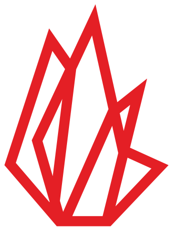

FIRE
Foundation for Individual
Rights and Expression

October 18, 2023

Letitia James, Attorney General for the State of New York
Judith Vale, Deputy Solicitor General for the State of New York
Jordan Adler, Senior Enforcement Counsel
Office the New York State Attorney General
28 Liberty Street
New York, New York 10005

Re: , No. 22 Civ. 10195 (S.D.N.Y): Demand to rescind October 12, 2023 investigation letters seeking social-media platform policies and actions related to removing third-party-posted "materials that may incite violence"

Dear Attorney General James, Ms. Vale, and Mr. Adler:

I am an attorney at the Foundation for Individual Rights and Expression and counsel for Rumble Canada Inc. (Rumble) in the above-referenced litigation. I am writing to demand the immediate and unequivocal retraction of your October 12, 2023 investigation letters to six internet platforms, including Rumble (collectively referred to as the Investigated Platforms). These letters violate (1) a federal district court's injunction against the enforcement of New York General Business Law § 394-ccc (the Online Hate Speech Law); (2) the active stay of all proceedings in that case as to Rumble; and (3) the First Amendment rights of the Investigated Platforms and their users.

Your letter set a deadline of October 20, 2023, for Rumble's response. If you do not rescind your letter by that date, we will file a motion with the district court to enforce the terms of the preliminary injunction and stay of the proceedings.

As the Attorney General's Office knows, Rumble, in addition to Locals Technology Inc. (Locals) and Eugene Volokh, is a plaintiff in a lawsuit against Attorney General James challenging New York's Online Hate Speech Law. The law targets "hateful" speech across the internet—defining "hateful" content as that which may "vilify, humiliate, or incite violence against" ten protected classes—requiring websites to develop and publish hate-speech policies and reporting mechanisms, and to respond to reports of hate speech. But Judge Andrew Carter of the U.S. District Court for the Southern District of New York

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enjoined enforcement of the law, including the law's investigation and enforcement provisions. , No. 22 Civ. 10195, 2023 WL 1991435 (S.D.N.Y. Feb. 14, 2023).

The October 12th letters "request" information about the Investigated Platforms' editorial policies, processes, and decisions for content that "may incite violence." At a minimum and on their face, the letters plainly seek to allow the Office to "take proof and make determinations of fact" under the Online Hate Speech Law. And according to your October 13th press release, the letters go further by demanding that the Investigated Platforms disclose their actions to "stop the spread of hateful content" and "violent rhetoric," in a transparent effort to get them to "remove" protected speech.[1] Because these demands, compounded by their vague references to hateful or violent speech, are within the scope of the Online Hate Speech Law's investigation provision,

, 2023 WL 1991435 at *1. The court recognized that websites and social media networks, including Rumble (as well as Locals and Professor Volokh's legal blog), "are publishers and curators of speech, and their users are engaged in speech by writing, posting, and creating content." . at *9. The Online Hate Speech Law, therefore, "fundamentally implicates the speech of the networks' users," too. . Because "the First Amendment protects individuals' right to engage in hate speech, and the state cannot try to inhibit that right, no matter how unseemly or offensive that speech may be to the general public or the state," , and the law was not narrowly tailored to regulate only categories of unprotected speech, . at *8 n. 3, Judge Carter held that the Online Hate Speech Law is likely to have "a profound chilling effect" on protected expressive activity. In fact, he deemed the law's burden on Rumble, Locals, and Volokh and their users to be "particularly onerous" because their "websites have dedicated 'pro-free speech purposes.'" at *16–17. On this basis, the district court enjoined any enforcement of § 394-ccc.

One month later, the State appealed the district court's decision to the U.S. Court of Appeals for the Second Circuit. The following day, the State sought to stay all discovery and other litigation deadlines pending appeal—but did seek to stay the injunction. The district court granted the motion to stay—over Rumble, Locals, and Volokh's written objection—until 30 days after the conclusion of all appeals of the preliminary injunction. No. 22 Civ. 10195 Order, ECF No. 37. Briefing is now complete in the Second Circuit and the case is awaiting oral argument to be scheduled. The injunction against § 394-ccc's enforcement remains in effect.

On October 7, Hamas militants broke through the wall separating Israel and Gaza and engaged in deadly

repeated "action[s] to hold social media companies accountable and limit dangerous material from spreading online."

proof and make determinations of relevant facts." And this provision, like the entirety of the Online Hate Speech Law, is enjoined from enforcement. , 2023 WL 1991435, at * 10. Indeed, the investigation letters do not explicitly invoke any legal authority under which the State is demanding information and internal documents from the Investigated Platforms—perhaps because the implicit statutory authority has been enjoined.

The Attorney General's rhetoric in her October 13th press release also demonstrates that the State is attempting to exercise its investigation authority provided by the now-enjoined Online Hate Speech Law. The press release explicitly mentions Investigated Platforms' responsibility for "hateful content." Consistent with the Attorney General's 2022 comments, the release notes her mission "to hold social media companies accountable and limit dangerous material from spreading online." And like the legislators who argued in support of the Online Hate Speech Law, the Attorney General argues that Investigated Platforms must "keep their users safe" by "prohibit[ing] the spread of violent rhetoric that puts vulnerable groups in danger"—the exact subject matter of the Online Hate Speech Law.

The investigation letters represent an exercise of the State's authority to "take proof," and therefore violate the Southern District of New York's preliminary injunction. The letters must be rescinded immediately.

Insofar as the State seeks from Rumble non-public information that would be available only through discovery in —or through enforcement of the Online Hate Speech Law, which, as noted above, is currently enjoined—the investigation letters violate the district court's stay insisted upon by the State. The State sought a stay "to further district court proceedings in the interest of judicial economy." ECF No. 36 at 1. The State predicted that, in the absence of a stay, "at a minimum," it would seek discovery about "whether the suing Plaintiffs are properly within the Statute[.]" . at 3. Thus, the State argued for the district court to stay the case pending appeal "to avoid unnecessary jurisdictional discovery." . at 4. The district court agreed and ordered the clerk of court to "mark this case as stayed." ECF No. 37.

While it should not need to be said, litigants cannot propound discovery while recognizing no obligation to discovery while a case is stayed. But the Office of the New York Attorney General has done just that with its letters,

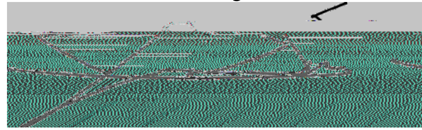
New York Attorney General Letitia James

Calls for Violence on the [company] Platform."[5] (emphasis added). The word "remove," or variations of it, appears 10 more times in the two-page letter, with repeated references to "identifying" and "blocking" disfavored content. Combined with the Attorney General's October 13th press release and her past rhetoric, the Investigated Platforms can draw only one conclusion: The chief law-enforcement agent in New York, with vast resources at her disposal, wants what she determines to be "hateful content" and "violent rhetoric" related to Jewish and Muslim people removed from online platforms—and there may be legal consequences if platforms do not do so to the State's satisfaction. This conclusion requires the Investigated Platforms, among others, to "steer far

discriminatory, overbroad, and vague speech regulations—so too does the State's investigation impinge the free publication and creation of protected speech on Investigated Platforms' websites. For example, the Supreme Court has repeatedly observed that the First Amendment protects the editorial discretion of newspapers.

Please do not hesitate to contact Jay Diaz at jay.diaz@thefire.org or (215) 717-3473 ext. 218 if you have any questions.

Sincerely,



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cc: Sarah Coco, Barry Covert