

Hastings Constitutional Law Quarterly

Volume 47
Number 2 *Winter 2020*

Article 2

Winter 2020

Foreword

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Recommended Citation

Wendy Melissa Hernandez, *Foreword*, 47 HASTINGS CONST. L.Q. 195 (2020).

Available at: https://repository.uchastings.edu/hastings_constitutional_law_quarterly/vol47/iss2/2

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Editor in Chief's Foreword

On behalf of the *Hastings Constitutional Law Quarterly*, I proudly introduce Issue 2 of Volume 47, “The First Amendment in a Digital Era.” The authors in this Issue engage in breakthrough discourse on the topics of addictive speech in video games and pornography, the evolution of dog-whistles to blowhorns, the rhetoric of “treason” on digital platforms, and chatbot speech. At a time where most (if not all) forms of speech interact with digital media, it is critical to explore what First Amendment implications exist (or should desist) in this form of communication.

Rising scholar Luke Morgan launches this Issue with a trailblazing question: how should the First Amendment treat intentionally addictive speech? Addictive products—such as tobacco, alcohol, and gambling—are considered legitimate regulatory targets. While expressive products—such as newspapers, books, movies, and video games—have been considered essentially immune from content-based regulation, due to the First Amendment. Morgan posits that social research indicates certain behavioral addictions premised on the compulsive use of expressive products—*particularly video games and pornography*—are real dysfunctions of the brain and regulators are beginning to unsteadily lurch into action, without any evidence that they are taking the First Amendment into account. Morgan proposes that, under current doctrine, any such regulation must satisfy strict scrutiny. More fundamentally, Morgan argues, intentionally addictive expression does not merit First Amendment coverage.

Charles Adside, III of the University of Michigan-Ann Arbor bridges the *noise* discussed in Issue 1, with unconstitutional *blowhorns* disguised as Presidential Executive Orders. Adside advances that the recently-litigated travel ban Executive Orders were blowhorns used by President Donald J. Trump to exclaim his disapproval of Islam. Adside concludes that the President’s online statements, however, are not needed to find that the orders violate the Religion Clauses. Though the Supreme Court held that the order it reviewed was religiously neutral, Adside argues that all three orders violated the Religion Clauses on their own terms, structure, and circumstances. Through a paralleled analysis on Establishment Clause jurisprudence and the travel ban executive order trilogy, Adside argues that the Court “put on blinders,” resulting in shortsighted view that is contrary to well-settled Establishment Clause jurisprudence.

Associate Dean for Academic Affairs and Associate Professor of Law at University of Detroit Marcy School of Law, J. Richard Broughton, then provides a contemporary constitutional discourse on the rhetoric of treason. Broughton provides a thorough explanation of what the Treason Clause of the Constitution requires and even points to some of President Trump's actions which are, arguably, treacherous. Ultimately, Broughton asserts the constitutional influence that treason-talk implies, especially when it stems from the President of the United States, who is expected to speak constitutionally sound. Broughton rightfully warns that there are still important conversations to be had about American treason in both the political and legal arenas, thus, if Americans value the criminalization of national disloyalty, he suggests, treason discourse should reach for the Constitution, not ignore it.

Senior Notes Editor for the *Quarterly*, Hilda Kajbaf, concludes this Issue as she contemplates the constitutional implications the "Siris" and "Alexas" of today may have in First Amendment jurisprudence. Specifically, Kajbaf examines whether the Free Speech Clause protects chatbot speech and whether the chatbot itself or the programmer deserves those rights. Kajbaf posits two ways to close this doctrinal gap. First, she argues, the Free Speech Clause could but should not apply to chatbot speech for policy reasons. Second, if the Supreme Court extends constitutional protections to chatbot speech, the Court should identify the chatbot programmer as the speaker. Ultimately, Kajbaf argues that Free Speech rights exist on a continuum, and thus recognition of chatbot speech would not be a revolutionary concept, but an evolutionary one.

I deeply appreciate all editors of the *Quarterly* for their diligent efforts in making Issue 2 of this volume possible.

Respectfully,
Wendy Melissa Hernandez
Editor in Chief, Volume 47
Hastings Constitutional Law Quarterly