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# FROM THE SPECIAL EDITORS

## Advancing the Hard Truth Through the First Amendment

Justice Anthony Kennedy once stated, "The First Amendment is often inconvenient."<sup>1</sup> This is especially so in difficult times such as we face today. In a bitterly contested election year, the preexisting sharp social and cultural divisions in our country have been made even more acute by a lethal pandemic that has elicited a variety of responses, whether positive, negative or otherwise. This in turn has led to applications of the First Amendment to unprecedented circumstances, such as government regulations regarding face masks, stay-at-home

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mandates, and limitations on assembly. At the same time, there seems to be a growing trend by some to use the First Amendment, not as a shield to protect the guarantee of universal freedoms but, as a sword to assert a position of individual privilege. But properly applied, the First Amendment advances truth, however inconvenient.

Each of the articles in this edition illustrates how the application of First Amendment principles in various contexts is indeed inconvenient, often giving rise to more questions than answers. Thomas J. Cafferty, Lauren James-Weir, and



**John C. Connell** is a partner/shareholder of Archer & Greiner, P.C., at the firm's headquarters in Haddonfield, and a member of the New Jersey Lawyer Editorial Board. He has represented clients ranging from Fortune 100 companies to individuals in a broad variety of commercial litigation matters, including First Amendment disputes, communications and intellectual property law, civil rights and employment defense litigation, and appellate advocacy.



**Lisa J. Trembly** is Of Counsel with the law firm of Connell Foley LLP at the firm's headquarters in Roseland, and is a long standing member of the New Jersey Lawyer Editorial Board. Her litigation practice encompasses insurance and fraud litigation, consumer fraud actions, and general commercial matters. She also advises clients on contract and insurance coverage issues and potential insurance or consumer fraud claims and violations.

Nomi I. Lowy, discuss the legal implications of wearing face masks as a form of expression, including compliance and non-compliance with government mandates. Walter M. Luers examines the changes to the Open Public Records and Open Public Meetings acts during the pandemic and the exemption on public records during a public health emergency. C.J. Griffin and Howard Pashman consider the novel contours of Free Exercise challenges to COVID-19 regulations. Professor Ronald K. Chen examines recent decisions of the United States Supreme Court with a view as to how they portend future treatment of the Establishment and the Free Exercise Clauses of the First Amendment.

Professor Edward Hartnett analyzes the impact of recent United States Supreme Court decisions on state constitutional law. Professor Laura E. Little offers an exegesis of the role and function of comedy as a form of protected speech. John C. Connell and Anthony M. Fassano critique the evolution of First

Amendment jurisprudence in the context of trademark registration under the Lanham Act. Bruce S. Rosen discusses the emerging trend of Anti-SLAPP statutes taking aim at suits that undermine the rights and value of the First Amendment but absent in New Jersey. Professor Burt Neuborne provides a historical assessment of robust free speech protection as an agent of egalitarian change.

We extend our sincere thanks to each of these authors for sharing their wisdom, knowledge, and keen insights. Their professional contributions are a significant benefit to the legal community, and have made this edition invaluable to attorneys on a professional and personal level.

The landscape of the First Amendment is vast, which is why we are dedicating two magazine issues to this area of law. Among the many different topics that could be addressed, this edition offers several articles on free speech and religion in modern society. We are excited to follow up in Decem-

ber with more First Amendment analysis on freedom, defamation and navigating a digital world, for your thoughtful consideration.

The path forward may not necessarily be well marked. But with continued vigilance on the part of the organized Bar, we expect that First Amendment protections will flourish and truth be meted out in the crucible of ideas. Our historical experiment in a democratic republic deserves no less.

We dedicate this special edition of *New Jersey Lawyer* to the memory of our recently passed colleague, Mitchell H. Cobert, Esq., who among the chairs of this Editorial Board, was an longtime icon of free speech, intellectual integrity, and progressive thought. May his memory be a blessing. ❧

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#### Endnote

1. *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 701 (1992).

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## PRESIDENT'S MESSAGE

*Continued from page 5*

Night party in our hometown of East Brunswick, where Maddie got to meet the very newly elected member of the local school board. She organized the other children at the party to approach the board member to lobby for hot pizza. He saw her passion and told her to reach out and she did. She emailed and set up an appointment and the

board member ended up visiting the cafeteria at her school and sampled the pizza. Based on that, she was invited to make a presentation at a school board meeting and the Superintendent acknowledged the issue.

I am happy to report that she won her election and the ovens were fixed so the children could enjoy hot pizza in the cafeteria. It was a great experience where she got to understand what it takes to be a leader and how to engage in the polit-

ical process to address the needs of the public. We all have limited time. We all have practices and so many other things happening in our lives, especially now. But I implore each of you to make time for democracy. It doesn't matter if you are a Democrat, Republican or Independent, voting rights are voting rights, and I hope the lawyers of New Jersey will seize this opportunity to use and protect this important tool to help "create a more perfect union." ❧

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