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Introduction

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TOURO COLLEGE

JACOB D.
FUCHSBERG
LAW CENTER



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SYMPOSIUM

STATE CONSTITUTIONAL LAW: ADJUDICATION AND REFORM

INTRODUCTION

Robert Heverly:

I would like to thank everyone for coming. It is going to be an interesting day. I have been assured of that by many of our speakers. I think we are going to have a lively debate, especially because the size of the crowd is manageable. I want to encourage people to take an interactive role, not necessarily interrupting people, but when the question and answer period comes up, get us. There is going to be a lot of information that is going to get people talking, I hope.

I am not going to spend a lot of time talking about what it is we are here to talk about because I would like to get on to the people who know this topic. We have today gathered a group of considered and thoughtful scholars on the topic of the Court of Appeals and the New York State Constitution, and there are certainly issues that are coming up on a daily basis.

Yesterday, here in Albany, somebody filed suit against what they considered to be an oppressive zoning regime under the

State Constitution which relates to adult uses.¹ Certainly the Governor's recent barrage of news releases and discussions fit into this discussion, as do the Chief Judge's recent responses to those, even though they are not direct responses. I am sure we will hit on all those points today.

I would like to get started with the first panel, and introduce as the Moderator, Albany Law School Professor, Michael Hutter. Thank you.

1. See, e.g., *People ex rel. Arcara v. Cloud Books*, 68 N.Y.2d 553, 503 N.E.2d 492, 510 N.Y.S.2d 844 (1986) (holding that the closing of a bookstore as a public nuisance, which engaged in the sale of adult books and showed sexually explicit films, in order to prevent the illegal conduct of its customers, incidentally affected the bookstore's state constitutional rights to freedom of expression, and therefore required the state to show that closing the bookstore was the least restrictive means to abate the nuisance); *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 540 N.E.2d 215, 542 N.Y.S.2d 139 (1989). The New York Court of Appeals addressed the issue of whether a zoning ordinance requiring that adult bookstores be located in specified industrial areas was an impermissible limitation of respondents' constitutional free speech rights. *Id.* at 548, 540 N.E.2d at 216, 542 N.Y.S.2d at 140. The court found the ordinance adopted to be an appropriate method for addressing town problems. *Id.* at 560, 540 N.E.2d at 224, 542 N.Y.S.2d at 147-48. The court held that the ordinance is not "overinclusive and it does not unduly restrict adult uses to limited or unsuitable areas of the Town." *Id.*