

## Amendment 1

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*



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**FIRST THINGS FIRST 2020**  
THE ANNUAL FIRST AMENDMENT AWARDS - DONE DIFFERENTLY

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## INTRODUCTION



**NECESSITY** is the mother of invention, so the saying goes. The Nackey S. Loeb School of Communications didn't invent the magazine, but the COVID-19 pandemic meant we needed a means other than our traditional First Amendment event to recognize this year's First Amendment Honors recipient.

This "FIRST THINGS FIRST" magazine is one way we are doing that. Another may be found on our website [www.loeb.school.org](http://www.loeb.school.org), where we will post these essays and a profile of our 2020 Honoree. The essayists were gathered from former First Amendment Event speakers, former honorees, and local experts on the First Amendment. We congratulate this year's recipient, Professor Marianne Salcetti of Keene State College (for her profile, please see **page 8**). We thank all those who contributed their thoughts to this magazine. Let's keep the conversation going. You will see here what the First Amendment means to others — what does it mean to you? Share your thoughts with us at [loeb.school@loeb.school.org](mailto:loeb.school@loeb.school.org).

We hope you will join the Nackey S. Loeb School and our sponsors to view our video tribute to the First Amendment on November 1, 2020, at our website, [loeb.school.org](http://loeb.school.org), when we will celebrate our 2020 Honoree and share videos of some of our essayists.

We are grateful to all of our sponsors. Without their contributions, our little school would not be able to do what it does for New Hampshire and the First Amendment.

And, we hope to see you at the 2021 Honors Event, if not before.

Cheers to the First Amendment,  
Laura Simoes, Executive Director  
Joseph W. McQuaid, President

## | Our Mission |

The Nackey S. Loeb School promotes and defends the First Amendment and fosters interest, integrity, and excellence in journalism and other forms of communication by educating students of various ages and providing them with the tools and knowledge to improve their skill.

## | Our Founder |



School founder Nackey Scripps Loeb was an unabashed champion of our First Amendment. How could she not have been? The Constitution's very first amendment gave her all the support she needed to run a newspaper that took seriously its role as public watchdog and allowed her to be an outspoken advocate of freedom and an equally passionate critic of those who would restrict or deny it. She counted Ronald Reagan as a friend and her political advice was coveted by many political figures.

She wanted her school to be a First Amendment resource for the people of New Hampshire, increasing their appreciation and understanding of it and offering classes, workshops, and training in ways and means to improve their own communication skills.

It has done that for more than 20 years, providing basic courses at no charge for students of all ages.

The teachers are highly valued professionals, including print, radio, photo, and TV journalists, lawyers skilled in First Amendment law, public relations executives, and digital pros who know Photoshop from a blog. Many students take more than one course and avail themselves of low-cost workshops on related subjects.

The School works collaboratively with several institutions including the New England First Amendment Coalition, the New Hampshire Institute for Civics Education, the New Hampshire Press Association, and partners with New Hampshire newspapers through its Solutions Journalism program. It has hosted visiting journalists from around the world and provided workshops for New Hampshire high school students.

Nackey Loeb was married to one outspoken newspaperman, William Loeb, and was granddaughter of another, E.W. Scripps. But as a new biography (*Political Godmother: Nackey Scripps Loeb and the Newspaper That Shook the Republican Party*, by Meg Heckman) shows, she didn't live in their shadows. She was herself a savvy and outspoken publisher who valued an independent press as being vital to American democracy. She felt so strongly on the subject that she directed that her stock in the New Hampshire Union Leader be donated to the school.



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\*First Amendment Award Judges



## THE AWARD

Nackey S. Loeb communicated through her art as well as her pen. She was an accomplished painter and sculptor. A Loeb Eagle is given annually to the First Amendment Honors recipient. Mrs. Loeb created the original in her Prides Crossing, Mass., home where it greeted guests at the front door. Daughters Nackey Scagliotti and the late Edith Tomasko commissioned the replica as a fitting remembrance of their mom and her patriotism.

# PAST HONOREES

The men, women, and organizations that comprise First Amendment Award recipients are as varied as are the students of the Nackey S. Loeb School. In each case, the judges look for those who have exercised their First Amendment rights in some meaningful way. Their causes are not always popular. Gail Cromwell and Donna Green fought their own school boards to bring important issues to light.

Robert Azzi's newspaper columns addresses some uncomfortable topics from a Muslim-American perspective. The New Hampshire Chapter of the American Civil Liberties Union has defended many controversial causes. State Rep. Dan Hughes defied his House leadership so the public could

know the public's business. James Foley risked and then lost his life in order to report the plight of children in Middle East war zones.

Also posthumously honored was Veterans Administration Dr. William "Ed" Kois who risked his career to bring to light the poor treatment being provided to the men and women who have served our nation in the armed forces.

In a time when expressing one's opinion or reporting objectively often risks ridicule, rejection, and even reprisals, the Nackey S. Loeb School is proud to underscore the importance of the freedoms guaranteed by the First Amendment. Nominations for future honorees are welcome at [loeb.school.org](http://loeb.school.org).

## Past First Amendment Award Recipients

<b>2019</b> Dr. William 'Ed' Kois	<b>2013</b> The Nashua Telegraph	<b>2007</b> David Scott
<b>2018</b> Robert Azzi	<b>2012</b> David Lang and Professional Fire Fighters of NH	<b>2006</b> The (Laconia) Citizen and John Howe
<b>2017</b> Right to Know NH and David Saad	<b>2011</b> The Portsmouth Herald and Howard Altschiller	<b>2005</b> Daniel Hughes
<b>2016</b> Donna Green and David Pearl	<b>2010</b> Gail Pierson Cromwell	<b>2004</b> The Keene Sentinel and Thomas Kearney
<b>2015</b> John Connors	<b>2009</b> William Chapman, Esq.	<b>2003</b> Philip McLaughlin, Esq.
<b>2014</b> James Foley	<b>2008</b> Mary Lukas DeWinkleer	

## Past Quill and Ink Recipients

<b>2019</b> David Tirrell-Wysocki	<b>2016</b> Claire Ebel, Esq. and ACLU-NH	<b>2012</b> Debi Clark Valentine	<b>2008</b> Mike Pride
<b>2017</b> Gregory V. Sullivan, Esq.	<b>2015</b> Judge James Carroll	<b>2009</b> Robert Foster	

# Our 2020 First Amendment Honoree

## Marianne Salcetti

BY JOE MCQUAID

The Nackey S. Loeb School's First Amendment honoree for 2020 is a Keene State College journalism professor who does more than teach her students how to gather the facts. When a public body refused to provide them, she led her students into court and argued on their behalf.

That action, which resulted in the New Hampshire Supreme Court siding with the professor and her students, is what caught the attention of the Loeb School's First Amendment board of judges.

Assistant Prof. Marianne Salcetti, PhD., is tenured and teaches in Keene State's Dept. of Journalism, Multimedia, and Public Relations. Her doctorate, from the University of Iowa, is in philosophy. But she has never lost her interest in news reporting.

With the First Amendment honor, she joins a group that includes a state attorney general, a school board member, a state legislator, newspapers, a labor union, a retired police officer, and the former director of the ACLU-NH. In each case, honorees met the criteria of exercising their First Amendment freedoms in a demonstrative or exceptional fashion that served the public's interest.

Salcetti pronounces herself as having been "gobsmacked" upon hearing of her selection. The honors program was established in accordance with founder Nackey S. Loeb's wishes that her school not only teach communications but serve as a resource for and defender of the First Amendment to the U.S. Constitution.

Salcetti regularly asks students to suggest what public records they would like to learn about. In the past, that has included documents on the Pam Smart case, after Smart petitioned the Executive Council for a reduction in her life sentence.

In 2017, students requested information from the City of Keene regarding restaurant inspections, underage drinking, and police discipline. After Keene refused repeated Right To Know requests, Salcetti and the students went to Cheshire County Superior Court, with the professor arguing their case.

Salcetti is not a lawyer. She says she was very nervous trying the case, was astounded by the amount of paperwork involved, and is convinced she chose the right profession of journalism, not the law.

Having lost their case in superior court, Salcetti and her students appealed to the state Supreme Court. At this point, attorney Gregory V. Sullivan (who also represents the Loeb School) was recommended to Salcetti and volunteered his services. She credits Sullivan as well as Right to Know New Hampshire's David Taylor with invaluable assistance in the case. It was one of three Right to Know appeals heard by the court last November. Salcetti and her students won their appeal, with all but one request decided in their favor. (The police discipline issue has been remanded to the lower court for further action.)

Salcetti finds New Hampshire's Right

to Know law "clunky and unnecessarily dense." She was "ecstatic and surprised" by the high court's ruling. "They heard, they saw, they read, and they ruled."

Salcetti's reportorial work spans several states and newspapers. One, exposing wrongdoing at a Veterans Administration Hospital in Cleveland, may remind New Hampshire readers of the late Dr. Ed Kois, whose whistleblowing at the VA in Manchester led to national changes. Kois was posthumously honored with the First Amendment honor last year.

A native of Pittsburgh, PA., Salcetti was intrigued by newspapers ever since reading the "Brenda Starr" comic strip in one of three daily papers that came to her parents' home. Later, she learned of and admired the exploits of two other Pittsburgh area women journalists, Nellie Bly and Ida Tarbell. (Also a fan of reporter and civil rights pioneer Ida Welles, she is nicknaming her First Amendment eagle "Ida.")

Many of Salcetti's journalism students have gone on to news careers, including the Chicago Tribune, the Concord Monitor, and editor Ben Conant of the Monadnock Ledger-Transcript.

She has two grown children. Son Jake is an operations manager in Brooklyn, NY and daughter Amelia is a counselor at Stevens High School in Claremont, NH.

*(For Dr. Salcetti's first-person reflections on the First Amendment, please see Page 9)*





## Marianne Salcetti, PhD

*2020 Honoree  
of the First  
Amendment Award*

What was supposed to be a routine class assignment turned into a life lesson for my students and an enduring reminder to me of why the First Amendment must be defended at all times. All of the time.

I had made the assignment for years teaching Public Affairs Reporting. Students were asked to pick a public entity and file a Right to Know (RTK) request for information they thought was in the public's interest to know about. Students then produced a news story, based on the information they received.

Five students filed RTKs with the City of Keene, New Hampshire, asking for several years worth of records on restaurant inspections, sexual assault reports, internal possession citations and citizen complaints alleging police use of excessive force. Several of those requests had been made by previous students who received answers.

But 2017 was different.

While the five requests reflected the usual information citizens might want to know about their community, for months city officials created labyrinths of equivocations to delay and deny the document requests.

About that time, the students shifted. This was no longer class work to complete. The levels of dismissiveness, patronization and obfuscation they were experiencing became personal. They wondered if it was because they were college students and would remind each other they were legally adults and many voted. They wondered how ordinary citizens ever got information. They increasingly realized they were the ones trying to get the public's information for all citizens. The First Amendment became their amendment.

When all avenues to obtaining the documents closed, I thanked

them for their commitment and explained the only recourse was for the six of us to file a lawsuit against the city of Keene and charge them with multiple violations of New Hampshire's RSA 91-A, Right-to-Know law. Unanimously, they agreed to file a lawsuit. And so for the first time in over 30 years of teaching, my class's final exam session was in a courtroom.

From that first hearing, years were spent at the Superior Court level, filing appeals and challenges both before and after the trial. My legal acumen only goes so far. Fervent thanks to David Taylor from Right to Know NH, whose expertise enabled those efforts.

By now, the students had all graduated, busy with their young adult lives. Yet, the basic principle of the First Amendment remained with them. As one voice, they supported appealing the superior court rulings to the New Hampshire Supreme Court. Renowned attorney Gregory Sullivan took the fight to the Supreme Court, which in July 2020 unanimously ruled primarily in the students' favor with some aspects remanded and as of this writing, still under contention by the city of Keene.

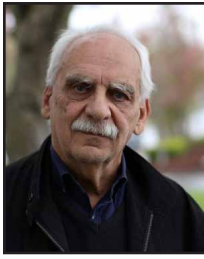
The students have told me this three-year battle for public documents taught them life lessons to advocate for themselves and always fight for citizens' right to know the public's business when they encounter resistance.

In these times, these young people and others like them are the future of the First Amendment. They did not seek this battle, but once confronted, they did not walk away. Their consciousness about why the First Amendment must always be defended is a resolute one and bodes well for the future of Journalism and of citizens' expectations about their government.

For me, this battle has been a reminder of why the First Amendment is exemplified by those who protect it and fight for it. Nearly a century ago Walter Lippmann wrote in Public Opinion, that the role of Journalism is to provide information so citizens can make informed choices in a Democracy.

It is that vision of Democracy, which requires, "Congress shall make no law ... Abridging the freedom of speech or of the press ..." that must be protected, defended and passed on.

# Reflections on the First Amendment



## Robert Azzi

*First Amendment Award  
Honoree, 2018*

I grew up with William Loeb.

As a teenager I remember reading Loeb when he, excoriator of “piously hypocritical” newspapers, called President Eisenhower “that stinking hypocrite in the White House,” because Eisenhower refused to support Senator Joe McCarthy’s anti-Communist witch hunts. Loeb’s vision for a Christian, conservative, right-wing, supremacist America had interests more closely aligned with John Birchers than with any interest that I, first-generation Lebanese-American, could embrace. I grew up as Other in Manchester, a son of working-class immigrants and it was clear to me that the vitriol Loeb directed toward the Other — toward people like me — was meant to disenfranchise and delegitimize us.

It’s a language that persists - I hear it to this day.

He had the right to use that language, I learned - first as photojournalist, then as columnist - because of the First Amendment.

Thus, when I received the 2018 Nackey S. Loeb First Amendment Award, I relished the delicious irony that the awarding institution was partly endowed by a corporation that historically profited, in part, by marginalizing people who look and think like me — people not white, not privileged, not conservative.

Yet, what connects us — what empowered Loeb’s nativism and protects me and my progressive, pluralistic, worldview — is the First Amendment.

It’s not about protecting a point-of-view, but about protecting the Public Square: to me it’s not a law but an aspiration - a call to understand that until all voices are heard, all voices are mute.

Today, as our president assaults the press as “Enemy of the People,” as he implores followers “Just remember ... what you are seeing and what you are reading is not what’s happening ... don’t believe the crap you see from these people, the fake news,” the Public Square is under attack.

It’s a language that persists - I hear it to this day.

The First Amendment is Freedom’s gatekeeper; if it falls, America falls behind it.



## Pat Buchanan

*American journalist,  
commentator, author and  
former candidate for President  
of the United States*

“Run, Pat, Run,” said the front-page editorial in the Manchester Union Leader. Without that shove from Publisher Nackey Loeb in late 1991, exercising her First Amendment freedom and publisher’s prerogative, I might never have challenged President George W. Bush for the Republican nomination. Without the Union Leader, there would have been no moral “victory” of the Buchanan Brigades in the New Hampshire Primary of 1992.

There would likely have been no “Mount-Up-and-Ride-to-the-Sound-of-the-Guns” triumph in the New Hampshire Primary of 1996.

What did Nackey Loeb, “Godmother of the Buchanan Brigades,” set in train by putting herself and her newspaper’s reputation on the line?

The “depression” that gripped New Hampshire in 1992 was brought to the attention of the nation. The idea of a post-Cold War foreign policy of “America First” nationalism was born and nurtured through the decade into the new century. Illegal immigration and border security were tabled as national concerns. The huge and soaring trade deficits, the hemorrhaging of manufacturing jobs, the export of America’s factories and industrial base to foreign rivals were brought to national attention.

Whatever one may think of these issues and the ideas behind them, it was Nackey Loeb’s Union Leader that assured they received a hearing in New Hampshire and went out to the nation.

Nackey Loeb was what a publisher ought to be, and it is the First Amendment’s freedom of the press that enables people like her to be the champions of ideas and ideals that they become.



## Joe Biden

*47th Vice President and 2020 Democratic Candidate for the President of the United States*

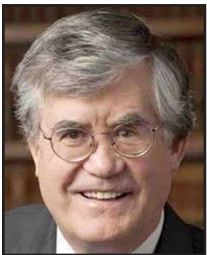
In 2011, I spoke at the Loeb School about how a free press and open access to information have always been the most powerful enemy of tyrants and dictators. From the pamphlets that helped spark our American Revolution, to the broadcasts of Radio Free Europe/Radio Liberty that helped bring down the Berlin Wall, the free press has always been essential to our nation and to the progress of democracy. That's why the threats we are seeing today to press freedom and to Americans' First Amendment rights are so outrageous—especially when they come from our current president. Attacking the press,

denigrating reporters, and denying objective facts are all tantamount to taking aim at the very guardrails of our democracy. It puts the character of our country and our ability to lead the world at risk.

Freedom of the press is not an inconvenience, it's foundational. It's who we are, and it's how we ensure transparency and accountability from our leaders. Granite Staters understand that. Thomas Jefferson wrote that “our liberty depends on the freedom of the press, and that cannot be limited without being lost.” We cannot allow that basic American truth

to become something that divides us. I may not always like what the press writes about me, but I will always respect their First Amendment rights. As President, I will not bully the media from the press room podium or via tweet. We must return to civility and transparency in America's civic discourse — and that example will start with me.

And, between now and then, we all have a responsibility to defend our liberties and our democracy with the most valuable tools we have as citizens — the very ones the First Amendment is designed to protect — our voices and our votes.



## John T. Broderick, Jr.

*Former Chief Justice of the NH Supreme Court and Mental Health Advocate*

The First Amendment holds a very special place in the Bill of Rights and in the hearts and minds of most Americans. All of us learned of its importance from a young age. We were proud of its entitlements free of government interference before we fully understood its history or the abuses that drove its birth. It is unique to our fingerprint as a free people. It distinguishes our country from most nations across the globe. But at the end of the day it is just forty-five words on a parchment until embraced, tested and applied in tough and challenging circumstances. That's the messy part of our democracy but it's where needed progress often happens. But for its promises forward progress might be burdened to exhaustion.

Earlier this year, Congressman John Lewis was taken from us after decades as a non-violent civil rights champion and icon. He labored for all of us at great personal risk to himself first as a Freedom Rider and later as a lifelong champion for and beneficiary of First Amendment freedoms. John Lewis' extraordinary legacy of making “good trouble” that impacted and empowered so many lives was steered by the sustenance he secured from the long, broad and protective reach of the First Amendment. His actions and those of others in the civil rights movement, then and now, have made America confront its promises in pursuit of “a more perfect union.” The First Amendment has been the gateway.



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-DR. MARTIN LUTHER KING JR.

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## Gail Pierson Cromwell

*First Amendment Award Honoree, 2010*

The combination of Covid-19 and the death of George Floyd created the perfect storm for those who might wish to destroy our country and they could use our basic freedoms to do so. People were frustrated by stay-at-home orders and outraged by the death of a black man at police hands.

Free speech was the first to be used. Public opinion did not need facts, only outrage, to cry for defunding the police. Anyone who might disagree was an easy target to be called a racist. The “cancel culture” invaded all discussion from academics to popular entertainment.

The right to assemble peacefully started with inspiring candlelight vigils but soon became mob action with the indiscriminate tearing down of monuments, even of historical anti-racist leaders.

The press appeared complicit, unable to separate news from opinion. The 1619 Project sponsored by the New York Times gave the clue: we were to believe that our country was racist from the beginning, that the founding goal was to establish slavery. The Declaration of Independence with its “all men are created equal” was just cover-up rubbish. Never mind that no historian agreed. It was good enough for the New York Times and good enough to win a Pulitzer Prize. The mob believed it. The solution was tear down everything and start over with a new socialist country where perfection will reign.

We should remember the words of E.B.White on the 200th anniversary of our country in 1976: He wrote:\* “What other country is so appalled by its own shortcomings, so eager to atone for its own bad conduct?”

Yes, name a socialist country or any country. My hope is that the ship will right itself. We are not a racist, sexist or homophobic country, Not perfect, but with fundamental values and the strength to fix what is wrong. We need to speak, to assemble, and to have a press that will report. Those are our freedoms. Let us not lose them.

*\*“A Busy Place,” Writings from The New Yorker, 1925-1976, Ed, Rebecca M. Dale, New York: HarperCollins 1990*



## Mary DeWinkleer

*First Amendment Award Honoree, 2008*

I studied literature, not journalism, in college.

Throughout most of my life, I have been obsessed with writing poetry and reading short stories and novels. So it’s only natural I became an English teacher.

It never occurred to me to want to teach journalism. Yet, in 2004 when I was offered a job at Londonderry High School (LHS) in Londonderry, N.H., to run the journalism program, I thought, I can do this. How hard could it be? Writing is writing, right?

Um, no. I clearly had no idea what I had gotten myself into.

That first year being a journalism teacher was shockingly difficult—harder than anything I had ever done before. At the end of the year I almost told my administrators I wanted out.

But I decided to give it one more year.

It has now been 16 years since I’ve been the journalism teacher and adviser of the LHS student news publication The Lancer Spirit. Yet I wouldn’t say it’s become any easier.

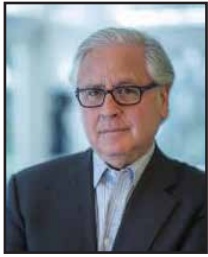
Sure, I’m no longer wondering what the heck a “lede” or a “graf” is, but I DO sometimes forget what my husband looks like as I oversee the production of both the online and print versions of our publication.

I wouldn’t trade one single moment with my journalism students though. Being their teacher has been one of the most delightfully challenging and most rewarding parts of my life.

My job is to teach kids how to write so people will listen to them. To help them realize they can be a voice for those in our school who may feel they cannot speak. To support them as they produce not just a “PR rag” for the school, but rather a publication filled with topics important to our teenage audience. To make sure they know what they have to say is important.

When I was awarded the Nackey S. Loeb First Amendment Award in 2008, I was incredibly honored. Finding out it was one of my students who nominated me, reinforced to me how important it has been for my students to have a place to speak up and be heard.

It hasn’t always been easy being the adviser when students want to write an article that criticizes a school policy or that covers an issue like vaping or mental health or addiction. They’re kids, so they like to push boundaries and often have no fear.



## Howard Fineman

*Award-winning journalist, editor and news analyst*

I know enough of history and the world to appreciate profoundly how lucky we are in America that the First Amendment is a cornerstone of our founding law and public life. As a student or reporter over the years, I've traveled in the old Soviet Union, behind the old Iron Curtain, in China, Vietnam and Cambodia. I have seen what it means to be afraid for your life and family to speak your mind, or for the press to report and print the truth.

I'm sorry to say that most American journalists never come close to testing the limits of the freedom — and the responsibility — the First Amendment bestows upon them. We swim in the safe middle channel, where the current carries us to the biggest audience and the least risk. We can do more.

And now we must. My career of nearly 50 years has been bracketed by the rise and rule — and, I hope, eventual ruin — of two presidents who had and have nothing but crushing contempt for the inalienable right of citizens to criticize them. The moments in which I most cherished the First Amendment are those when I was moved to oppose in public the lies and policies of Richard Nixon and Donald Trump.

In the spring of 1970, Nixon widened the Vietnam War by ordering the bombing of the Ho Chi Minh Trail in Cambodia. As the leading journalist on my college campus, I led a group of students to Washington to protest the decision. I trusted at the time that doing so would not cost me a job in the future, let alone my freedom. I continued to have that faith even though I knew President Nixon would stifle such dissent. Indeed, that fall, he sent Vice President, Spiro Agnew, onto the campaign trail to attack the press.

It is a straight line from Agnew's corrosive Nixonian bile to Trump's dictatorial rage. Now, a half century after I first ventured to protest a president, I am back at it, this time writing, talking on TV and tweeting about Trump and his contempt for the First Amendment, a free press and the right to dissent.

As lucky as we are, we have to realize that we can lose our freedom if we aren't awake to those in power who don't value what is essential and unique about our precious country and its Constitution.



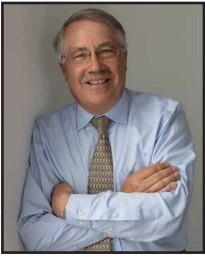
## Donna M. Green

*First Amendment Award Honoree, 2016 (with David Pearl)*

When I learned I was nominated for the Nackey S. Loeb's First Amendment Award, my initial response was puzzlement. "My case was about Right to Know," I said. David Tirrell-Wysocki then responded: "Congress shall make no law respecting... the right of the people... to petition the Government for a redress of grievances."

Petitioning the government requires knowledge of the government's activities, and that is where transparency advocates like me become unintentional First Amendment warriors. I won a New Hampshire Supreme Court ruling that government information, when it is available in electronic form and requested as such, must be given so. It seems nothing more than common sense, but the highest court in the state had to require it, such was the drive of a school district to keep its budget from me in useful form.

Four years later, as we are beset by the cancel culture's profound threat to free speech and divergent thinking, it seems so much less important to focus on government transparency. Who would have thought before the riots that government would seem the lesser threat to our freedoms? And so it goes... one moment the threat is here; the next moment the threat is elsewhere. Just as knowledge and know-how are the cornerstones of wealth in our economy, so, too, is knowledge of government workings the foundation of government by, for and of the people. It is our job to demand transparency and its consequence of accountability to make sure good government does not perish from the earth — and with it, our cherished liberties.



## John Howe

*with The (Laconia) Citizen, First Amendment Award Honoree, 2006*

Freedom and responsibility: Mention the First Amendment, and we think about what it protects: religion, speech, press, petition, and assembly. This comes with responsibility.

Responsibility involves maintaining an open mind and willingness to consider alternative perspectives rather than jumping to conclusions.

Consider what happens when witnessing an accident. You are sitting in traffic and see it occur. As a result, you feel entitled to the belief that you know truth, what really happened. You believe the car went through the red light and was hit broadside by

an oncoming vehicle. This much is observable. But why did it happen?

You think the driver seemed distracted. It appeared as though he was looking at his cell phone. You conclude the driver was irresponsible. He simply ignored or missed the red light. Carelessness caused the accident.

• One also might ask the driver what was happening as he approached the intersection. He was rushing to the hospital and trying to reach a doctor.

• One might ask the passenger what was going on as they approached the intersection. She was having contractions. She was having a baby.

She needed a doctor.

• One might ask a pedestrian if the light was working as the car approached the intersection. It was yellow and turned red just as they got there.

In considering this additional information one realizes the complexity of the picture that initially appeared simple, clear and damning – a distracted driver on a cell phone ignored a traffic light and caused an accident.

Rights come with responsibility: being open to other perspectives. Challenges to our thinking increases clarity and helps reveal truth.



## Tom Kearney

*with The Keene Sentinel, First Amendment Honoree, 2004*

New Hampshire's Right to Know Law had been in effect just two weeks when Peter W. Selkove of The Keene Sentinel and I of radio station WKBK were thrown out of a Keene City Council committee meeting Jan. 16, 1968.

The committee was reviewing the city budget proposal, which had always been done in secret. Pete and I thought the new law required the meeting to be open. But Mayor Richard E. Bean intoned, "The public has a right to know my decisions but how I arrive at them is my own damn business." Pete and I were bounced.

The Sentinel then sued, beginning a decades-long crusade for government transparency. I succeeded Pete at The Sentinel and became the point man for right-to-know issues. The publisher, James D. Ewing, knew the courts would decide the meaning of

the right-to-know law. He hired a lawyer who was ready to go to court on a moment's notice.

And go to court we did. The Sentinel filed at least 125 court cases and quickly earned a reputation: Comply with the law or you'll be sued. As a result, I was able to negotiate solutions to hundreds of disputes without going to court — including when Gov. John H. Sununu and the five executive councilors met at night, inside the locked Statehouse, to divvy up \$880 million in federal transportation aid.

Jim Ewing and our attorney, Arnold R. Falk, pursued strategies that opened the doors on court hearings, board meetings, jury selection, sealed court records and on and on. New Hampshire is a different place because of what they did.



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— Franklin D. Roosevelt, excerpted from the State of the Union Address to the Congress, January 6, 1941



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### "Four Freedoms"

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression—everywhere in the world.

The second is freedom of every person to worship God in his own way—everywhere in the world.

The third is freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.

The fourth is freedom from fear—which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation.

That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.





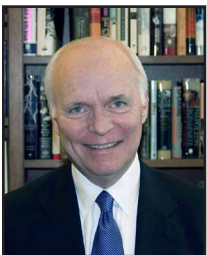
## Garrison Keillor

*American humorist, storyteller and columnist*

I'm an old man and I've never known a time so squeamish about free speech as the current time. What we feel we must suppress is our own happiness. Wherever three or more Americans gather, the talk immediately goes to the sad state of government or journalism or the arts or the young or the injustices of society, the outrages we read about. We feel morally obligated to be in constant gloom if not despair, to see ourselves as invalids and victims. We're like the man who walked into the bar with his hands full of dog poop and said, "Look what I almost stepped in." In my parents' house we were not allowed to say "sh%%" and I don't use it often, nor any of the other five words

broadcasters used to avoid, but there isn't a good synonym for "sh%%tty," and it's a lousy situation when we cannot confess our love of the life we're given, our enthusiasm for work, our pride in country, our fascinations, our sheer good luck.

Emerson said, "To be yourself in a world that is constantly trying to make you something else is the greatest accomplishment." It's like the dog who walked into the bar and said, "Look at me, I'm a talking dog. Isn't that amazing? Aren't you impressed? How about a drink for a talking dog?" And the bartender said, "Sure, the toilet is right down the hall."



## Brian Lamb

*Founder and retired CEO, C-SPAN*

At the founding of C-SPAN 41 years ago, the First Amendment was the guide star for the 23 cable industry entrepreneurs who launched our network. Its guarantee of free speech and free press found expression in our programming concepts. Until C-SPAN, only Congress' leaders, celebrities, or scoundrels made their way to the evening news. Our unfiltered coverage of Congress gave voice to both the majority and minority, to freshman members as well as the most senior. Our unedited telecasts of hearings meant that

witnesses could be fully heard, and Congressional oversight observed beyond a few excised soundbites. Our respect for the importance of a free press has been evidenced through the multitudes of reporters and columnists whose journalism has been showcased on our interview programs. Since 1998, BookTV has complemented our core public affairs coverage, introducing the viewing public to the ideas and scholarship of thousands of nonfiction authors, left, right, and center. Perhaps our most significant

and ongoing celebration of free speech is the C-SPAN call-in program, which will mark its 40th anniversary on October 7, 2020. Anyone, anywhere, in possession of a phone and a cable or broadband subscription can speak their truth to power, talking directly to elected officials, journalists, or other societal influencers on our daily Washington Journal program. Today, the program remains my ritualistic early morning check-in with our fellow citizens beyond the beltway, where a great deal of the wisdom of America resides.



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The Nackey S. Loeb School of Communications, Inc. has partnered with local news outlets, donors from the business and nonprofit sectors, and the Solutions Journalism Network to cover what is sometimes missing in today's news: how people are responding to problems, and how can we all help develop solutions to complex issues.

Current projects focus on New Hampshire's workforce (Union Leader/New Hampshire Sunday News) and civil discourse in the Lakes Region (Laconia Sun). Donations and grants allow news outlets to hire a reporter exclusively to cover each issue, then share stories, at no cost, with other news organizations around our state and beyond.

Learn more about NH's Solutions Journalism Lab, or donate to our efforts, at [loeb.school.org](http://loeb.school.org).





## Laurie Ortolano

*For NH Right to Know, First Amendment Award Honoree, 2017*

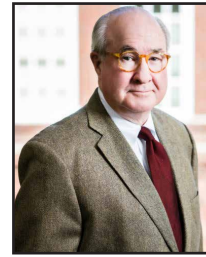
The access of public records embodies freedom of speech that is critical in allowing citizens to understand the business of government and hold it accountable. In New Hampshire, property tax is the primary source of revenue to fund local and state budgets. It is paramount that municipalities hold themselves to high standards where fairness, transparency and equity are the guiding principles in determining property assessments.

In 2018, I began researching the practices of the Nashua Assessing Office and have discovered serious issues. Early inquiries for governmental records were met with no resistance. But once the City realized that the information was used by citizens to uncover problems, they forced a formal process of using RSA 91-A to request documents, successfully drew out response times. My 20 month initiative has led to change by generating reports using data obtained through Right-To-Know requests and engaging State agencies.

The state agencies have issued sanctions against the Nashua Assessors office, they are monitoring the City's assessing office through reporting, and requiring the reassessment of properties using the most thorough methods available. The City of Nashua NH has taken advantage of the 2020 Pandemic to unlawfully deny access to information and limit means of citizen oversight.

This has been achieved by restricting freedom of speech and our right to petition the Government for a redress of grievances. The Nashua Board of Assessors, shut down all forms of public comment for five months, refusing to even accept emails. Citizens must be watchful that public officials are not using the pandemic to overextend their reach and powers and thwart the oversight by engaged Citizens. A lawsuit claiming 10 Right-to-Know law violations has been filed in Nashua Superior Court.

*NH Right to Know is a nonprofit, nonpartisan citizen coalition that works to make state, county, and local government in New Hampshire more open and transparent.*



## Thomas D. Rath, Esq.

*Former NH Attorney General*

While the First Amendment guarantees freedom of expression to all, the exercise of that right frequently, nearly always, requires balancing various legitimate but competing interests. That balancing entails an understanding of and acceptance of different voices and different ideas.

In the late 1970's, New Hampshire was loudly divided by the proposed construction of a nuclear power plant at Seabrook by Public Service of New Hampshire (PSNH). The argument played itself out in the press, on the streets and particularly at the proposed site in Seabrook. Large demonstrations, "occupations" of the site, led by The Clamshell Alliance with mass arrests challenged the NH public safety system.

The groups had a right to be heard and the State had the responsibility of enforcing the rights of the land owner as to its property. The intensity of the public argument grew and the sides became increasingly entrenched.

Charged with sorting this out and facing yet another and larger protest, the NH Attorney General's office began discussions with all sides to see if a balancing of these interests could be achieved. Prior demonstrations had resulted in literally thousands of arrests and incarcerations. The State, with some significant public criticism, with the consent of the property owner, undertook negotiations that offered the protestors the opportunity to come on the property if they would agree to leave the site after three days, respecting their First Amendment right to be heard.

This decision was not universally praised, some arguing that one set of rights outweighed the other. And, it was argued, these protestors would never keep their word and leave. And it had never been done before.

The demonstration did go forward, the State held back on making arrests. And, at the time agreed upon, the protestors left the site (and a very young AG exhaled deeply).

NH proved that the First Amendment right to free speech would be honored here, even when politically controversial. I like to think that the agreement forged here demonstrated New Hampshire's fidelity to this constitutional value and principle.



## Trish Regan

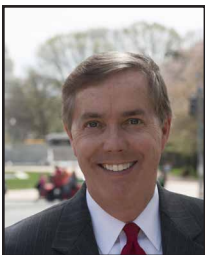
*Executive editor of American Consequences, formerly of FOX Business and CNBC*

Growing up in the great Live Free or Die state of New Hampshire, I was always encouraged to speak my mind. Political debate was a regular part of our family dinner conversations and all opinions—while not always agreed with—were certainly welcome.

In recent times, such discussion and debate, whether it be at the dinner table or the national stage, have devolved into discord with both sides demonizing the other. It cannot continue.

For a society to progress and grow, we need real, honest, intellectual debate. We cannot live in a world where half the population is afraid to speak up for fear the culture police might cancel them. I refuse to live like that and have made it quite clear, I will always speak my

mind – regardless of whether “higher-ups” may be offended. I have my biases. Contrary to what some believe, they are not political--but rather, economic. Indeed, the politicization of our economy is what I've found most troubling. Hey, JFK cut taxes! I am a fierce independent who supports the candidate with the best policy ideas to improve our economy. It is critical, especially now, that we work together to create a society where everyone has equal access to the American Dream. Free market capitalism, while not perfect, sure beats the alternative. As such, we must open our channels of communication to discuss, debate and synthesize the best ideas for America's future.



## Steve Scully

*Senior executive producer & political editor, C-SPAN*

Novelist George Orwell once said: ‘If liberty means anything at all, it means the right to tell people what they do not want to hear.’ Those words are even more vital during this pivotal moment in our country's history. As we deal with a global pandemic, economic uncertainty, racial unrest and sharp political divisions, it is imperative that a free and open press hold truth to power.

Journalism is always the first draft of history, and often a rough draft. Critics can attack the media, and while that rhetoric may form a cloud, we have a responsibility to clear the air, move ahead and present the facts. Freedom of speech, religion and assembly form the cornerstone of our democracy. Our obligation is to get it right the first time, without fear or favor. Whether an evening newscast or national magazine, a state-wide newspaper where voters cast the important 1st presidential primary ballots, or a cable network whose mission is to open up the political process, each of us play a critical role to inform, engage and enlighten the American people, allowing them to ultimately form their own point of view.

George Orwell was right! And actor Jack Webb said it even more succinctly: “Just the facts.” Our obligation is to serve the public, get it right, and always defending America's First Amendment to the U.S. Constitution.

## Thank you to our Video Essayists

In addition to the essays contained here, we received video submissions from the following:

### George Will

*Author, political comentator and columnist*

### George Stephanopoulos

*Anchor of ABC's "Good Morning America," and "This Week with George Stephanopoulos"*

### Trish Regan

*Executive editor of American Consequences, formerly of FOX Business and CNBC*

### John Kasich

*Former Governor of Ohio, 2016 candidate for President of the United States*

Join us on November 1, 2020 to watch our video tribute to the 2020 First Amendment Honoree, and these special guests, at [loebsschool.org](http://loebsschool.org).





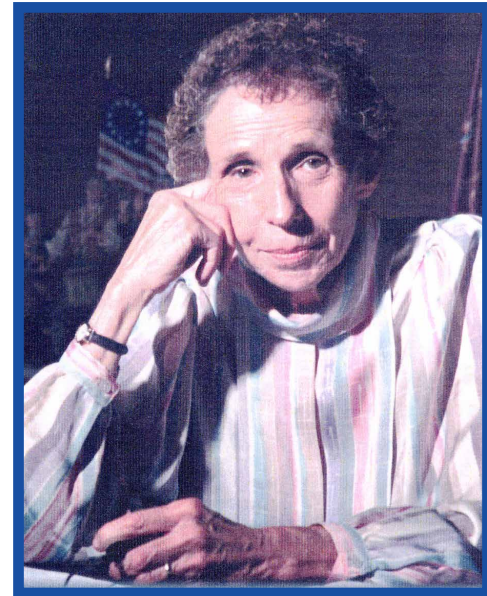
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A decorative graphic at the top of the second section, consisting of a network of thin, light green lines connecting various points, overlaid on a larger, semi-transparent green polygonal shape that resembles a stylized landscape or a data visualization.

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# The First Amendment in the Time of COVID-19

**Chuck Douglas** *Former Justice of the NH Supreme Court and Publisher of the Bow Times newspaper*

We have for decades been able to speak freely, gather, assemble for worship or protest and go to events with thousands of other people. But along came COVID-19, community spreading of the coronavirus, millions of infections and more than 200,000 deaths creating a pandemic both here and abroad.

How do our freedoms hold up when Governors issue orders limiting gatherings to 50 or 100 people, require masks, and even close certain businesses? Can Governors do those things when our Bill of Rights in the very first amendment says otherwise? The answer is yes. When there is a need to use what is called “the police power” at a State level due to a flood, conflagration, riot or public health crisis our rights may be temporarily curtailed for the greater good. What then are the limits on government doing things it otherwise could not do? “Implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Boy Scouts of Am. V. Dale*, 530 U.S. 640, 647 (2000). “Where... a law regulates speech only incidentally, as a consequence of expressly regulating conduct, it will withstand first amendment scrutiny if, in its application to incidental speech, it is no more restrictive than a time, place, and manner regulation.” *United States v. O’Brien*, 391 U.S. 367, 376-77 (1968).

Determining whether a time, place, and manner regulation comports with the Constitution, requires a Court to employ a three-prong test. The Court must determine whether the regulation: (1) is content-neutral; (2) narrowly serves a significant governmental interest; and

(3) allows for other opportunities for expression.

Thus the first step is to be sure that a COVID-19 restriction is content neutral. A limit of 100 people in a public gathering to address the risk of spread came before the United States Supreme Court this Spring. A church challenged the limit as violating the First Amendment’s protection to freely exercise one’s religion. The Chief Justice noted that in our federal system the “safety and health of the people” is governed by the general police power of the states “to guard and protect.” *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905). Their decisions should not be subject to second guessing by an “unelected federal judiciary” lacking the expertise to assess public health emergencies said the court in *South Bay United Pentecostal Church v. Newsom* (May 29, 2020). The orders California’s Governor issued were not aimed only at churches but were broad and neutral in terms of the content of the message, be it plays, movies, etc.

The second step of the analysis is to determine whether the restriction is narrowly tailored to serve a significant government interest. Courts have long held that public health, safety, and welfare constitute a significant government interest. See e.g., *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 485 (1995).

In a challenge to Governor Chris Sununu’s Executive Order #2020-04 limiting scheduled gatherings to 50 people, a Superior Court judge concluded that:

“EO 2020-04 clearly declared a state of emergency as the result of an impending public health crisis in the State of New Hampshire, and Emergency Order #2 was issued by Governor Sununu to address the public health crisis established in that

executive order. As a result, the State has established that it has a significant interest in promoting public health and safety as related to the spread of COVID-19.”

-- Judge John Kissinger in *Binford v. Sununu*, Merrimack County #217-2020-CV-00152 (March 25, 2020)

As required by the caselaw the New Hampshire court then turned to the third step in reviewing Emergency Order #2, which is whether it allows for alternative opportunities for expression. Order #2 only bans scheduled gatherings of 50 or more people and dine-in restaurant services. People are free to attend scheduled gatherings with fewer people. They can attend impromptu gatherings of any kind. They are free to communicate via the internet or telephone. They may tune into televised events. They can continue to dine together in their homes or outdoors. The trial court then concluded the order passed muster:

There are a wealth of opportunities for individuals to exercise their right to freely assemble and associate that do not require them to gather in large groups or eat at a restaurant during a public health emergency. Accordingly, the Court finds that Emergency Order #2 allows for alternative opportunities of expression.

The lesson for all of us in unusual times of a health crisis or mass riots was well stated over 70 years ago by Justice Robert Jackson in his dissenting opinion in *Terminiello v. Chicago*, 337 U.S. 1 at 37 (1949), a free speech case involving a potential riot concerning anti-Semitic speech:

“The choice is not between order and liberty. It is between liberty with order and anarchy without either.” The court should not “convert the constitutional Bill of Rights into a suicide pact.”



# Don't Let the Government Turn the Cameras Off

**Jeanne Hruska** *ACLU-NH Political Director*

The right to protest and the right to peacefully assemble are core pillars of a functioning democracy, as is the right of the press to bear witness to protests and the government's response to them. Recently, we have repeatedly seen law enforcement work to obstruct the press from covering violent police responses to peaceful protests. This obstruction defies the First Amendment and threatens the legitimacy of our democracy.

Government efforts to thwart peaceful protests have unfortunately become nearly as common as protests themselves, with almost daily footage of law enforcement using tear gas, rubber bullets, and handcuffs to stop protesters from exercising their First Amendment rights. While covering these protests and police activity in cities across the country, journalists also have become conspicuous targets for arrest, intimidation, and assault by police officers and federal agents, even though (or perhaps because) they are clearly identifiable as members of the press.

In the past couple of months, there have been numerous, well-documented instances of deliberate abuse against journalists by law enforcement officers. A Minnesota State Patrol officer arrested CNN correspondent Omar Jimenez and his crew during a live broadcast, despite the journalists repeatedly having offered to comply with police and asking where they could move. Los Angeles Times reporter Molly Hennessy-Fiske and photographer Carolyn Cole were chased by MN State Patrol officers, tear-gassed, and shot at with rubber bullets. This happened even though both identified themselves as journalists and were wearing their press credentials.

And police officers pepper-sprayed a group of visibly credentialed journalists, including KTSP reporter Ryan Raiche and his producer, as they were pinned against a wall.

These attacks violate the First Amendment and impede government transparency. An open society depends on a free press to keep the public informed and to bear witness to government actions. It is because of this very function – bearing witness – that members of the press are often targeted. Brutality is much easier to perpetrate when done metaphorically in the dark. This is why authoritarian governments go to great lengths to coopt the press or intimidate it into subservience, whether it's in Russia, China, Turkey, or Rwanda.

When law enforcement targets members of the press with impunity, our nation's democratic legitimacy takes a hit. The ability of citizens and the press to document and make public government abuse is a core tenant of a democratic society wherein the power ultimately rests with the citizens. Shining a light on government misconduct is one way that citizens hold their government accountable. As citizens, we should be collectively outraged every time an officer tries to prevent an individual from recording their interaction on their cellphone camera or federal agents physically assault journalists. Our government is trying to hide its actions from us.

Law enforcement officers who perpetrate these abuses must be held accountable. There must be consequences for targeting journalists and for trying to stop citizens from recording and publishing police interactions.

Unfortunately, many police departments and agencies have refused to take action in response to flagrant abuse by their officers. They have failed to establish necessary guidelines, trainings, and disciplinary protocols to ensure that attacks on journalists and protesters are treated with zero tolerance. Instead, they have made excuses and ducked responsibility, such as when the MN State Patrol claimed that they released Mr. Jimenez and his crew "once they were confirmed to be members of the media" – even though that fact was obvious before the arrests took place. (And even if they were not media, they still should not have been arrested.)

If the government refuses to hold its officers accountable for their unlawful actions, the ACLU will. Our national office and affiliates across the country have filed multiple lawsuits in the past couple of months to protect the First Amendment and ensure that the rights of protesters and the press are upheld.

New Hampshire is not immune to these assaults on the First Amendment. The ACLU-NH settled a claim against the Exeter Police Department after that Department arrested a man for publicly criticizing the police. Just this year, we sued the Manchester Police Department for seizing a man's cellphone without a warrant after the man recorded a police interaction in public. These incidents may not rise to the abhorrent events taking place in Portland, OR, but we must not be indifferent to them either. Recording and protesting government action is an essential right of citizens, whether it makes the evening news or impacts only a small town in a rural state.





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# Women's Suffrage and the First Amendment

**Jennifer L. Parent** *Director of McLane Middleton, Chair of Litigation Department*

This year marks the 100th anniversary of the 19th Amendment of the United States Constitution, which granted women the right to vote. The passage of this amendment resulted in the largest expansion of democracy in our country's history. As we commemorate this milestone, it is appropriate to remember the many suffragists who advocated for the vote for women and whose resilience and bravery led to this constitutional right. Many credit the start of the national women's rights movement to the Seneca Falls Convention held in New York in 1848. The women and men who attended that two day event sought change to the disenfranchisement of women. Coming out of that gathering, the Declaration of Sentiments, modeled after the Declaration of Independence, demanded equal rights for women, including the right to vote. Decades of campaigning and crusading for women's suffrage at both the state and national levels followed. It was a long and hard fought effort. While individual states granted women the right to vote, it was not until 1919 that the U.S. House of Representatives and then Senate passed federal legislation for a constitutional amendment. Ratification by the states followed, and after obtaining the needed thirty-six states (with New Hampshire being the sixteenth state) to ratify, on August 26, 1920, U.S. Secretary of State Bainbridge Colby certified the ratification of the 19th Amendment making it law. How does the centennial celebration of the passage of the 19th Amendment

relate to a publication of essays on the First Amendment? How amendments separated by more than a century in their passage unite? In essence, without the individual rights guaranteed and protected by the First Amendment of the Bill of Rights, the 19th Amendment may never have happened.

The First Amendment protects, among other rights, the freedom of speech, of the press, of the right to peaceful assembly, and to petition the government. It prevents the government from making laws which abridge or prohibit these individual and guaranteed freedoms. When women had few rights, women utilized the fundamental freedoms under the First Amendment to press their cause. The women's suffrage movement is an example of these rights in action. Armed with these most basic constitutional guarantees, suffragettes advocated for the right to vote. They attended rallies, marched in parades, and stood on soapboxes to spread the word and promote voting for women. They picketed in the streets and on sidewalks. They wrote, lobbied, and lectured those who make the laws about a woman's right to have a say in elections to win support for a constitutional amendment. These spirited individuals used the strength of their voices and the power of the pen guaranteed to each of them under the First Amendment freedoms in this crusade for change. The actions of these individuals did not come without discourse on both sides for

these protections apply both to speech people like and speech people do not like. Both sides of the discussion were heard and picked up by the press, raising awareness of all opinions. In the end, the protections from government restriction of the freedoms enshrined in the Bill of Rights—the most important of which are part of the First Amendment—are which allowed a national discussion furthered the women's rights movement and eventual passage of the 19th Amendment. The relationship between the First and Nineteenth Amendments is evident in the centennial celebration of suffrage for women. The name "suffragettes" alone brings to mind images of women in long white dresses draped in sashes sewn with the words "Votes for Women" marching down city streets. Any internet search of the women's right to vote movement results in press clippings, speeches, and photos of women lecturing to crowds or picketing with signs or banners that proclaim, "Rally! For The Woman Suffrage Amendment." Throughout the lengthy fight in this effort, the freedoms under the First Amendment provided those seeking a woman's right to vote with a platform. We continue today to use these fundamental rights protected by the First Amendment to further causes or to protest. We may not always agree with the discourse. But safeguarding such freedoms and preserving the protection of these rights is as important today as it was when the suffragists marched for the women's right to vote 100 years ago.



# Unpopular Speech

**Justin Silverman**

*Executive Director of NEFAC (New England First Amendment Coalition)*

About 50 years ago a Chicago attorney received a phone call from a man being prevented from demonstrating in a small town northwest of the city. Town officials, the caller said, didn't like the message they anticipated him sharing and didn't want him to speak.

Recognizing the clear constitutional interests at stake when government decides which voices should be heard and which ones silenced, the attorney agreed to represent the caller. The case that proceeded would eventually become First Amendment legend, but the principles on which this attorney stood now seem to be forgotten.

The caller's name was Frank Collin, a Nazi leader of the National Socialist Party of America. Collin and his fellow party members wanted to parade through the predominately Jewish town of Skokie, Illinois, wearing Nazi uniforms and displaying swastikas.

The attorney who agreed to represent him was David Goldberger, a Jewish lawyer then working for the ACLU of Illinois. He would serve as lead and prevailing counsel in the 1977 U.S. Supreme Court case *National Socialist Party of America v. Village of Skokie*. Goldberger, who remembers being attacked repeatedly at the time as a "traitorous Jew," recently wrote: "To this day, the case still brings up difficult feelings about representing a client whose constitutional rights were being violated but who represented the hatred and bigotry that continues to erupt into America's consciousness."

As Goldberger's story attests, the First Amendment is both a blessing and a burden. Only by requiring government to remain steadfastly neutral can the First Amendment protect minority voices and dissenting opinions — key components of our democracy — from censorship through changes in power.

Depending on perspective, unpopular expression may be a red "Make America Great Again" hat in a public school or a Black Lives Matter sign staked into a front lawn. To protect one voice, the First Amendment must protect the other no matter how objectionable it may be.

In today's political environment, unfortunately, tolerance for even mere disagreement can seem like a burden too great to bear. The wisdom of the First Amendment has become overshadowed by what U.S. Supreme Court Justice Oliver Wendell Holmes, Jr., called "freedom for the thought that we hate."

A survey released last year by the Freedom Forum Institute found nearly one-third of Americans believe First Amendment freedoms "go too far," and nearly one-half believe public institutions should revoke invitations to guest speakers when they are likely to offend. When it comes to the First Amendment, our focus as a country seems to be on other people's speech and its effect on us. We

would be better served to also view the First Amendment through a self-centered lens. Rather than focusing solely on the speech of others, we should consider that it is our own speech that may need protection in the future. Whether speech is offensive, ultimately, is a matter of shifting opinion.

Prior to *Skokie*, courts across the country were already ruling in favor of protestors who challenged parade ordinances. According to one legal scholar, "the ordinances vested too much power in city officials who could — and sometimes would — deny permits because they disliked the group or its cause." But these cases were different than *Skokie*. They occurred in the South during the Civil Rights Era and those silenced were Blacks marching against racism.

Silencing some speech, even under the best of intentions, can endanger all speech. In his recent essay, Goldberger wrote that a state legislator after the *Skokie* case introduced a bill that sought to criminalize the "public display of racial hatred." The proposed law, Goldberger explained, "used language so sweeping that it would justify, for example, criminal prosecution of a Black Lives Matter leader for making a speech blaming white racism for police shootings of African Americans."

Lawmakers carving out offensive speech from First Amendment protection will never use a sharp enough scalpel. As the framers of our Constitution knew, government is ill-equipped to determine for us what discourse is appropriate. Give government the power to make such a determination and that power will inevitably be abused.

This applies not only to freedom of speech, but also to freedoms of religion, press and assembly as well as the corollary right to obtain government information. True, the First Amendment may protect expression we personally find offensive, but we must remember that this figurative shield is there for our protection too. One day we may find ourselves in the political minority, expressing unpopular opinions and with government officials pointing their collective finger at us.

*(Statements regarding the Skokie case and David Goldberger's experience can be found at <https://www.aclu.org/issues/free-speech/rights-protesters/skokie-case-how-i-came-represent-free-speech-rights-nazis>. See also *United States v. Schwimmer*, 279 U.S. 644 (1929). See <https://www.freedomforuminstitute.org/first-amendment-center/state-of-the-first-amendment/>).*

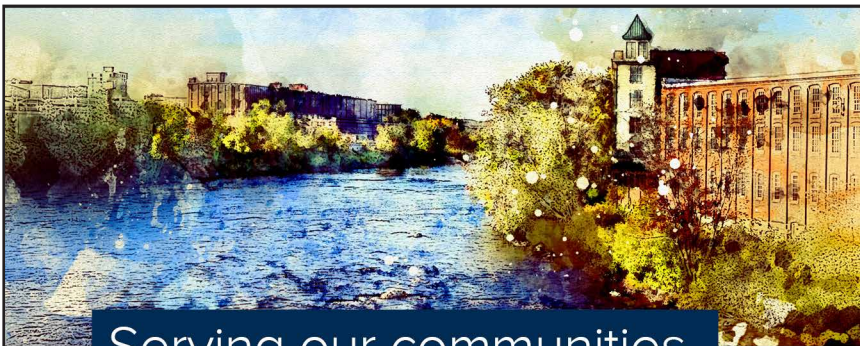
*The New England First Amendment Coalition, the region's leading advocate for First Amendment freedoms and the public's right to know about government. Please visit [nefac.org](http://nefac.org) to learn more about the coalition's work.*



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# Our Five Freedoms

**Gregory V. Sullivan, Esq.** *President of Malloy & Sullivan and Member of the Nackey S. Loeb School*

We the people of the United States enjoy a system of government wherein our three branches, executive, legislative and judicial are intended to provide checks and balances upon the others. Balancing individual freedoms and other societal interests is the work of our government, as laid out in the Constitution.

That system, led by elected representatives and their appointees cannot endure unless supported by the true fuel of democracy, an informed citizenry.

The First Amendment guarantees five basic freedoms: freedom of religion, speech, press, assembly and to petition the government for a redress of grievances. These sacred freedoms are not absolute. Obscenity, defamation, bribery, perjury, true threats, child pornography, anti-trust conspiracies, false advertising and solicitation to commit murder are classes of speech that get no First Amendment protection.

During the past one hundred years the courts, federal and state, have wrestled with the clash between free expression on the one hand and public safety and national security on the other.

The framers of the Constitution and the Bill of Rights sought to protect the citizens of the new nation from federal interference with their thoughts and discourse on national policies.

The roots of this concept are traced back to English scholars like John Stuart Mill and John Milton. Milton, in 1644, wrote that truth will ultimately prevail over falsehood given free and unlimited debate on political issues.

In the early part of the twentieth century, United States Justices Louis Brandeis and Oliver Wendell Holmes brought this “marketplace of ideas” theory into our First Amendment jurisprudence. In 1927, Justice Brandeis wrote that:

“[t]hose who won our independence believed that the final end of the State was to make men free to develop their faculties... They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth...that the greatest threat to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.” *Whitney v. California*.

In times of war and peace the Supreme Court of the United States has defined, protected and sometimes limited our First Amendment freedoms. During World War II the Court, in upholding a disorderly conduct conviction of a New Hampshire resident for speaking disrespectfully to a constable stated:

“[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. ... the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words- those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. Such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” *Chaplinsky v. New Hampshire*.

Fortunately, the Supreme Court has not invoked the “fighting words” doctrine to infringe any American’s First Amendment freedoms since the Chaplinsky decision.

In 1989, in overturning a conviction for burning the American flag, the Court held that “if there is a bedrock principle underlying the First Amendment it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”. *Texas v. Johnson*. The First Amendment must protect even the most controversial speech to counter the tyranny of the majority, to keep our government open and honest, and to move America towards a more perfect union.

Our speech, assembly, petition and press rights are only fully potent when accompanied by the right to know what the government is up to. The First Amendment and the Constitution of New Hampshire provide us with the tools needed to shine the light of public scrutiny on governmental actions.

Since 1925 the First Amendment has been held to apply to all governmental actors, federal, state and local, and it applies only to governmental action.

Given today’s turbulent political climate we must be ever mindful of the sacred principles underlying the First Amendment. It is the cornerstone of democracy. Our speech, assembly, petition and press rights form the basis for Americans’ right to know what our government is up to, and to effectuate appropriate and meaningful change.

The First Amendment and the Constitution of New Hampshire provide us with the tools needed to shine the light of public scrutiny on governmental actions. We, as inheritors of this great system, have the obligation and duty to be ever vigilant in protecting these rights for ourselves and for those who come after us.



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