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Summarizing recent significant New York appellate cases

The Court of Appeals recently addressed whether New York's Hateful Conduct Law compels social media companies to speak in violation of their First Amendment rights, holding that its reporting and disclosure requirements merely mandate that the companies make reporting avenues available to users, but do not require companies to respond to reports of hateful online discourse. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last few weeks.

COURT OF APPEALS

CONSTITUTIONAL LAW, HATEFUL CONDUCT LAW

***Volokh v James*, 2026 NY Slip Op 03913 (Ct App June 23, 2026)**

Issue: Can a social media network comply with New York's new Hateful Conduct Law (General Business Law § 394-ccc) without explicitly referencing its definition of hateful conduct, and does the statute require a social media network to respond to a user report of hateful conduct?

Facts: "In 2020, a bill was introduced in the New York legislature that proposed to combat the rise of hateful rhetoric on social media by regulating the moderation policies of social media networks. The bill would have required social media networks to remove or block access to 'hate speech' within 24 hours of receiving a user complaint and to "immediately' notify the person submitting the complaint about any decision, along with the reasons for the decision." That bill, however, never passed. After the 2022 mass shooting at a Tops supermarket in Buffalo, however, "the legislature passed the Hateful Conduct Law with significant bipartisan support. As its plain text makes clear, the HCL is significantly more limited in scope than the 2020 proposed legislation. The HCL contains two substantive requirements, which the parties and federal courts have referred to in this litigation as the 'Report Mechanism Requirement' and the 'Policy Disclosure Requirement.'"

The Report Mechanism Requirement mandates that social media companies in New York "provide and maintain a clear and easily accessible mechanism for individual users to report incidents of hateful conduct." And the Policy Disclosure Requirement provides that social media companies must "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."

Plaintiffs—Eugene Volokh of the Volohk Conspiracy blog, and two social media companies—challenged the Hateful Conduct Law in federal court, arguing, among other things, that it violated the First Amendment by compelling speech. The District Court granted a preliminary injunction against enforcement, reasoning that "the statute requires social media networks to 'speak about' and even 'endorse the state's message about "hateful conduct"' by publishing policies 'expressly indicating that their users have a mechanism to complain about the "hateful conduct" as defined by the'" law and could have a chilling effect on social media users' protected speech. The state appealed, and the Second Circuit certified three questions to the Court of Appeals:

> (1) Does a social media network comply with N.Y. Gen. Bus. Law § 394-ccc(3)'s requirement to publish a 'clear and concise policy . . . which includes how such social media network will respond and address the reports of incidents of hateful conduct on their platform' if its policy does not explicitly reference or address the content encompassed by the statute's definition of 'hateful conduct' and does not otherwise address content that encompasses this defined category?
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> (2) Does a social media network comply with N.Y. Gen. Bus. Law § 394-ccc(2)'s requirement to 'provide and maintain a . . . mechanism for individual users to report incidents of hateful conduct' if that mechanism does not explicitly reference or address the content encompassed by the statute's definition of 'hateful conduct' and does not specifically state that content meeting the statute's definition of 'hateful conduct' may be reported using that mechanism?; and
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> (3) Does N.Y. Gen. Bus. Law § 394-ccc require a social media network to provide a direct response to any individual reporting hateful conduct informing them of how the matter is being handled?"

Holding: Answering the certified questions, the Court of Appeals explained that the Hateful Conduct Law does not require creation of a reporting mechanism specifically for hateful conduct or referencing the statute's definition of hateful conduct. The Court held, "the statute does no more than require a social media network to create and maintain a tool capable of performing two minimum basic functions: it must (1) enable users to notify a social media network of hateful conduct posted to its platform should they choose to do so, and

(2) enable the network to respond to such reports should it choose to do so. Inasmuch as the HCL does not require that the tool be provided 'solely' or 'exclusively' for users to report incidents of hateful conduct, the statute is not offended where a social media network's reporting tool can be used, without definition or limitation, to report anything a user wishes to report. Nor does the plain language of the HCL require that networks explain or publicize the reporting mechanism to users with reference to the statutory definition of hateful conduct. On this point, the statute states only that the mechanism itself must be 'clear and easily accessible' to users; it does not by its terms require the network to encourage users to report hateful conduct or to reference or define that term for them. A simple, unobscured 'report' button that provides a means for users to report any complaint, whatever its nature, constitutes a clear and easily accessible mechanism for users to report incidents of hateful conduct. Thus, it is only if a network's reporting mechanism cannot be used to report hateful conduct, including if the network has no reporting mechanism for any content at all, that this requirement is violated."

The Policy Disclosure Requirement also can be satisfied without reference to the statute's hateful conduct definition, the Court held, "as long as the network's explanation is broad enough to encompass, or *include*, content falling within the HCL definition of that term. For example, a network might disclose that out of respect for its users' freedom of expression, it will not regulate or remove any content posted on its platform. Such a disclosure would necessarily inform users that the network will do nothing in response to reports falling within the statutory definition of hateful conduct—or any other content." And that would satisfy the Policy Disclosure Requirement. The Court therefore concluded "that a network satisfies its disclosure obligation when an ordinary user can readily infer from the network's policy notice what it will do in response to a report of content that vilifies, humiliates, or incites violence against a protected class."

Finally, the Court held, the Hateful Conduct Law does not compel any speech or require a social media company to respond to reports of hateful conduct. "The Report Mechanism Requirement provides only that a network's reporting tool must 'allow' a network to respond to a user report of hateful conduct, not that it must do so. Similarly, the Policy Disclosure Requirement mandates that social media networks disclose 'how' they will respond to and address reports of hateful conduct. It does not require them to adopt any particular policy on responding to such reports. No other substantive provision of the statute even arguably requires a social media network to take particular action in response to a report of hateful conduct."

Therefore, the Court explained, "[t]he purpose of the HCR was not to regulate networks' moderation decisions or to compel networks to endorse the State's view that hateful conduct is socially destructive. It was to empower private individuals—social media *users*—by equipping them with the mechanisms and information they need to bring hateful conduct to networks' attention, and to identify those platforms whose policies condone such content. Specifically, the Report Mechanism Requirement ensures that social media users can express their concerns to networks about hateful conduct on their platforms, while the Policy Disclosure Requirement informs users as to what, if anything, a network will do in response to such complaints. The legislature could rationally have concluded that such mechanisms and information may be important to consumers in this age of increasingly toxic online discourse and real-world violence. Together, the requirements *facilitate* users' speech by giving them a channel to express complaints, and compel transparency by networks rather than endorsement, enabling users to make informed decisions when choosing among platforms based on their reporting mechanisms and procedures."

CIVIL PROCEDURE, NOTICE OF CLAIM

***Incorporated Vil. of Freeport v Freeport Plaza W., LLC*, 2026 NY Slip Op 03906 (Ct App June 18, 2026)**

Issue: May a village be equitably estopped from asserting a CPLR 9802 defense for a party's failure to file a notice of claim prior to bringing a claim?

Facts: Following a failed land sale transaction, the Village of Freeport sued Freeport Plaza West, LLC ("FPW") for breach of contract. FPW filed counterclaims for anticipatory breach, which the Village answered, asserting as an affirmative defense failure to satisfy condition precedents to suit. After 17 months of litigation, the Village moved to dismiss FPW's counterclaim for failure to comply with CPLR 9802's notice of claim requirements. FPW did not dispute that it failed to serve a notice of claim, but argued instead that the Village "should be equitably estopped from invoking the notice of claim requirement, contending that the Village had commenced the action and had actual knowledge of the contract dispute from which the counterclaim arose, but deliberately delayed raising the issue until the eve of trial, at which point the statutory limitation period on the counterclaim had expired."

Supreme Court denied the Village's motion, declining to enforce the notice of claim requirement because "the Village had failed to raise the notice of claim issue" throughout the litigation and "FPW's counterclaim arose out of the same occurrences asserted in the Village's complaint," so the Village "had every opportunity to investigate and defend that it would have been afforded if a notice of claim had been filed and was not prejudiced.

The Appellate Division, Second Department reversed and granted the Village's motion to dismiss FPW's counterclaim. "The Court determined that the Village had litigated to prosecute its own breach of contract claim, rather than attempting to lull the defendant to sleep on its rights; that its conduct was not calculated to, or negligently did, mislead or discourage FPW from serving a timely notice of claim; and that FPW had not justifiably relied upon the Village's actions." Therefore, application of equitable estoppel was improper.

Holding: The Court of Appeals affirmed. Explaining that CPLR 9802 is of one of the many notice of claim provisions applicable to claims against government entities, which "afford local governments the opportunity to fully investigate and, if regarded as appropriate, to settle claims without the expense and hazards of litigation," the Court held that application of equitable estoppel against a government agency's reliance on a notice of claim statute is rarely warranted. Indeed, the Court noted, "[w]here the text of a notice of claim statute" permits no exception, we have concluded that the Legislature intends its enforcement even if the government had actual knowledge of the claim or failed to demonstrate actual prejudice. And we have repeatedly rejected proposals to compromise the strict statutory notice of claim requirement to avoid uncertainty and vexatious disputes, even where such requirements yield harsh results." Thus, the Court explained, courts should not apply equitable estoppel against a municipality to foreclose a failure to file a notice of claim defense "absent a showing of wrongful or misleading conduct" by the municipality.

Here, the Court held, "the Village did not engage in wrongful or misleading conduct warranting the application of equitable estoppel. As the Appellate Division correctly determined, participation in litigation, without more, does not constitute action calculated to mislead or discourage a party from filing a notice of claim. That holds true here, where the Village was pressing its own breach of contract claim and therefore had every reason to participate in discovery and related court conferences, independent of FPW's counterclaim . . . Notice of claim statutes are longstanding procedural requirements in municipal litigation and compliance is not overly burdensome. We do not condone the Village's litigation conduct, but nothing prevented FPW, represented by experienced legal counsel, from filing a notice of claim. To the extent FPW relied on the Village's conduct to their detriment, such reliance was unreasonable."

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