



**In re: Requiring Social Media Networks to Provide Mechanisms
for Reporting Hateful Conduct
(Bill S.4511-A-Kaplan/A.7865-A-Fahy)
Memorandum of Opposition**

Bill S.4511-A-Kaplan/A.7865-A-Fahy would require each social media network to provide and maintain a mechanism that allows users to inform that social network about hateful conduct occurring on that network's internet platform. The bill would also require each social media network to create policies addressing how reports of hateful conduct will be handled.

New Yorkers for Constitutional Freedoms is sympathetic to the purpose behind this legislation. Media reports indicate that the alleged perpetrator of the racially motivated mass murder that occurred in Buffalo on May 14, 2022 shared a 180-page manifesto online days before committing his barbaric acts. If another user had seen the manifesto and spoken up about it, perhaps this horrific act of violence could have been prevented.

This legislation, however, is problematic. The chief concern about the bill is its definition of "hateful conduct." The bill defines the term as "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." This definition is both underinclusive and overinclusive. First, the definition does not include hateful conduct directed at individuals, but only hateful conduct directed at entire groups. If a reporting mechanism like this is to be created, it should include hateful conduct or threats directed at a single person. It should also include hateful conduct or threats that are not necessarily based on racial prejudice or other forms of bigotry. Second, this definition does not effectively distinguish between statements of disagreement and expressions of hatred. Last year, Twitter suspended the account of U.S. Rep. Jim Banks (R-IN) after he referred to U.S. Assistant Secretary for Health Rachel Levine as a "man." (Assistant Secretary Levine self-identifies as "transgender.") Rep. Banks did not use hateful, derogatory, or threatening language toward Assistant Secretary Levine or anyone else, but he lost his Twitter privileges anyway. This legislation could have a similar effect. If a

Christian social media user politely expresses disagreement with the notion that a person can change his or her sex, it is quite possible that another user could report the Christian and claim that the statement has caused them to feel vilified or humiliated. This section of the bill must be amended to avoid scenarios in which social media networks are invited to become politically correct thought police.

There is also a secondary concern about this bill. While the bill requires social media networks to create policies to address hateful conduct, it is silent on the question of what those policies should say. The key question of when a social media network is obliged to notify law enforcement about hateful conduct is left unanswered.

Unless and until these problems are conclusively addressed, New Yorkers for Constitutional Freedoms is constrained to oppose this bill.