



# FIRE

Foundation for Individual  
Rights and Expression

August 18, 2022

Via USPS Priority Express Mail and Electronic Mail (hoppel@nysenate.gov)

Eric M. Hoppel  
Director of Media Services  
New York State Senate  
State Capitol Building  
Albany, New York 12247

Dear Mr. Hoppel:

FIRE<sup>1</sup> writes to convey our concern regarding the New York State Senate's use of its official Twitter account (@NYSenate) to block users and hide tweets critical of the Senate, its members, or pending legislation. This practice not only undermines democratic participation, but violates the First Amendment.

We represent William J. Silver, who used Twitter as a responsible New York citizen to track legislation pending before his state legislature. After the U.S. Supreme Court struck down, on Second Amendment grounds, a New York law requiring a license to carry a firearm outside of the home, Gov. Kathy Hochul called an extraordinary session of the legislature, which adopted new legislation.<sup>2</sup> The Senate tweeted that the session would “take up legislation in response to recent changes in federal law.”<sup>3</sup> Silver responded by tweeting the words “Shall not”—a reference to the Second Amendment.<sup>4</sup> In response to this exercise of core political speech, the New York State Senate hid Silver's tweet and blocked his account.

Silver is not alone. New Yorkers regularly complain that the Senate has blocked accounts of users after they criticized legislation, lawmakers, or the Senate

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<sup>1</sup> The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights.

<sup>2</sup> Lauren del Valle & Veronica Stracqualursi, *New York Democratic governor signs law limiting concealed carry of firearms in wake of Supreme Court ruling*, CNN (July 1, 2022), <https://www.cnn.com/2022/07/01/politics/new-york-gun-law-concealed-carry>; *N.Y. State Rifle & Pistol Ass'n v. Bruen*, No. 20-843, 142 S. Ct. 2111, 2126 (2022).

<sup>3</sup> New York State Senate (@NYSenate), Twitter (June 27, 2022, 12:00 PM), <https://twitter.com/NYSenate/status/1541451386151477250>.

<sup>4</sup> Will Silver (@trashrehash), Twitter (June 30, 2022, 2:56 PM), <https://twitter.com/trashrehash/status/1542582939594199041>.

itself. Some, for example, have been blocked after criticizing crime rates,<sup>5</sup> eviction moratoriums,<sup>6</sup> and COVID-19 restrictions.<sup>7</sup> In addition to blocking users, the Senate regularly hides users' tweets from the threads it creates. During the session on gun control, for example, the Senate hid at least 79 tweets critical of the state's response to the Supreme Court's decision.<sup>8</sup>

These practices—as some of the hidden tweets point out—violate the First Amendment, as interactive spaces created by Senate tweets are designated public forums. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 573–75 (S.D.N.Y. 2018). Like then President Trump's account, the Senate's tweets are generally accessible to the public, creating interactive spaces designed for expressive activity. *Id.* at 574. Consequently, viewpoint discrimination is prohibited (*Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018)), and content-based restrictions must satisfy strict scrutiny, meaning they must be “narrowly-tailored” to serve a “compelling” government interest (*Hotel Emps. & Rest. Emps. Union, Local 100 of New York, N.Y. & Vicinity v. City of N.Y. Dep't of Parks & Recreation*, 311 F.3d 534, 545 (2d Cir. 2002)).

Blocking users critical of the Senate or hiding those users' tweets is viewpoint discrimination. *See, e.g., Knight*, 302 F. Supp. 3d at 575 (like the Senate, President Trump blocked users “shortly” after critical tweets); *see also, e.g., Price v. City of N.Y.*, 2018 WL 3117507, at \*16 (S.D.N.Y. June 25, 2018) (blocking user “[v]ery shortly after posting . . . critical tweets . . . strongly suggest[ed]” that the blocks were “on the basis of her viewpoint”). That makes the Senate's actions presumptively unconstitutional. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 830 (1995). Even assuming the Senate could assert that the restrictions served a compelling interest, indefinitely blocking a person from a public forum is unlikely to be narrowly tailored to advance that interest. *See, e.g., Garnier v. O'Connor-Ratcliff*, 513 F. Supp. 3d 1229, 1249–51 (three-year Facebook

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<sup>5</sup> Anonymous (@ModerateMuslim\_), Twitter (Feb. 24, 2022, 12:04 AM), [https://twitter.com/ModerateMuslim\\_/status/1496712735077421056](https://twitter.com/ModerateMuslim_/status/1496712735077421056).

<sup>6</sup> Anna Boim-Marinelli (@anna\_boim), Twitter (Jan. 12, 2022, 7:40 PM), [https://twitter.com/anna\\_boim/status/1481425973274984456](https://twitter.com/anna_boim/status/1481425973274984456).

<sup>7</sup> Anonymous (@7even8ight7even), Twitter (Dec. 20, 2021, 12:38 PM), <https://twitter.com/7even8ight7even/status/1472984878270631944>.

<sup>8</sup> *See* Hidden Tweets, New York State Senate (@NYSenate), Twitter, <https://bit.ly/3RCUmmD>, <https://bit.ly/3z7yCrO>, <https://bit.ly/3IU41RT>, <https://bit.ly/3yDNcpv>, <https://bit.ly/3AZcAsi>, <https://bit.ly/3Octd6S>, <https://bit.ly/3cgdLt3>, <https://bit.ly/3cl2gRu>, <https://bit.ly/3yFMQyr>, <https://bit.ly/3yzM9qk>, <https://bit.ly/3uOf0Gx>, <https://bit.ly/3Pwb4BY>, <https://bit.ly/3IDHnmK>, <https://bit.ly/3uOackm> (last visited Aug. 10, 2022).

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block was not narrowly tailored) (*aff'd, Garnier v. O'Connor-Ratcliff*, No. 21-55118, 2022 WL 2963453 (9th Cir. July 27, 2022)).

As a deliberative body representing the views of all New Yorkers, the Senate should not send the message that dissent is unwelcome. As a government body bound by the First Amendment, the Senate must immediately unblock from accessing its official accounts any users barred based on the content of their posts, and unhide any user content that was removed from its social media pages for viewpoint- or content-based reasons. Moving forward, the Senate must discontinue these practices.

Thank you for your prompt attention to this matter. We would appreciate a response to this letter by the close of business on September 1, 2022. We caution that FIRE is committed to using all of the resources at its disposal to see this matter to a just conclusion for New Yorkers of all viewpoints. To these ends, please find enclosed a public records request pertaining to the Senate's use of social media.

Sincerely,



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cc: Alejandra N. Paulino, Esq., Secretary of the Senate  
(via Express Mail and email: apaulino@nysenate.gov)  
Sen. Andrea Stewart-Cousins, President Pro Tempore and Majority Leader  
(via Express Mail and email: scousins@nysenate.gov)  
Sen. Robert G. Ortt, Minority Leader  
(via Express Mail and email: Ortt@nysenate.gov)

Encl.

## **FREEDOM OF INFORMATION LAW REQUEST**

To Whom It May Concern:

This is a request under the New York Freedom of Information Law (N.Y. Pub. Off. Law § 84 *et seq.*) for the following records related to the New York State Senate's Facebook page (located at <https://www.facebook.com/NYsenate>) and the New York State Senate's Twitter account (located at <https://twitter.com/NYSenate>).

As an initial matter, you have a duty to preserve evidence, including electronically stored information. *VOOM HD Holdings LLC v. EchoStar Satellite L.L.C.*, 93 A.D.3d 33, 41 (N.Y. App. Div. 1st Dep't 2012). If changes to the Senate's social media settings are made, you must ensure that information concerning the accounts or content blocked, hidden, or filtered by the Senate's social media accounts is preserved.

I request:

1. A copy of the full settings for the Facebook page. These records may be accessed through one of three processes:

The first option:

- a. Log in as an administrator of the page.
- b. Navigate to the Facebook page  
(*i.e.*, <https://www.facebook.com/NYSenate>).
- c. On the left-hand side of the page, where it says "Manage Page," scroll to "Settings," located at the left-hand side of the bottom of the page.
- d. Click "General" on the left-hand side of the page.

The second option:

- a. Log in as an administrator of the page.
- b. Go to <https://facebook.com/NYSenate/settings/?tab=settings>.

The third option:

- a. Log in as an administrator of the page.
- b. Navigate to the Facebook page  
(*i.e.*, <https://www.facebook.com/NYSenate>).
- c. Go to this  
URL: [https://www.facebook.com/NYSenate/settings/?tab=settings&ref=page\\_edit&section=download\\_your\\_page](https://www.facebook.com/NYSenate/settings/?tab=settings&ref=page_edit&section=download_your_page).
- d. Click "Download your page."
- e. Select "HTML," "High," and "All time" in the available options.

- f. Make sure only the “Page profile information” and “Page settings” boxes are checked.
  - g. Click “Request a download.”
  - h. When the information is ready to download, enter the password to download it.
  - i. Press “Confirm.”
  - j. Provide the files contained in the .zip file.
2. A copy of the list of banned people and pages for the Facebook page. This record may be accessed in this manner:
  - a. Log in as an administrator of the page.
  - b. Navigate to the Facebook page  
(*i.e.*, <https://www.facebook.com/NYSenate>).
  - c. On the left-hand side of the page, where it says “Manage Page,” scroll to “Settings,” located at the left-hand side of the bottom of the page.
  - d. Click “People and other Pages” on the left-hand side of the page.
  - e. On the menu labeled “People who Like this Page,” select “Banned People and Pages.”
3. A copy of the list of “Page Roles” for the Facebook page. This record may be accessed in this manner:
  - a. Log in as an administrator of the page.
  - b. Navigate to the Facebook page  
(*i.e.*, <https://www.facebook.com/NYSenate>).
  - c. On the left-hand side of the page, where it says “Manage Page,” scroll to “Settings,” located at the left-hand side of the bottom of the page.
  - d. Click “Page Roles” on the left-hand side of the page.
4. A copy of the list of words, phrases, or emojis filtered on the Facebook page using the “content moderation” function. This record may be accessed in this manner:
  - a. Log in as an administrator of the page.
  - b. Navigate to the Facebook page  
(*i.e.*, <https://www.facebook.com/NYSenate>).
  - c. On the left-hand side of the page, where it says “Manage Page,” scroll to “Settings,” located on the left-hand side of the bottom of the page.
  - d. On the line marked “Content Moderation,” click the word “Edit.”
  - e. It may also be possible to obtain this list by visiting this URL: [https://www.facebook.com/NYSenate/settings/?tab=settings&ref=page\\_edit&section=page\\_moderation](https://www.facebook.com/NYSenate/settings/?tab=settings&ref=page_edit&section=page_moderation).

5. For each of the “THREADS” identified below, a copy of any hidden comments, with all comments expanded, that are visible when logged in as the administrator of the Facebook page. The records of the hidden comments on the full thread may be accessed through this process:
  - a. Log in as an administrator of the page.
  - b. Navigate to the URL of the thread.
  - c. Be sure you are interacting with the page as the administrator of the page: Click the down-pointing arrow next to the user icon (located near the top of the thread, to the right of the “Like,” “Comment,” and “Share” buttons) and, on the “Choose How to Interact” menu, select the name of the page.
  - d. Click “Most Relevant” (or “Newest” or “All Comments” or “Hidden by This Page”) and, on the menu, select “Hidden by This Page.”
  - e. Make sure the thread is fully expanded: Scroll through the comments and click the links reading “1 reply,” “replies,” or “View more comments” to expand the thread.

For purposes of this request, “THREADS” means and refers to the posts located at:

- a. <https://www.facebook.com/NYsenate/posts/pfbid02Er1rKLE95ppwS89VUpbmZktnRxZYjrq9WQF4UsAKTUrGYJ2KTTudMVC3KxQ2wiCFI>
  - b. <https://www.facebook.com/NYsenate/posts/pfbid0KWJznvTQPYkJTPjVqTwdYEomDqLE4r54SoMadsSEJrN1kTU7UixFjNbgQY4K5V6sl>
  - c. <https://www.facebook.com/photo/?fbid=401385212032317&set=a.244824664355040>
  - d. <https://www.facebook.com/NYsenate/posts/pfbid02kYocdBXnGsUjLyj7smnf2zacD8KYUgajTnLPA3DjbZYcrWTuEqwSyPXFTRM5GJF3l>
  - e. <https://www.facebook.com/NYsenate/posts/pfbid021ZkoxgSbTDdFgc5CqNtda1uVmBTjq2su5i7tGhZ7ELPdAU3FS9QZaLSfit4MnQRl>
  - f. <https://www.facebook.com/photo/?fbid=383821217122050&set=a.244824664355040>
  - g. <https://www.facebook.com/NYsenate/posts/pfbid02GMvr3F9caXrKggorxeQuEhXWpAk6x4LXBfJEkCtiDbpZAUFGLtmMgukJ45NmaLobl>
  - h. <https://www.facebook.com/photo/?fbid=291989132971926&set=a.244824664355040>
  - i. <https://www.facebook.com/NYsenate/photos/a.162761540882/10159409135940883>
6. Any policy concerning public interaction with or comments posted to the New York State Senate’s Facebook or Twitter account.

7. A copy of the list of accounts blocked by the Twitter account @NYSenate. This list is accessible by logging into the account as the administrator and navigating to this URL while logged into the account:  
<https://twitter.com/settings/blocked>.
8. Any correspondence (including emails, text messages, memoranda, letters, or social media messages) sent to, sent by, or received by the Director of Media Services or any person responsible for managing the New York State Senate Twitter or Facebook accounts which (a) contain the words “block,” “blocked,” “blocking,” “unblock,” “unblocked,” “deleted,” “hidden,” “hiding,” or “First Amendment”; and (b) were sent, received, or generated on or after January 1, 2022.
9. A copy of any current organizational chart concerning the employees of the Media Services team.
10. A copy of the current job descriptions for any position reporting to the Director of Media Services.
11. A copy of the current job description of the Director of Media Services.