

SUPREME COURT OF NEW JERSEY

Docket No. 58, 878

ROBERT WAYNE TARUS,
Plaintiff-Appellant,
v.
BOROUGH OF PINE HILL, MAYOR
LESLIE GALLAGHER AND POLICE
CHIEF WELKER,
Defendants-
Respondents.

: ON APPEAL FROM THE
: SUPERIOR COURT OF NEW JERSEY,
: APPELLATE DIVISION
:
: App. Div. Docket No. A-2072-04T1
:
: SAT BELOW:
: HON. ANTHONY J. PARRILLO, JAD
: HON. JOHN S. HOLSTON, JR., JAD
: HON. WILLIAM P. GILROY, JAD
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**BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY,
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF**

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CONSTITUTION

N.J. Const., Art. I, ¶ 6 4

I. INTEREST OF THE AMICUS

The American Civil Liberties Union of New Jersey ("ACLU-NJ") is a private non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Constitution. Founded in 1960, the ACLU-NJ has over 15,000 members in the State of New Jersey. The ACLU-NJ is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of nearly 450,000 members nationwide. See Accompanying Certification of Edward Barocas, ¶ 4(a). ACLU-NJ strongly supports ensuring that all persons, even those who espouse or endorse unpopular views, are free to express those views, and to engage in expressive activity to communicate those views without governmental restraint. See Accompanying Certification of Edward Barocas, ¶ 4(b).

The ACLU-NJ has participated in numerous cases raising first amendment claims involving the right to freedom of speech. See, e.g., Green Party v. Hartz Mountain Industries, 164 N.J. 127, 752 A.2d 315 (2000); State v. Charzewski, 2002 WL 31777844 (App. Div. Dec. 13, 2002); Dendrite Int'l, Inc. v. Doe No. 3, 342 N.J. Super. 124, 775 A.2d 756 (App. Div. 2001); Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly, 309 F.3d 144 (3d Cir. 2002); Dwyer v. Oceanport School District, et al., Civil Action

No. 03-6005 (D. N.J. filed Dec. 18, 2003) (protecting right of student to maintain a web site forum focusing on concerns regarding school administrators); Forchion v. Intensive Supervised Parole, 240 F. Supp.2d 302 (D.N.J. 2003) (right of probationer to advocate for change in drug laws); Boehm v. Borough of Franklin Lakes, 2001 WL 1704817 (D.N.J. Oct. 10, 2001) (challenge to overly-restrictive lawn sign ban). It has also participated in numerous cases pertaining to access to government or public information. See, e.g., ACLU-NJ v. Hudson and Passaic Counties, 352 N.J.Super. 44, 799 A.2d 629 (App. Div.), certif. denied, 803 A.2d 1162 (N.J. 2002) (seeking access, under Right-to-Know Law and other statutes, of names of detainees being held in New Jersey jails); North Jersey Media Group, et al. v. Ashcroft, et al., 308 F.3d 198 (3rd Cir.), cert. denied 538 U.S. 1056, 123 S. Ct. 2215, 155 L. Ed. 2d 1106 (2003) (challenging closure of immigration hearings to the press as well as to family members).

The participation of the ACLU-NJ as *amicus curiae* will assist this Court in the resolution of the issues of public importance raised by this case by providing the legal context in which to analyze the facts of this case.

II. STATEMENT OF THE MATTER PRESENTED

Amici hereby rely upon the State of the Matter Involved set forth in the Petition for Certification.

III. LEGAL ARGUMENT

A. Pine Hill's Restriction on Tarus' Right to Videotape a Public Meeting Was Not a Legitimate Time, Place and Manner Restriction, and Therefore Violated His Right to Free Speech Under the New Jersey Constitution.

1. The Appellate Division Failed to Recognize the Right to Videotape Encompassed Within Article I, Paragraph 6 of the New Jersey Constitution.

Although the Appellate Division below recognized that "the free speech guarantee [of the New Jersey Constitution] protects not only the free discussion of governmental affairs, but also the corresponding right to receive information and ideas so that the discussion be informed", it held that there was no constitutional right to videotape public meetings. Tarus v. Borough of Pine Hill, 381 N.J.Super. 412, 422, 886 A.2d 1056, 1062 (App. Div. 2005) (citations omitted). The Appellate Division's conclusion and, indeed, its analysis, misses the mark. The right to videotape - like the right to audiotape, take notes, passively listen, actively leaflet, or distribute copies of audiotapes and videotapes - is simply one manner in which to engage in one's right to obtain or disseminate information, and is therefore covered by the constitutional right to free speech. See State v. Baird, 50 N.J. 376, 380, 235

A.2d 673, 674 (1967) (recognizing that the freedoms of speech and press include the right to distribute, the right to receive, and the right to read); State v. Williams, 93 N.J. 39, 58, 459 A.2d 641, 651 (1983) (recognizing the right to access under the New Jersey Constitution). If the government wants to restrict the right to document, obtain, or disseminate information, it can do so if its limitations are legitimately based on time, place, and manner concerns. The Appellate Division never properly conducted that time, place, and manner analysis. As explained below, Pine Hill's *ad hoc* decision to foreclose videotaping (or, even more limitedly, foreclose videotaping of persons attending or speaking at the public meeting) was not a legitimate time, place, and manner restriction - and therefore violated Plaintiff's rights under Article I, Paragraph 6 of the New Jersey Constitution.

In pertinent part, Article I, Paragraph 6 of the New Jersey Constitution provides that "[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press." N.J. Const., Art. I, ¶ 6. "[T]he freedoms of speech and press include not only the right to utter and print, but also the 'right to distribute, the right to receive, the right to read.'"

State v. Baird, supra, 50 N.J. at 380, 235 A.2d at 674 (citing Griswold v. Connecticut, 381 U.S. 479, 482, 85 S. Ct. 1678, 1680, 14 L. Ed. 2d 510, 514 (1965)). Videotaping a public meeting involves receiving information. A videographer in the act of videotaping an event such as a public meeting is making a recording of that information quite similar to a person handwriting notes, a sketch artist drawing images of the events, or even an audio recorder, which records information to a lesser extent than video. See Tarus, supra, 381 N.J. Super. at 423, 886 A.2d at 1062-63 (citing Whiteland Woods, L.P. v. Township of W. Whiteland, 193 F.3d 177 (3d Cir. 1999)) (acknowledging that "spectators were free to take notes, use audio recording devices, or even employ stenographic recording" at the Planning Commission meeting open to the public).

Atlantic City Convention Ctr. Auth. v. South Jersey Pub'g Co., 135 N.J. 53, 637 A.2d 1261 (1994) is instructive. In that case, this Court examined whether audio tapes made in the course of a public meeting for purposes of assisting in preparation of official minutes constituted "Right-to-Know" records. In that case, this Court described the audio tapes "as though the secretary had taken shorthand notes of the meeting." Atlantic City Convention Ctr. Auth., supra, 135 N.J. at 63, 637 A.2d at 1266. While this Court declined to include audio tapes within

in the meaning of Right-to-Know records, the Court did hold that audio tapes were common-law records. Id. at 64, 637 A.2d at 1266. This Court reasoned that the "previous definition of a common-law record was drawn from sources that spoke in terms of traces of ink on paper . . . [and that] [t]he essence of the common law is its adaptability to changing circumstances." Id. Drawing examples from Evidence Rule 801(c)'s definition of a writing, Colorado's statute defining "public records" and "writings", other courts' treatment of the right of access to audio and video tapes, and even New Jersey's Destruction of Public Records Law, this Court noted that most definitions included written as well as electronic recordings. Id. at 64-64, 637 A.2d at 1266-67. Most notably for purposes of the current case, therefore, was that the Court's view of the right to receive information, which considered the many different methods in which one many receive such information.

Another way to view the right to receive information is the right of access. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 576, 100 S. Ct. 2814, 2827, 65 L. Ed. 2d 973 (1980) (equating the right of access to the right to gather information). "The right of access to places traditionally open to the public . . . may be seen as assured by the amalgam of the First Amendment guarantees of speech and press; and their

affinity to the right of assembly is not without relevance.” Richmond Newspapers, supra, 448 U.S. at 577, 100 S. Ct. at 2827. “People assemble in places not only to speak or to take action, but also to listen, observe, and learn.” Id. at 578, 100 S. Ct. at 2828 (citing Hague v. CIO, 307 U.S. 496, 519, 59 S. Ct. 954, 965, 83 L. Ed. 1423 (1939)). A video camera similar to an individual’s own eyes and ears is a method of observing, listening, and memorializing information for the present and later observation. Whether it be identifying persons engaging in criminal activity or, most famously, the incident involving Rodney King and the Los Angeles police, on numerous occasions over the past 15 years, video has proved an invaluable method of documenting government activity or individual misconduct that occurs in public.

The Appellate Division clearly acknowledged that “plaintiff’s right of access to public proceedings of borough council is not only founded on statute, but also emanates from the free speech guarantee of the New Jersey Constitution.” Tarus, supra, 381 N.J.Super. at 422, 886 A.2d at 1062. Nevertheless, it declined to find a right to videotape public meetings encompassed within the right to free speech in the New Jersey Constitution, namely, because plaintiff failed to demonstrate the nexus between the right of access and the right

to videotape. Id. at 423-24, 886 A.2d at 1062-63. In reaching this conclusion, the Appellate Division relied on Whiteland Woods, L.P. v. Township of W. Whiteland, 193 F.3d 177 (3d Cir. 1999), which held that the restriction placed therein on videotaping was a legitimate time, place, and manner restriction. Id. By doing so, however, the Appellate Division misconstrued the decision, instead relying on it to hold that videotaping public meetings does not fall within the ambit of the right to free speech. The Appellate Division also ignored the invitation in Whiteland Woods to address a state constitutional right to videotape.

In Whiteland Woods, the Third Circuit had "no hesitation in holding Whiteland Woods had a constitutional right of access to the Planning Commission meeting." Whiteland Woods, supra, 193 F.3d at 180-81. Whiteland Woods, unlike this case, analyzed the right of access within the context of the federal constitution and not state constitutional law. See State v. Williams, supra, 93 N.J. at 58, 459 A.2d at 651 (observing that "the provisions of the [New Jersey] State Constitution dealing with expressional freedoms antedate the application of the First Amendment to the states and are set forth more expansively.") Had the Third Circuit even addressed the state constitutional law issue, it would have applied the law of the Commonwealth of Pennsylvania

and not that of the State of New Jersey. Consequently, the Third Circuit in Whiteland Woods provided state courts, and more specifically, New Jersey state courts the opportunity to decide whether the right to videotape public meetings created a state constitutional right.

Although the Third Circuit analyzed federal constitutional law in Whiteland Woods, the Third Circuit's adoption of a legal framework for right of access cases is persuasive and has applicability here. Having been persuaded by authority from the Eleventh, Seventh, and Second Circuits, the Third Circuit found that the public's right of access was not absolute, but rather subject to reasonable, time, place, and manner restrictions imposed by the government. Whiteland Woods, supra, 193 F.3d at 181. As a result, the Third Circuit examined whether a "content-neutral restriction on the time, place, or manner of access to a government proceeding . . . meaningfully interfere[d] with the public's ability to inform itself of the proceeding."¹ Id. at 183. The Third Circuit adopted this legal framework because it reasoned that "the alleged constitutional violation consisted of a restriction to plaintiff's right to

Ultimately, the Court found that plaintiff's right of access to the Planning Commission meeting was not meaningfully restricted by the ban on videotaping. Id. at 183. The court reasoned that "nothing in the record suggests videotaping would have provided a uniquely valuable source of information about the Planning Committee meeting." Id. The ACLU-NJ disagrees with this result as explained *supra*.

receive and record information." Id. Similarly, here, in seeking a right to videotape, plaintiff is asserting a constitutional violation consisting of a restriction of the rights of access and to receive information in which the right to videotape may be found. As a result, the ACLU-NJ respectfully requests that this Court adopt a similar legal framework as the Third Circuit in Whiteland Woods and determine whether the Defendants' restrictions of the right to videotape a borough council meeting are legitimate time, place, and manner restrictions.

2. The Borough of Pine Hill Imposed Unreasonable Time, Place and Manner Restrictions on the Right to Videotape Its Pine Hill Borough Council Meetings.

It has been held that "[g]overnment regulation of expressive activity is content neutral so long as it is 'justified without reference to the content of the regulated speech.'" Horizon Health Ctr. v. Felicissimo, 135 N.J. 126, 140, 638 A.2d 1260, 1265 (1994) (citing Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 2754, 105 L. Ed. 2d 661, 675, reh'g denied, 492 U.S. 937, 110 S. Ct. 23, 106 L. Ed. 2d 636 (1989)). In the present case, the Pine Hill Borough Council did not seek to restrict videotaping based on what was being said, but rather sought an outright ban on videotaping portions of its meetings (or at least portions of the audience

and certain public speakers). Thus, Pine Hill Borough Council's regulation was content-neutral in that it sought to regulate where and when one can videotape.

While a government may impose content neutral time, place, and manner restrictions on speech in public forums, that right is not absolute. Horizon Health Ctr., supra, 135 N.J. at 137, 638 A.2d at 1267 (citing Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45, 103 S. Ct. 948, 955, 74 L. Ed. 2d 794, 804 (1983)). Here, Defendant's restriction on free speech was not a legitimate time, place, and manner restriction.

Before addressing the "time, place, and manner" analysis, however, it is first important to note that the restriction here took place not only in a public forum, but where the need to shed light on the functioning of government was at its zenith. "Quintessential public forums are those that 'have immemorially been held in trust for the use of the public and have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" Id. at 139-40, 638 A.2d at 1266 (citing Perry, supra, 460 U.S. at 45, 103 S. Ct. at 954-55, 74 L. Ed. 2d at 804). "'Public forum' is a legal designation given to certain places, 'such as public streets, sidewalks, and parks' where historically everyone has been free to speak, subject only to 'time, place or manner' restrictions."

McGlynn v. New Jersey Public Broad. Auth., 88 N.J. 112, 132, 439 A.2d 54, 64 (1981). While the "public forum" concept is strictly limited to those areas in which tradition mandates a right of access, a place becomes a public forum when it has been "dedicated to public use." Id. at 132-33. A borough council meeting by its very name implies that it is indeed a public forum. See, e.g., N.J.S.A. 10:4-7, et seq. ("Open Public Meetings Act"). Indeed, as explained by the New Jersey Legislature: "[T]he right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process." Id.; see also Perry, supra, 460 U.S. at 45, 103 S. Ct. at 954, 74 L. Ed. 2d at 804, (defining "public forum" as "places which by long tradition or by government fiat have been devoted to assembly and debate.")

Whether time, place, and manner restrictions imposed are reasonable and permissible in such fora depends on whether the restrictions "(1) serve a significant government interest; (2) are narrowly tailored to serve such an interest; and (3) leave open ample alternative channels of communication for defendant." Horizon Health Ctr., supra, 135 N.J. at 143 (citing Perry, supra, 460 U.S. at 45, 103 S. Ct. at 955, 74 L. Ed. 2d at 804).

"The requirement of narrow tailoring is satisfied 'so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'" Id. at 148 (citing Ward, supra, 491 U.S. at 799, 109 S. Ct. at 2758, 105 L. Ed. 2d at 680). "[A] regulation may not 'burden substantially more speech than is necessary to further the government's legitimate interests.'" Id.

In determining whether the Borough Council's restrictions on videotaping its meetings were reasonable restrictions, one must first determine whether such restrictions served a significant government interest. Before delving into that analysis it is worth noting that the restrictions imposed by the Borough Council were not already existing regulations, but rather *ad hoc* determinations made by Mayor Leslie Gallagher during the June 19, 2000 and the October 23, 2000 meetings.

According to the present facts, it appears as though Mayor Gallagher's reason for requesting that Tarus desist from videotaping was because several members of the audience did not wish to be videotaped. However, there is no right of citizens not to be videotaped in public, much less at a public government function. Indeed, local stores, malls, and in fact municipalities have cameras strewn throughout their streets to purportedly watch for crime, people constantly take pictures of

tourist sites with others in view, and the Star Ledger (on www.nj.com) even has a "Zoom Cam" for viewers to watch beachgoers at the New Jersey shore. If individuals had a privacy right not to be videotaped in public, all of those business owners could be sued for invasion of privacy and the municipal cameras would be constitutionally precluded. That is of course not the case. Once one exposes himself or herself to the public by attending (and, even more so, by taking the stand to speak at) a public meeting, there is no right not to have one's presence, one's actions and one's speech recorded. See e.g., Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 812 F.2d 105, 116 (3d Cir. 1978) ("Of course, to the extent that gambling is done in public, such as at casinos, and drinking is done openly in bars or public functions, there is no privacy interest involved"); see also Nixon v. Warner Communications, 435 U.S. 589, 601, 98 S. Ct. 1306, 1313, 55 L. Ed. 2d 570 (1978) (finding that the right to privacy disappears with the right of access to presidential audio tapes, which might be publicly distributed); State v. Neulander, 173 N.J. 193, 801 A.2d 255 (2002) (finding that prohibition on media from identifying jurors impermissibly infringed upon First Amendment rights to extent that it restrained use of juror identification information that was part of public record, but that prohibition

on media interviews of members of hung jury, including those initiated by jurors, until after completion of retrial, was necessary to protect defendant's Sixth Amendment rights on retrial).

As noted in Maurice River Twshp. Bd. of Educ. v. Maurice River Twshp. Teachers Assoc., 193 N.J.Super. 488, 492-493, 475 A.2d 59, 61 (App. Div. 1984):

Video cameras and recorders have become a commonplace item in our every day life. They are a common security device and confront us at the bank, in stores and even in apartment houses. Exposure to video recording of all of us is a normal occurrence on the streets and in public gatherings such as athletic contests and sporting events where participants and spectators are under constant television surveillance.

Id.

The Appellate Division in fact directly addressed the very argument Pine Hill raises herein in Maurice River. The court rejected the argument. It held:

The Board's vague suggestion that its members may be inhibited, intimidated or uncomfortable under the eye of the video camera, or that members of the public may be intimidated or reluctant to come forward and participate in the public meeting is not persuasive. In Chandler v. Florida, supra, the court found the risk of some juror prejudice in some cases insufficient to justify an absolute ban of a TV news broadcast of a trial. Id. at 574-575, 101 S. Ct. at 909-10, 66 L. Ed. 2d at 52. If a TV broadcast of a criminal trial is not a per

se unconstitutional act, we are satisfied the same applies to the less formal atmosphere of a public school board meeting. To warrant a ban on the videotaping of the Board meetings, more than a potential for adversely affecting one or more persons must be shown.

Id. at 492-493.

Because the restriction did not further a "substantial government interest," the restriction must be struck down and the Court need not analyze the matter further. Yet, if the Court were to assess the "alternative channels" prong, it is important to note that the right to take notes or audiotape does not provide as complete a record as videotaping does. Quite to the contrary, a videotape provides a uniquely valuable source of information that may not be obtained through handwritten notes or audio recording. A video camera is capable of recording the environment in which a meeting is held, the facial expressions and non-verbal gestures of speakers and audience members, and the volume and tone of a speaker. These details all assist an observer in understanding and gathering information about the events that transpired at a meeting. Without a video camera, it would be difficult to obtain such a meaningful understanding of the meeting and of individual participants' views. It also provides a level of accuracy and proof for which notes do not suffice.

Since persons have no right to privacy in having their attendance at a public meeting documented, as videotaping provides important information about the functioning of the public activity taking place, and as the prohibition on videotaping was not due to a legitimate time, place, and manner restriction (such as limiting the number of video cameras allowed to be present due to overcrowding or interference with audience viewing), the defendant municipality can not meet its burden for imposing a restriction on Tarus' free speech rights.

The ACLU-NJ, therefore, respectfully requests that this Court strike down the Defendants' restrictions on videotaping Borough Council meetings.

B. A Common Law Right to Videotape a Public Meeting is Recognized in the State of New Jersey Pursuant to Maurice River Twshp. Bd. of Educ. v. Maurice River Twshp. Teachers Assoc., 187 N.J.Super. 566, 455 A.2d 563, aff'd, 193 N.J.Super. 488, 475 A.2d 59 (App. Div. 1984).

The Appellate Division misinterpreted Maurice River Twshp. Bd. of Educ. v. Maurice River Twshp. Teachers Assoc., 193 N.J.Super. 488, 475 A.2d 59 (App. Div. 1984) as holding that, absent a township's creation of guidelines for videotaping, no right to videotaping existed. Tarus, supra, 381 N.J.Super. at 424. Nowhere in the Maurice River decision did the Appellate Division state or imply that the common law right to video it had recognized was contingent on the creation of guidelines.

Instead, the holding of that case invited and suggested that townships "be given the opportunity in the first instance to formulate reasonable guidelines for videotaping of its proceedings." Maurice River, supra, 193 N.J.Super. at 493, 475 A.2d at 61. The case stood for the proposition that, absent such guidelines, the common law right to videotape public meetings should be allowed to be exercised. Id. Pine Hill adopted no such guidelines and, indeed, made an impermissible *ad hoc* determination to deny Tarus his rights.

In Maurice River, the Appellate Division examined the very issue presently before this Court, namely, whether a member of the public had a right to record proceedings of a public body by means of videotape. In that case, representatives of the Maurice River Township Teachers Association (the "Association") attended a public meeting of the Board of Education where they attempted to videotape the proceedings. Id. at 490. The Board requested that the Association desist and, when it did not, the Board recessed the meeting and filed the instant action for temporary restraints. Id. Examining whether the right to videotape a public meeting existed, the Chancery Division of the Superior Court of New Jersey relied on common law and Article I, paragraph 6 of the New Jersey Constitution to hold that "a member of the public has the right to videotape a public

meeting, subject to certain restrictions . . . and that the public body involved has no power to arbitrarily forbid such action." Maurice River Twshp. Bd. of Educ. v. Maurice River Twshp. Teachers Assoc., 187 N.J.Super. 566, 568, 455 A.2d 563, 564 (Ch. Div. 1982).

The Appellate Division upheld the lower court ruling and reiterated that "the Association had the right to videotape the proceedings of the Board." Maurice River, supra, 193 N.J.Super. at 491. According to the Appellate Division, the ability to videotape proceedings could be subject reasonable guidelines for videotaping formulated by the Board. Id. The Appellate Division stated that those "guidelines should include the number and type of cameras permitted, the positioning of the cameras, the activity and location of the operator, lighting, and other items deemed necessary to maintain order and to prevent unnecessary intrusion into the proceedings." Id. The Appellate Division proceeded to set forth recommended guidelines regarding the storage of the videotapes, and the necessity for interruptions of video recording. Id. At no time did the Appellate Division discuss only allowing the right to videotape if the town formulated guidelines as the Appellate Division in the present case suggested.

The Appellate Division decided Maurice River in 1984, giving townships ample time to create guidelines for videotaping its proceedings, if it so chose to create and adopt them. If the Appellate Division in Maurice River had made the right to videotape proceedings contingent on the adoption of guidelines, an absurd result would have followed: A town would retain greater control to limit and, indeed, outright deny a citizen his or her right to videotape a meeting unless and until it created such guidelines. Further, a person who wished to engage in his common law right could be denied that right during the time the process of adoption took place, even though the town was made aware of its responsibility to adopt such guidelines twenty-two years ago. For instance, a person seeking to videotape a public meeting would first have to attend a public meeting or by other method make it known to the town council that it sought to videotape its meetings. Then, the person seeking to videotape would have to await the town's creation and adoption of guidelines for videotaping. Depending on how long it takes for a town to create guidelines, it would then take at least a month or maybe longer for a town to adopt such guidelines, considering that most town councils in New Jersey only meet bimonthly. See N.J.S.A. 40:49-2 (setting forth the procedure for passage of town ordinances).

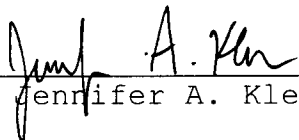
A person seeking to videotape public proceedings of towns should not be unreasonably denied the right to videotape those proceedings considering that a town had between 1984 and now to adopt such guidelines as the Appellate Division suggested, but instead was dilatory in doing so. Consequently, both the language and the intended result of the Maurice River ruling suggest that, if a town wishes to regulate the common law right to videotape a public meeting, that town must adopt proper guidelines, and thereby notify citizens the manner in which it will be restricting that right. In short, *ad hoc* restrictions - as Pine Hill engaged in here - impermissibly violate the common law right that exists.

IV. CONCLUSION

For the reasons set forth above, amicus respectfully urges the Court to reverse the decision below.

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