

EDITOR-IN-CHIEF'S PAGE

Last Spring I wrote about how concern over the impacts of COVID-19 had so quickly eclipsed the news that had consumed us only months before—the wildfires, a Presidential impeachment and, for those of us in the Washington DC area, the excitement of a World Series championship. Its effects have only worsened since then. This past summer, the disease claimed the life of D.C. Circuit Judge Stephen Williams, a giant in the field of energy law to whom we dedicate this fortieth anniversary edition of the *Journal*.

The virus and its rapid spread continue to disrupt all of our lives. Home schooling has taken on a whole new meaning. Inexplicably, at least to this editor, the wearing of masks to reduce the virus's spread has become a political issue. We've added new terms to the lexicon like "super-spreader events" and "coronavirus hot zones." And an impending eviction crisis threatens to make millions homeless, to bankrupt many building owners, and to create increasing financial pressures on utilities hemorrhaging revenues while avoiding life-threatening service cutoffs to financially strapped customers. Regrettably, the crisis has not abated. As of this writing, daily COVID-19 cases have exceeded 130,000—worse than the rates of infection that overloaded our health care facilities and overburdened our health care providers in April. Nearly a quarter million Americans have died from the disease. And, unfortunately, infectious disease professionals fear the worst is yet to come this winter.

The last six months have not only seen the spread of the pandemic. We have witnessed the unprecedented acrimony and intensity of the just completed Presidential election campaign, the killing of an unarmed George Floyd at the hands of Minneapolis police officers and the ensuing calls for policing reform, the death of Supreme Court Justice Ruth Bader Ginsburg, and a nomination process for her replacement completed a week before Election Day. Concerned about the impact of the economic power of social media giants to limit competition, the Justice Department has filed an antitrust suit against Google, while over forty state attorneys general are considering their own suits. And in the thoughtful Netflix documentary, the Social Dilemma, former tech executives warn of the growing power of social media algorithms to amplify disinformation—power that has hundreds of thousands—in 2020—believing that the earth is flat. In the last few days, we've mourned the passing of Alex Trebek, the erudite host of Jeopardy who somehow managed to enliven and make entertaining a T.V. show that is an antidote to disinformation, a show about facts.

It is in the midst of all this that scores of us have been planning this fortieth anniversary edition—from our homes. Our authors, peer review editors, student editors (and in particular our student editor-in-chief Jackson Bowker), notes editors, and committee report editors have put in countless hours to complete this edition. We hope you will find our work worthy of your attention.

In these pages, you'll find the usual collection of articles, student notes, book reviews, and committee reports. But, to mark the *Journal's* fortieth anniversary, we have a few additional features—we've included three past articles of special significance, we've included remarks from past EBA and ELJ presidents and all of the *Journal's* past editors-in-chief, and, as I noted earlier, we've dedi-

cated this Journal to Judge Stephen Williams with a special tribute from one of his former law clerks.

As a part of the celebration of the *Journal's* 25th anniversary, we republished several articles the editors thought to be the most significant in the *Journal's* first quarter century of existence. We have done something similar this time around. We canvassed current and past *Journal* editors for suggestions about which three articles published in the last fifteen years have had the most significant impact and importance. Making our final selection of articles to republish was exceedingly difficult and admittedly subjective. A case could easily be made for inclusion of many other articles.

The first of the articles we chose—Dr. Janice Beecher's 2008 piece *The Prudent Regulator: Politics, Independence, Ethics, and the Public Interest*—touches, among other things, on the importance of the regulator's independence from political influence to good decisionmaking. Its theme mirrors the message of an author talk by former state consumer advocates Elin Katz and Tim Schneider the EBA sponsored two weeks before our online publication of this edition. Like Dr. Beecher, they spoke about the importance of maintaining the independence of consumer advocates offices. That message has special resonance in these times. FERC commissioners serve fixed terms and, unlike presidential appointees of cabinet agencies, may only be dismissed for cause. But presidents have the unique right to redesignate among FERC's sitting commissioners who may serve as Chair. The current president used that prerogative five times during his term of office. Norman Bay was replaced by Cheryl LaFleur, who was replaced by Neil Chatterjee, who was replaced by the late Kevin McIntyre, who was replaced by Neil Chatterjee. And days after the election, the President replaced Mr. Chatterjee as Chair with James Danly.

The then-bubbling tension between state and federal regulation was the subject of the late Robert Nordhaus's 2015 article *The Hazy Bright Line*, the second article we selected for republication. That tension is on full display now with disputes about the division of authority between FERC and the states over electric storage, demand response, resource choices, supply aggregators, distributed energy resources, subsidies, and carbon-reduction policies. Mr. Nordhaus's foresight in recognizing the emerging importance of finding a rational way to draw that line gives his work added importance today.

The third of the articles we have republished—*Energy Justice and Climate Refugees*—first appeared in the *Journal* in 2018. Jeremy Sholtes's 2013 article discussed the U.S Army's longstanding concerns about the population relocations and disruptions and political instability likely to result from climate change and the steps the Army was taking to combat climate change. Roxana Mastor, Michael Dworkin, Mackenzie Landa, and Emily Duff tackle the broader implications of a climate crisis that threatens to create millions of climate refugees. How, they ask, can concepts of international law on the rights of refugees and the protections they are accorded be applied to those displaced by the direct and indirect effects of climate change, including war and civic unrest? And how they ask, can nations address the needs of traditional refugees when climate change has affected the receiving nations' own circumstances? The extreme wildfires, hurricanes, tornadoes, and flooding we've seen in the last few years remind us almost daily that the concerns highlighted by the authors demand our attention.

It seems clear as I write this message that the president has lost his bid for reelection and that the Biden Administration will take office in January 2021. The President-Elect urged in his post-election message that, despite our differences, we make the effort to hear each other. You can be sure that, as we always have, on the pages of this *Journal* we will hear each other. We will continue to

be a forum for vigorous intellectual debate, where our authors express their strong opinions, but where the authors tackle fairly the positions of those with whom they disagree and where our editors rigorously cite check sources so you can trust their accuracy. Energy policy changes are almost certain to come with a change in administration. They always do. Those changes, in turn, are also certain to generate debates and disputes that in the coming years will become the grist for new articles likely to appear in the *Journal*.

Harvey L. Reiter, Editor-in-Chief
Potomac, MD November 11, 2020