

## THE AM LAW LITIGATION DAILY

# After Decades of Work on Speech and Religious Freedom Cases, Gibson Dunn Formally Launches First Amendment Practice

By Ross Todd

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**T**ed Boutrous of Gibson, Dunn & Crutcher says that if you told him a dozen years ago that the First Amendment practice would be booming today, he never would have believed you.

“Back then it looked like the law was pretty well settled,” said Boutrous, when I caught up with him by phone yesterday. In defamation law, Boutrous pointed to *New York Times v. Sullivan* and state-level anti-SLAPP laws that laid out basic, fundamental principles that seemed well-established when it came to representing the firm’s media clients.

A lot has changed. President Donald Trump’s emergence has brought a resurgence of politicians and public figures using the legal system to go after journalists and news organizations. Social media has seen a swirl of First Amendment issues pop up around issues including content moderation. And the emergence of artificial intelligence is presenting its own burgeoning set of First Amendment issues.

This morning, Gibson Dunn is announcing the launch of a First Amendment and free expression practice group. “One thing about the First Amendment ... it cuts across all ideologies, all political



(l-r) Theodore J. Boutrous Jr., Katie Townsend, and Connor Sullivan of Gibson, Dunn & Crutcher.

parties,” Boutrous said. “It’s a universal. And these rights are really fundamental to freedom and liberty, and everyone benefits from them.”

If you’re like me, you might be thinking to yourself right now: “Wait, Gibson Dunn doesn’t already have a First Amendment practice?”

Boutrous and the firm, after all, represented Jim Acosta and CNN in the fight over Acosta’s White House press credential during the first Trump administration, as well as *Playboy* and its White House correspondent Brian Karem in a similar fight. Before that, Boutrous and the firm had a high-profile First Amendment engagement for Apple Inc. in its constitutional challenge to efforts by the FBI seeking to force

the company to unlock the iPhone of a gunman in the 2016 mass shooting in San Bernardino, Calif. The firm also notably represented a coalition of media organizations in connection to access to the criminal trial against Michael Jackson. Earlier in his career, Boutrous also helped defend *Newsday* and reporter Tim Phelps in the Senate's investigation into the leak of Anita Hill's allegations during the confirmation hearing for U.S. Supreme Court Justice Clarence Thomas.

(You can hear the details of some of those representations in a podcast Boutrous recorded in 2021 with his late partner **Ted Olson**, which includes an incredible anecdote from Olson about serving court papers as a young lawyer to Charles Manson while Manson was locked inside a cage in a courtroom. These are the sorts of representations that seem to put a lawyer squarely at the crossroads of history.)

Boutrous told me yesterday that he and his partners looked around at the volume of work that the firm was doing in the past few years in the First Amendment space and realized that it was worthy of its own practice group distinct from the firm's media, entertainment and technology industry group.

"We really felt that the issues crystallized over the last decade, and so we're calling the First Amendment and free expression practice for a couple of reasons," he said. "When you think about how much work the First Amendment is doing to make everything—all the other rights—flourish and to protect them: It's not just speech. It's not just the press. It's not religion only. It's all these things," Boutrous said. "It's a playing field that's meant to be protected so everyone can get out there and express their views, so we have the robust debate that the Supreme Court has said is so important to our democracy."

The "free expression" piece of the sobriquet, he added, encompasses both the work the firm

does protecting religious liberty and the fact that the firm advises clients on similar issues abroad where the First Amendment doesn't apply.

Boutrous estimated that the practice will include about 50 lawyers at the firm who have a "material" amount of their practice focused on these issues. He will co-chair the group alongside partners **Katie Townsend** and **Connor Sullivan**. Last year, Townsend rejoined the firm after a decade at the Reporters Committee for Freedom of the Press, where she headed the media non-profits litigation efforts. Townsend has collaborated with Boutrous on a number of recent high-profile First Amendment cases, including representing National Public Radio in a First Amendment challenge to an executive order cutting the media outlet's federal funding base. Sullivan, meanwhile, has taken a leading role on a number of major defamation cases, including working alongside Boutrous to help OpenAI knock out one of the first defamation cases directed at AI-generated speech last year.

In announcing the move, the firm also highlighted its work on matters regarding religious freedom. Notably, the firm represented the Roman Catholic Diocese of Brooklyn, New York, at the U.S. Supreme Court in a successful challenge to limits on in-person church attendance in purported COVID-19 hotspots during the pandemic. Late last year, partner **Allyson Ho** argued at the Supreme Court on behalf of an evangelical street preacher in Mississippi challenging a local ordinance prohibiting him from proselytizing outside a public amphitheater.

"To be able to express your beliefs and to practice your faith is an expressive activity," Boutrous said. "We tried to capture that whole universe that we have been practicing in with this umbrella."