIGAN: So Judge Jacobs indicates that

1 he thinks the two provisions rise or fall together, and
2 that if the first provision, the policy disclosure
3 provision, is determined to be unconstitutional, then the
4 reporting mechanism falls as well. I guess I have a
5 related question for you, which is could we interpret the
6 first provision as requiring - - - the circuit would decide
7 about the constitutionality, but as requiring something
8 specific as to hateful conduct and the reporting mechanism
9 as not? Can they be differently interpreted that way? I
10 see your light is on, but maybe you can quickly answer.

11 CHIEF JUDGE WILSON: Please answer, yeah.

12 MS. COCO: Yes, Your Honor. So you could
13 interpret the two provisions differently. And I think that
14 goes to our severability argument. We do think the
15 reporting mechanism is kind of the heart of what the
16 legislature was trying to achieve here. And so if the
17 court were to conclude, perhaps, that the policy disclosure
18 required some reference to hateful conduct, but the
19 reporting mechanism didn't, we would also urge the court to
20 clarify that the provisions are severable, which is an
21 issue of state law. That's what the Second Circuit
22 determined, and that's consistent with how other courts
23 have looked at these regulations of social media, where
24 they've gone provision by provision. And we do think the
25 court could reach different answers on the two provisions.

1 CHIEF JUDGE WILSON: Thank you.

2 MS. COCO: Thank you.

3 MR. CORN-REVERE: Good afternoon, Your Honors.

4 I'm Robert Corn-Revere for the plaintiffs below. Professor
5 Eugene Volokh and Rumble Canada. I'd like to start with
6 addressing one of the issues that came up repeatedly in the
7 briefing at least a dozen times and was mentioned briefly
8 during Ms. Coco's presentation just now. And that is the
9 suggestion of the State that the Second Circuit is - - - in
10 some way has endorsed the Attorney General's really narrow
11 interpretation of the hateful conduct law. Really, nothing
12 could be further than the truth.

13 What the Second Circuit said is, if you interpret
14 the statute as it is written, it would violate the First
15 Amendment, either under strict scrutiny or even under
16 intermediate scrutiny. What the court said was that the
17 law could be considered valid only if it can be read to say
18 that a platform can comply with the hateful conduct law if
19 it has no formal policy at all that mentions hate speech
20 and makes moderation decisions, if any, case-by-case.

21 JUDGE RIVERA: So why can't - - -

22 CHIEF JUDGE WILSON: So why can't it be read that
23 way?

24 JUDGE RIVERA: Yes. Why?

25 MR. CORN-REVERE: Well, I think to do that you



1 have to ignore the wording of the statute. Ms. Coco just
2 said - - -

3 CHIEF JUDGE WILSON: Well, which words in
4 particular? Which words in particular do you need to
5 avoid?

6 MR. CORN-REVERE: Well, pretty much all of them.
7 The core of the statute is the definition of hateful
8 conduct. It appears not just in the title - - -

9 CHIEF JUDGE WILSON: Right. So why can't that be
10 read as a requirement that social media companies not have
11 a reporting policy that excludes the ability to report that
12 sort of speech?

13 MR. CORN-REVERE: Well, for one thing, the
14 reality that the legislature was facing included no real-
15 world examples of saying that we have policies except for
16 hate speech. Ms. Coco referred to - - -

17 CHIEF JUDGE WILSON: Why does that matter? And
18 perhaps the legislature thought this is sort of near the
19 edge of what we're allowed to do constitutionally. We'd
20 like to do more, but we've decided to just do this.

21 MR. CORN-REVERE: Well, what they did was specify
22 exactly what kind of speech was to be included in
23 complaints.

24 CHIEF JUDGE WILSON: No. They've, I think,
25 specified that you have to have a mechanism that includes

1 at least that. No? It doesn't say you can't also report
2 other things.

3 MR. CORN-REVERE: Yes. But - - -

4 CHIEF JUDGE WILSON: It doesn't say you have to
5 separately report hate speech.

6 MR. CORN-REVERE: It seems an odd way to write a
7 statute where you have a term that recurs - - -

8 CHIEF JUDGE WILSON: Well, but we don't - - -

9 MR. CORN-REVERE: - - - six times - - -

10 CHIEF JUDGE WILSON: We don't really hold statute
11 unconstitutional because there was a better way to write
12 them, if there's a reading of them that is constitutional.

13 MR. CORN-REVERE: Well, if you accept the State's
14 definition of how you define this law - - -

15 CHIEF JUDGE WILSON: Yes.

16 MR. CORN-REVERE: - - - then you can accomplish
17 what the State set out to achieve in twelve words. That a
18 social media platform has to have a complaint button and an
19 email address, and that would do it. And that excludes - -
20 -

21 CHIEF JUDGE WILSON: Well, and - - - that's the
22 first part. And their method - - - or at least they have
23 to disclose then what they're going to do with complaints
24 that come in, right?

25 MR. CORN-REVERE: But that excludes 97 percent of

1 the language included in the statute. And that - - -

2 CHIEF JUDGE WILSON: Well, why do you say that?

3 MR. CORN-REVERE: Excuse me.

4 CHIEF JUDGE WILSON: What else does it exclude?

5 MR. CORN-REVERE: Well, as I say, the - - - the
6 statute - - -

7 CHIEF JUDGE WILSON: The definition of hate
8 speech or hateful conduct?

9 MR. CORN-REVERE: Well, for one thing, it takes
10 out the entire first definition of hate speech.

11 CHIEF JUDGE WILSON: Well - - -

12 JUDGE CANNATARO: Does it really? I don't see
13 any place in the - - - in the statute that requires in
14 specific words, the printing of that definition of hate
15 speech.

16 MR. CORN-REVERE: Well, it defines what it means
17 by hate speech. And then the policy - - -

18 JUDGE CANNATARO: It includes the definition, but
19 it doesn't require that it be printed anywhere on the
20 website. It says there has to be a place to go where you
21 can see the policy, and it kind of basically stops there.

22 MR. CORN-REVERE: It does require you to disclose
23 a policy that, in the words of the statute says in section
24 3, which includes how such social media network will
25 respond and address the reports of incidents of hateful

1 conduct on their platform.

2 CHIEF JUDGE WILSON: Right. And suppose they say
3 we're - - - for anything you report, regardless of what
4 kind of speech it is, we're not going to do anything about
5 it, or we're going to send it all to the Attorney General
6 regardless of what it is. Would - - - that would be a
7 policy.

8 MR. CORN-REVERE: It would be a policy, but it
9 would contravene how this court has previously interpreted
10 excess language in cases involving First Amendment claims.
11 For example, in - - -

12 JUDGE TROUTMAN: How is it violative of First
13 Amendment to provide users with information so that they
14 can decide whether or not it's a platform that they should
15 in fact use?

16 MR. CORN-REVERE: That could be an approach,
17 except it's not the interest that the State said it was
18 trying to serve. It was trying to say that we need these
19 policies to prevent future - - -

20 CHIEF JUDGE WILSON: Well, so let me ask you
21 about the State's interest then. Suppose, just
22 hypothetically for a second, you interpret it the way we've
23 been suggesting perhaps that it - - - it could be sort of,
24 let's say, the way the State is suggesting it could be
25 interpreted. That is, if you have a broad policy that says

1 you can report anything you want, you can read the statute
2 that way, is there anything that would prevent the State
3 from advertising to consumers, you can use these social
4 media reporting mechanisms to report hate speech?

5 MR. CORN-REVERE: The State can speak in whatever
6 way that it wants.

7 CHIEF JUDGE WILSON: Okay.

8 MR. CORN-REVERE: It can tell people to complain
9 to social media platforms - - -

10 CHIEF JUDGE WILSON: And can actually say - - -

11 MR. CORN-REVERE: - - - to allow these - - -

12 CHIEF JUDGE WILSON: - - - these mechanisms now,
13 by law, have to have a mechanism where you can report
14 hateful speech. And here's our definition. It could say
15 that.

16 MR. CORN-REVERE: The State could call for people
17 - - -

18 CHIEF JUDGE WILSON: Yeah. Okay.

19 MR. CORN-REVERE: - - - to complain, but there's
20 no record here of platforms not having complaint buttons.
21 And as a matter of fact, the reference in the joint
22 appendix 171 basically says that they do. And Buffalo - -
23 -

24 CHIEF JUDGE WILSON: Well - - -

25 JUDGE RIVERA: Then they've satisfied it. Then



1 they've satisfied it.

2 MR. CORN-REVERE: Not according to the language
3 of the statute. It satisfies the interest - - -

4 JUDGE TROUTMAN: And wouldn't it help someone
5 who's setting up a network in the future to know ahead of
6 time that's one of the things in their structure that they
7 need to have in place?

8 MR. CORN-REVERE: Well, and that's the very
9 problem that we've identified and that the Second Circuit
10 identified from a First Amendment perspective. If you're
11 compelling people, what kind of complaints and how they're
12 supposed to deal with complaints - - -

13 JUDGE TROUTMAN: They're not - - -

14 MR. CORN-REVERE: - - - based on subject matter -
15 - -

16 JUDGE TROUTMAN: It doesn't seem to compel. It's
17 just giving consumers information.

18 CHIEF JUDGE WILSON: If the State's - - -

19 MR. CORN-REVERE: Well, all compelled speech
20 gives consumers information.

21 CHIEF JUDGE WILSON: If the State's
22 interpretation is correct, is there any chilling effect?

23 MR. CORN-REVERE: What there is - - - and this is
24 what the court outlined in *People v. Dietze*, is when you
25 have excess language in a statute that sets out



1 requirements. When those who are required to comply with
2 the statute read what the requirements are, they tend to
3 think that the statutory language means what it says. Here
4 you have not only the hateful conduct definition, but you
5 have it built into what the policy is supposed to require -
6 - -

7 JUDGE CANNATARO: I'm still not clear on what the
8 requirement is that offends these interests around the
9 definition of hateful conduct. What is the statutory
10 command regarding the definition of hateful conduct?

11 MR. CORN-REVERE: Well, the statutory command is
12 in - - - first in the policy requirement that says the
13 policy has to include just not only a clear and concise
14 policy that addresses these complaints but also includes
15 how such social media networks will respond and address the
16 reports of incidents of hateful conduct on their platform.

17 JUDGE CANNATARO: Okay. But in that I hear
18 nothing about the definition - - - the statutory definition
19 of hateful conduct specifically. And that's the question
20 I'm trying to zero in on.

21 MR. CORN-REVERE: Well, where a statute defines a
22 term and then repeatedly uses that same term - - -

23 JUDGE CANNATARO: Yeah.

24 MR. CORN-REVERE: - - - throughout the statute,
25 the assumption is that that is what the legislature meant

1 by using that term.

2 CHIEF JUDGE WILSON: Yes. But - - - I guess - -
3 - but the question is, why can't it have used that term to
4 specify something that social media companies couldn't
5 exclude from their reporting mechanisms?

6 MR. CORN-REVERE: I'm sorry; I didn't understand
7 the question.

8 CHIEF JUDGE WILSON: Sure. Your - - - it seems
9 to me your position is we have to look at the definition of
10 hateful conduct to define the limits of some sort of
11 reporting mechanism, rather than a piece of the content of
12 it. It's as if I said all grocery stores have to sell
13 apples. You're saying that's all they can sell. And I'm
14 saying if they sell every other kind of fruit or vegetable,
15 that's okay. The fact that they're required to sell apples
16 doesn't mean that they can't include them with everything
17 else, and they don't have to advertise that they're selling
18 apples.

19 MR. CORN-REVERE: Right. With - - - I think we
20 may be comparing apples and oranges here. The problem, I
21 think, is in trying to describe this as a floor. If you
22 have a generic mechanism, maybe you can use that to accept
23 complaints on anything. But there's no example, real world
24 example of any platforms that exclude complaints about hate
25 speech as - - -

1 JUDGE CANNATARO: Well, that's not a reason,
2 really, to invalidate or to construe things differently
3 just because other - - - because there might be many
4 participants in this particular marketplace of ideas that
5 include a complaint mechanism. But let me ask - - - I
6 think it might be the same question - - -

7 MR. CORN-REVERE: If I could - - -

8 JUDGE CANNATARO: You can address it but let me
9 put a question to you as well.

10 MR. CORN-REVERE: Sure, sure.

11 JUDGE CANNATARO: I wonder if you could look at
12 the definition of hate speech along the lines of what the
13 Chief Judge was asking as a - - - as an internal - - - as
14 an inward facing definition for use by the platform. So in
15 other words, you have an outward facing requirement. Put a
16 button on your website and have a page where you, you know,
17 talk about your policy. But inwardly facing for the users,
18 the definition helps the platforms understand what it is
19 the statute is trying to capture. So in other words, you
20 don't have to use that definition. You don't have to put
21 that definition out there in the world. You're just
22 telling the platform, here's what we call hateful conduct.
23 Make sure your mechanism has space to capture those types
24 of complaints. What's wrong with that interpretation of
25 it?

1 MR. CORN-REVERE: But again, it is the
2 government, through the statutory language, putting the
3 thumb on the scale of what kind of speech they want
4 platforms to monitor. It is very much like the - - - the
5 statute that was struck down in - - -

6 JUDGE CANNATARO: Is that really what it - - -
7 there's no monitoring here. This is a reporting mechanism.
8 A user can report it or not report it. They're just - - -
9 their interest here is in making sure that the reporting
10 capability is not so limited that it can't capture that
11 definition.

12 MR. CORN-REVERE: But it's not just you can
13 report it or not report it. There's also the enforcement
14 provision of Section 5, which empowers the Attorney General
15 to investigate whether or not this is being done, including
16 to use subpoenas. And that's where the link to the Supreme
17 Court decision in Bantam Books v. Sullivan, I think,
18 becomes clear because there you have - - -

19 CHIEF JUDGE WILSON: But doesn't that turn on
20 what a violation of the statute is, right? I mean, it
21 seems to me the enforcement provisions in section 5 don't
22 come into play unless there's a violation of the statute.

23 MR. CORN-REVERE: Well, it comes into play if the
24 Attorney General wants to find out whether or not the
25 platforms are complying, and that's where they ask whether

1 or not - - -

2 JUDGE RIVERA: Well, aren't they just going to
3 look on the website? You either have - - -

4 MR. CORN-REVERE: And that's one of the reasons
5 why it makes no sense - - -

6 JUDGE RIVERA: The obvious policy available,
7 right?

8 MR. CORN-REVERE: That's one of the reasons why
9 it makes no sense to have this statute written the way it
10 is, because if this just required a complaint button and an
11 email address, then you wouldn't need subpoena power to
12 find out whether or not statute - - - websites were
13 complying with the statute.

14 JUDGE HALLIGAN: Well, why is - - -

15 MR. CORN-REVERE: You could simply look at the -
16 - - the website.

17 JUDGE HALLIGAN: Why would that be different if
18 it's read as you suggest? It seems to me that even if it's
19 read as you suggest, which I take it is to have a policy
20 specific as to hateful conduct, right? Then wouldn't - - -
21 and a reporting mechanism - - - wouldn't that be apparent
22 from the face of the website itself, just as it would be if
23 it was a generic policy in mechanism?

24 MR. CORN-REVERE: You would think it would be
25 clear - - -

1 JUDGE HALLIGAN: Okay. So why would the Attorney
2 General's subpoena power be deployed differently with
3 respect to one reading or another?

4 MR. CORN-REVERE: Because it would be following
5 up to determine whether or not platforms are actually
6 monitoring or responding to complaints about hateful
7 conduct - - -

8 JUDGE HALLIGAN: Well, that turns on - - -

9 MR. CORN-REVERE: - - - as defined by the law.

10 JUDGE HALLIGAN: - - - whether the statute is
11 read to require a response, right? But if the statute is
12 read only to require policy disclosure and a reporting
13 mechanism and - - - and whether and how to respond is up to
14 the platform, how would you see the Attorney General
15 utilizing subpoena power?

16 MR. CORN-REVERE: The example of the letters that
17 were sent in October 2023 after the attack on Israel,
18 indicate how subpoena power would be used. Now we're not
19 arguing that they were doing that in this case. The court
20 ruled that that wasn't a violation of the injunction. But
21 this is an example of the kinds of questions the Attorney
22 General - - -

23 JUDGE HALLIGAN: What - - - okay.

24 MR. CORN-REVERE: - - - would ask.

25 JUDGE HALLIGAN: But specifically, though, if we

1 read the provisions, as you suggest, what kinds of
2 questions do you envision the Attorney General getting at
3 in the course of a subpoena that's not - - - that's not
4 apparent from the face of the website, if we assume that
5 the statute does not also require the website to respond?

6 MR. CORN-REVERE: I think the questions that were
7 laid out in the example, in the supplemental appendix - - -

8 JUDGE HALLIGAN: Uh-huh.

9 MR. CORN-REVERE: - - - in essay one and two, the
10 letter that was sent to Rumble from the Attorney General
11 lays out 11 categories of information that the Attorney
12 General was seeking information on. For example, what, if
13 any, is the company - - - has the company - - - efforts has
14 the company taken to address the recent calls for violence?
15 Describe in detail the public facing terms of service,
16 community rules and other things. Describe how the company
17 has handled these - - - these things, including providing
18 internal documents. That's the kind of enforcement power
19 that you get with section 5 and this open-ended mandate in
20 the statute itself. And that's why it puts pressure on the
21 moderation policies that are constitutionally protected of
22 the social media companies. Again - - -

23 CHIEF JUDGE WILSON: Well, wouldn't the Attorney
24 General need subpoena power, for example, if a social media
25 platform disclosed - - - that it's publicly disclosed

1 prominently, concisely, whatever, that its - - - that its
2 policy was that it had a team of 50 attorneys who would
3 review complaints, and it turned out that was completely
4 false. They had no attorneys. You might need subpoena
5 power to figure that out, and there might be a violation of
6 the statute, but I'm not sure that implicates the First
7 Amendment.

8 MR. CORN-REVERE: Well, you - - - if all the
9 statute required was a complaint button and an email
10 address, you would need - - -

11 CHIEF JUDGE WILSON: Well, no. And disclosure of
12 a mechanism of how a response - - - how complaints will be
13 responded to. It requires that as well. And if you
14 falsely say how you're going to respond, it seems to me
15 there's a problem that doesn't implicate the First
16 Amendment.

17 MR. CORN-REVERE: Well, that would be something
18 that perhaps under standard can - - -

19 CHIEF JUDGE WILSON: Yeah. And you might need
20 subpoena power for that. No?

21 MR. CORN-REVERE: What was your question?

22 CHIEF JUDGE WILSON: You might need subpoena
23 power to ferret that out. I mean, I guess what I'm taking
24 issue with is your conclusion that the existence of
25 subpoena power necessarily compels an interpretation of the

1 other paragraphs that affect the First Amendment. And I'm
2 asking whether that's so.

3 MR. CORN-REVERE: Well, there is general subpoena
4 power to deal with commercial fraud and things like that.

5 CHIEF JUDGE WILSON: Yeah. And a social media
6 platform - - -

7 MR. CORN-REVERE: This - - -

8 CHIEF JUDGE WILSON: - - - could be - - - could
9 violate this statute by making a false disclosure about
10 what its policy was. No?

11 MR. CORN-REVERE: But here, the false disclosures
12 keep specifically to the content-based terms of this
13 statute where you have a definition - - -

14 CHIEF JUDGE WILSON: Why not to the procedural
15 terms of the statute?

16 MR. CORN-REVERE: Well, the procedural terms are
17 tied into the overall definition of - - -

18 CHIEF JUDGE WILSON: Well, I guess the way you
19 interpret them, yes. But I think perhaps the way that the
20 State interprets them, no.

21 MR. CORN-REVERE: And the way the State
22 interprets them reads out 97 percent of the language used
23 by the legislature, which this court said in both *People v.*
24 *Dietze* and *People v. Marquan M.*, is not an appropriate use
25 of the avoidance canon to try and make a statute survive

1 that otherwise violates the First Amendment. I don't see
2 any light, so I'm not sure.

3 CHIEF JUDGE WILSON: You still have time, that
4 means.

5 MR. CORN-REVERE: Oh, terrific. Then the canons
6 of judicial construction that are at issue here is whether
7 or not the laws that - - - actually the law - - - the
8 language used by the legislature, is the clearest
9 indication of what they meant by it. And here, as I say,
10 the statute includes 395 words. 380 of them are apparently
11 superfluous.

12 The only canon of statutory construction that the
13 Attorney General relies on in this argument is the statute
14 - - - is the - - - the canon of constitutional avoidance.
15 And that doesn't apply, as I said, in the cases of both
16 People v. Dietze and People v. Marquan M., because they
17 basically ruled out completely reconstructing the statute
18 by avoiding most of the terms.

19 JUDGE CANNATARO: Counsel, in that regard, what
20 about the savings provision? If indeed you are right that
21 the statute was intended to have much sharper teeth than
22 the Attorney General says it has now, why isn't that
23 excusable in light of the savings provision in the statute?

24 MR. CORN-REVERE: The savings clause of Section 4
25 really does two things. In Section A, it basically says

1 that nothing here is required to violate the rights of any
2 person. Which means - - - and I'll agree with Ms. Coco in
3 this regard. It wasn't intended to compel platforms to
4 take content down if there was a complaint. I think that's
5 what A goes to.

6 Section B says that it's not going to add or
7 increase liability for social media network for anything
8 other than the failure to provide a mechanism for a user to
9 report the social media network, for instance, of hateful
10 conduct and - - - on their platform and to receive a
11 response of such report. In other words, the part that the
12 savings clause does not save is complying with the law as
13 set forth in the earlier provisions in the definition of
14 hateful conduct, the reporting mechanism, the policy
15 requirement, and so on.

16 And if you're curious about what the Attorney
17 General meant by that, the report that was issued in
18 October 2002 that followed the Buffalo shooting explained
19 exactly what the Attorney General meant by this. At Joint
20 Appendix 76, it says, "Online platforms must be more
21 transparent in their content moderation policies and how
22 those policies are applied in practice, including those
23 that are aimed at addressing hateful, extremist, racist,
24 and violent content. This will aid accountability and give
25 the public clarity regarding the nature and success of

1 industry moderation efforts." And goes on to say, "We can
2 no longer entirely rely on the industry to regulate itself
3 through voluntary commitments." That was reflected then in
4 the letters in October 2000 - - - 2023, after the attack on
5 Israel. And it indicates that this statute does have more
6 teeth than the Attorney General is saying so in its
7 interpretation.

8 CHIEF JUDGE WILSON: Thank you.

9 JUDGE HALLIGAN: Counsel, can I ask you to
10 address those letters, please? And in particular, how some
11 of the excerpts, which are at pages 37 to 39 of your
12 adversary's brief, how they square with your reading of the
13 statute as allowing for generic policies and generic
14 enforcement reporting mechanisms.

15 MS. COCO: So Your Honor, those letters had
16 nothing to do with the statute. They didn't reference the
17 statute. The statute had been enjoined the entire time it
18 had been in effect. And so those letters were really
19 requests for information about - - -

20 JUDGE HALLIGAN: Under what statutory authority?
21 Generally, I thought that when the Attorney General issued
22 a letter like this, it was because there was some - - -
23 even if it's not, in fact, a subpoena, I don't know whether
24 these were or weren't, but it was because the Attorney
25 General has some enforcement authority. So what was the

1 underlying enforcement authority here, if not that?

2 MS. COCO: So these were absolutely not
3 subpoenas. They were very much voluntary requests for
4 information. So they say things like, we would like to
5 better understand and we request. And when networks refuse
6 to respond or didn't answer some of these requests, there
7 was no sort of follow up.

8 JUDGE HALLIGAN: So you're saying that these
9 letters were not sent predicated on any investigative
10 authority at all?

11 MS. COCO: So the letters don't make reference to
12 any investigative authority, and they don't threaten any
13 enforcement. Now, the District Court did recognize that
14 there's other statutes that might give the Attorney General
15 this type of authority, but I think the primary argument we
16 would make is that there is no need for investigative
17 authority for this type of letter. And the District Court
18 agreed with us that these were voluntary requests for
19 information. They weren't, you know, compulsions. They
20 weren't an enforcement subpoena.

21 And the idea there was that the Attorney General
22 was responding to the specific incident where there had
23 been this extremely dramatic rise in calls for violence on
24 social media.

25 JUDGE HALLIGAN: Is your view that - - - that the

1 statute, as you interpret it, would it authorize the
2 Attorney General to send letters along these lines, or no?

3 MS. COCO: Your Honor, I don't think anything in
4 the statute would authorize the Attorney General to send
5 letters along these lines. These letters are really not
6 connected to the statute at all, which was enjoined. We
7 were aware of the preliminary injunction. We weren't
8 trying to violate the injunction. And the District Court
9 concluded that these letters did not violate the
10 injunction.

11 JUDGE HALLIGAN: So under your reading, you could
12 not issue a subpoena or commence an enforcement proceeding
13 that would entail asking what your process is for
14 identifying and removing calls for violence and reposting
15 the content.

16 MS. COCO: So Your Honor, I think the enforcement
17 authority would have to be tied to a reason that the
18 statute - - - or excuse me, that the network is failing to
19 comply with the policy disclosure.

20 JUDGE HALLIGAN: Probably.

21 MS. COCO: So we need some reason to think they
22 were not accurately disclosing their policy. And the bar
23 for liability is very high in the statute. There's a
24 scienter requirement. So there'd have to be a knowing
25 misleading of consumers. So maybe if we had an employee

1 whistleblower that says my network has 50 - - -

2 JUDGE HALLIGAN: I guess what I'm asking, though,
3 is what - - - in terms of what you understand the scope of
4 the obligations in the statute to be, not what the level of
5 scienter is. Do you think that you could read the - - - if
6 the statute is read as you propose, would it require a
7 platform to have the kinds of disclosures that are set
8 forth in - - -

9 MS. COCO: No.

10 JUDGE HALLIGAN: - - - in the letter request?

11 MS. COCO: Absolutely not. No, no. And I would
12 just say Rumble does have a policy of prohibiting violence.
13 That's a publicly available policy they have. So that's
14 not the Attorney General assuming they have that policy.
15 That's a public policy they've posted and that they've
16 alleged in the complaint.

17 JUDGE GARCIA: Counsel - - -

18 JUDGE RIVERA: What if it just had - - - you
19 know, you went on the site and it just had many, many
20 postings of vile, hateful language inciting violence, would
21 that be enough to request further information under this
22 section?

23 MS. COCO: No, Your Honor. Because the statute
24 does not give the Attorney General the authority to require
25 networks to take down any particular content or have any

1 particular policies. And the Attorney General recognized
2 in that report that my friend was reading from that the
3 First Amendment would not allow that type of requirement.
4 And actually, the Attorney General was calling for a change
5 to current law. So that's the part that he was reading
6 from. A change to section 230 of the Communications
7 Decency Act - - -

8 JUDGE CANNATARO: Your position is - - -

9 MS. COCO: - - - under federal law.

10 JUDGE CANNATARO: -- - I believe, correct me if
11 I'm wrong, that this - - - that the statute doesn't require
12 the network to do anything with a report of hateful
13 conduct?

14 MS. COCO: That's correct. So long as they
15 disclose that to users. And I'd like to refer the court to
16 the Joint Appendix at 119, which is Professor Volokh's blog
17 post. And I just want to point to this because he
18 interpreted the statute exactly the way that you do - - -

19 JUDGE GARCIA: Counsel, your light is on. So if
20 I - - -

21 MS. COCO: Yes. Yes, Your Honor.

22 JUDGE GARCIA: - - - if I might just ask a
23 question. If I'm a social network provider and I don't
24 believe my users should have to report anything. I think
25 it's burdensome. I think it's a violation of their rights.

1 Whatever I think. I don't think they should have to report
2 anything. Now this law comes out. How do I comply?

3 MS. COCO: So you would have to have a way for
4 them to report as a technical matter and it'd have to be
5 accessible. But then you could have a policy that says, I
6 don't think my users should have to report anything, so
7 report whatever you want, but I'm not going to respond.

8 JUDGE GARCIA: But then I have to make it even
9 broader than I want. I want to do the minimum I have to do
10 because I don't think anyone should have to report. So how
11 do I do that?

12 MS. COCO: So if you wanted to have a very narrow
13 reporting mechanism, you could say, this statute requires
14 me to have a reporting mechanism for hateful conduct.
15 That's all you can report. I don't think you should have
16 to report anything.

17 JUDGE GARCIA: And I don't have to define it
18 because I want to make it as narrow as possible. So I just
19 want to comply with the statute.

20 MS. COCO: You would not have to define it. No.
21 The statute doesn't require you to reference or adopt - - -

22 JUDGE GARCIA: But then people are going to
23 report whatever they think is hateful conduct. So it may
24 indeed be broader than your definition. And I only want
25 them to report the minimum, because my view is you

1 shouldn't have to report anything. So I only want to
2 report the minimum. So how do I comply with that and
3 adhere to that philosophy of mine? How would I do that?

4 MS. COCO: I suppose a network could say
5 something like, you are only allowed to report what I'm
6 legally required to.

7 JUDGE GARCIA: And then - - -

8 MS. COCO: I mean, I'm just not sure - - -

9 JUDGE GARCIA: And then what would that be?

10 MS. COCO: So - - -

11 JUDGE GARCIA: Then I wouldn't have to reference
12 what I'm legally - - - what you're legally required to
13 allow you to report?

14 MS. COCO: Maybe I'm not - - - I'm not sure I'm
15 following the question.

16 JUDGE GARCIA: So I don't want you to report
17 anything. That's my - - - I have no mechanism. I don't
18 want to do anything. I don't believe in this. And then
19 you pass this law. And now I want to do the minimum amount
20 I need to do because I have to comply with the law. How do
21 I do that without being overbroad in what I'm telling
22 people they can report?

23 MS. COCO: So I think you would have to have a
24 way for them to report hateful conduct. And you could
25 describe what you were doing in a number of different ways

1 to kind of put forward your views about what they should
2 and shouldn't report. But you do have to accept - - -

3 JUDGE GARCIA: But I don't want my views - - - I
4 just want them, my users, to only have a mechanism of what
5 they have to report under this - - - but I have to let them
6 report under the statute. And I'm struggling to see how I
7 would do that if I want to do only the minimum I'm required
8 to do under the statute without telling them what's in the
9 statute.

10 MS. COCO: So I think our point, Your Honor, is
11 that the specific First Amendment right here with respect
12 to the disclosure and the reporting mechanism, is that you
13 don't have to speak about the definition of hateful
14 conduct. So you can have this general reporting mechanism,
15 and you're not speaking about the definition. Now that
16 might be more - - -

17 JUDGE GARCIA: But then I have to have a general
18 reporting mechanism.

19 MS. COCO: So - - -

20 JUDGE GARCIA: That's the answer.

21 MS. COCO: That might be more general - - -

22 JUDGE GARCIA: Like either I have to have all or
23 nothing, like - - -

24 MS. COCO: You do have to comply with the statute
25 in terms of what's actually accepted for reports. Yes. So

1 you would have to have that - - - those minimum reports be
2 accepted.

3 JUDGE RIVERA: You're saying in response to Judge
4 Garcia's question, there is no way that a network could
5 craft a policy that it would announce on its website, at a
6 minimum, that would say that you - - - you can use this
7 mechanism to report hateful conduct as defined by New York,
8 which I think is what Judge Garcia is saying. This is a
9 network that doesn't want to have any reporting mechanism.
10 But if the law is upheld, okay. I only want to create a
11 mechanism to report exactly what they say must, at a
12 minimum, be reported. I think the question is how would
13 they communicate that? What's the least amount of
14 information they would give to a user so they would be in
15 compliance? If that's the way that particular - - - the
16 hypothetical Judge Garcia is going through - - - the
17 hypothetical network wants to try and comply? You're
18 saying there's - - - there's no way to do that. You either
19 do it all - - - you're all in, or you accept this
20 definition and set it out full throttle.

21 MS. COCO: Well, Your Honor, I guess it would
22 depend on what the - - - I think this is part of the - - -
23 the challenge or the pre-enforcement challenge. I think it
24 - - - it would depend on what the network was doing and
25 whether it was consistent with the terms of the statute.

1 So I'm not - - -

2 JUDGE RIVERA: No, no, no. But now you're just
3 trying to avoid the question because the question is what
4 does the statute require?

5 MS. COCO: Yes, Your Honor. So I'm not
6 immediately seeing how the network could - - -

7 JUDGE RIVERA: So all I understood this question
8 to be to you is what would be the minimal thing that a
9 network could do to satisfy this statute?

10 MS. COCO: So I think - - -

11 JUDGE RIVERA: Doesn't want to go one letter more
12 than is required.

13 MS. COCO: I think it depends on how you think
14 about minimal. I am trying to answer the question, but I
15 do think it depends on whether they want to say as little
16 as possible - - - if they want to closely circumscribe it
17 to the conduct - - -

18 JUDGE GARCIA: I don't want to say as little as
19 possible. I want reported as little as possible.

20 MS. COCO: Then I think probably tracking the
21 definition is going to be the most effective way to do
22 that. But that's not the statute requiring them to speak
23 about the definition. That's a choice they're making.

24 JUDGE GARCIA: No. But you've set the minimums.
25 So why isn't that the statute telling me what I have to do

1 - - -

2 MS. COCO: Because again - - -

3 JUDGE GARCIA: - - - and what I have to tell
4 them?

5 MS. COCO: Again, the network could comply in
6 other ways that would not require them - - -

7 JUDGE GARCIA: By being overbroad.

8 MS. COCO: - - - to speak about the definition.
9 But that - - - they don't have a First Amendment right not
10 to accept complaints. The Second Circuit already
11 determined that. So it's really just a question of whether
12 they have to speak about the statute - - -

13 JUDGE GARCIA: No. I'm willing to comply. I'm
14 the provider. I'm not saying I don't have to do this. I'm
15 saying I want to do the minimum I want to do to comply with
16 your new law. And it seems like we're twisting ourselves
17 into pretzels because you don't want them to have to say
18 this, but I don't see any other way to do it. And I do
19 sort of come back to this idea, you know, we've heard that
20 this was legislation that was in response to a truly
21 horrific act of violence. And it seems to me that the
22 bottom line is you're saying that to comply with this
23 statute, a provider could put online, you can report
24 anything you want, you can use this link. And we're not
25 going to do anything about it. That would comply, right?

1 MS. COCO: Yes. We agree.

2 JUDGE GARCIA: And that's the response to that
3 act of violence? That's what the legislature intended?

4 MS. COCO: So I think the legislature was
5 appropriately recognizing that the First Amendment does
6 impose serious limitations here. And you can see that in
7 part 4 where they said, we're not trying to do anything
8 that would violate the First Amendment. They referred to
9 this repeatedly as a modest, small step. They were trying
10 to do something narrow that would be consistent with the
11 First Amendment. And that's what our interpretation
12 achieves.

13 JUDGE RIVERA: What if - - - again, in response
14 to this particular hypothetical, that the network doesn't
15 want to do this, but if the law is upheld, they want to be
16 in compliance, but only as narrowly as possible, only the
17 minimal to comply. What if the website merely indicated
18 and explained what was the mechanism to submit - - - let me
19 just get this right. I want to use the language of the
20 statute. I'm sorry. To report incidences as provided by,
21 and then just cite the section without using the words
22 hateful conduct. Would that be in compliance, do you
23 think?

24 MS. COCO: I think that would probably be fine.
25 Yes.

1 JUDGE GARCIA: Does that get you anything? I
2 mean, I'm not saying what the statute says. I'm just
3 citing it.

4 MS. COCO: So Your Honor - - -

5 JUDGE GARCIA: Is that different?

6 MS. COCO: - - - I think it would turn on whether
7 it would be clear to a user whether they could actually
8 report hateful conduct. And I think there's a strong - - -
9 I don't think we would try to enforce the statute against
10 someone that was doing that, because I think there would be
11 a strong argument that that would be sufficiently clear.
12 It may not be the most clear way, but I think it would be
13 sufficiently clear.

14 JUDGE RIVERA: It requires more than one step.

15 MS. COCO: Yes.

16 JUDGE RIVERA: For the person who doesn't know -
17 - -

18 MS. COCO: Yes, I agree.

19 JUDGE RIVERA: - - - what the statute says - - -

20 MS. COCO: I agree.

21 JUDGE RIVERA: - - - they're going to have to go
22 to the statute.

23 MS. COCO: Yes.

24 JUDGE GARCIA: Could you put every other word in
25 and then, you know, you could get the gist of it, but you'd

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have to go to the statute?

MS. COCO: I don't want to go back to this, but I do think these are better brought as as applied challenges after there's been some enforcement. So that's what I'll say about that.

CHIEF JUDGE WILSON: Thank you.

MS. COCO: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Bobby Hodges, certify that the foregoing transcript of proceedings in the Court of Appeals of Volokh v. James, No. 58 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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