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Foreword

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Co-Editor in Chiefs' Foreword

When we started law school in the Fall of 2019, our professors made clear that Constitutional law was undergoing unprecedented changes. From the nondelegation doctrine, to presidential immunity, to even the Appointments Clause, professors prefaced their teachings of Constitutional doctrine with the recognition that the law would likely change before we ever sat for the bar. Doctrine that had remained untouched for decades was suddenly in flux. As new, first-year law students, Constitutional law seemed to be in nothing short of an upheaval.

In the two years that followed, it only became clearer that Constitutional law was going to continue its drastic transformation. We saw the death of Associate Justice Ruth Bader Ginsburg, the appointment of Associate Justice Amy Coney Barrett, and, with that, a newfound 6-3 conservative majority—a Court drastically different from the one we had known all our lives. Now, in 2022, the effects of this new majority are beginning to take shape, perhaps most clearly in the five rights protected by the First Amendment: right to freedom of religion, of speech, of the press, to assemble, and to petition the federal government.

In many ways, the COVID-19 pandemic made reconsideration of First Amendment doctrine all the more inevitable. Between the regulation of worship in churches and the polarizing “debate” about COVID-19 facts and misinformation, our country is being asked to answer difficult questions that rest at the heart of our democratic system. Does the First Amendment protect the marketplace of ideas somewhat absolutely, or should it be balanced against objective interests in health and welfare? What threat does information bubbles pose to our democracy? What role does disinformation, or false information play in the First Amendment? There are no resolute answers to these questions as the Amendment itself is only forty-five words long. But the COVID-19 pandemic could not make it any clearer that the First Amendment is primed for change, debate, and modernization, and each of our articles in Issue 1 address the inevitable, transformative change the First Amendment will have to endure in order to come into accord with the changing nature and modernization of speech in the twenty-first century.

We have seen and continue to see the Court bolster religious protections under the Free Exercise and Establishment Clauses. At the same time, many are wondering how *Dobbs v. Jackson Women's Health Organization* is going to rewrite the protections set forth in *Roe* and *Casey*. While many of the liberties outlined in the First Amendment are changing rapidly, our first issue

of Volume 49 focuses on the right of free speech—a liberty that does not appear to be changing nearly as rapidly.

Our first article by Justin Burnworth explores “Son of Sam” laws, which are laws meant to prevent people from benefiting from publishing books and movies about their illegal acts. In the context of the booming true crime industry and the increasing incentives to publish media dealing with crime, Justin assesses New York’s Son of Sam law and contends that it is not possible to create a “Son of Sam” law that can be narrowly tailored enough to meet strict scrutiny, and the law will always disproportionately restrict the right to freedom of speech. In many instances, such laws would have stifled the authorship of renown activists deemed to be “criminal voices,” including works such as *The Autobiography of Malcolm X*, and works from Martin Luther King, Jr. or Bertrand Russell.

Next, in *Nobody’s Business* Jordan Wallace-Wolf examines anonymity in the form of namelessness, proposing that the normative significance of namelessness itself is the evasion of responsibility for an individual’s conduct. While individuals should generally be held responsible for their own conduct, Wallace-Wolfe argues that there are certain circumstances in which an individual is justified in enjoying the privilege of namelessness. He argues *Americans for Prosperity Foundation v. Bonta* was wrongly decided because the circumstances justified the enjoyment of the privilege of namelessness.

Finally but certainly not least, we are also excited to publish a note by our Executive Operations Editor, Alyssa Ivancevich. Her note explores political deepfakes and their uniquely effective ability to manipulate voters and threaten American democracy. Alyssa explores two different approaches the United States Supreme Court could adopt to equip the First Amendment for twenty-first century deepfake concerns.

On behalf of *Hastings Constitutional Law Quarterly*, we would like to thank the authors for entrusting us with their scholarship and their patience throughout the publishing cycle. This issue would not be possible without the help of our diligent editorial staff. Hosting orientation online and working with a lean team of editors was challenging, but our brilliant team of editors stepped up and met the challenge.

We are excited to share our first issue of Volume 49 with our readers and hope it provokes discussion about how the First Amendment can be modernized for the twenty-first century.

Sincerely,



Meron Wendwesen and Katrina Ueyehara
Co-Editor in Chiefs, Volume 49
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