



## Virginia Elections 2017: With Wins Like This, Who Needs Losses?

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(he/him/his)  
News Editor

By all indications, Democrats are pretty excited about their performance in last week's Virginia elections. Lieutenant Governor Ralph Northam will trade up to Governor. Polls leading up to the election suggesting that his Republican opponent Ed Gillespie might be able to pull out a win by appealing to neo-Confederates turned out to be incorrect. In the Thirteenth District, journalist and metal guitarist Danica Roem won election as America's first openly transgender state legislator, defeating Bob Marshall, the self-proclaimed "chief homophobe" of Virginia who authored our state's version of the "bathroom bill." Democrats made up a great deal of lost ground in the House of Delegates, as a whole turning fifteen red seats blue. Good news, certainly, but far from adequate. Current projections have the GOP clinging to a 51-49 seat majority. This, in a year more-or-less defined by Republican political scandals, and coming on the heels of a presidential election in which the Democratic candidate won Virginia by better than five percent, is nothing short of an embarrassment.

Granted, much of this discrepancy can of course be attributed to voter suppression brought about by Virginia's new voter ID law, and much of the rest is owed to gerrymandering. As chairman of the Republican National Committee, Ed Gillespie (yes, *that* Ed Gillespie) implemented a program called REDMAP, which sought to make the GOP's 2010 election victories permanent by shamelessly drawing unrepresentative districts. It was a runaway success and a big part of why Republicans can expect a House of Delegates majority despite garnering barely 4/5 as many total votes as Democrats in last Tuesday's election. Indeed, they're downright gleeful about it. The project's website—yes, it has a website—describes the effort thusly:

The rationale was straightforward: Controlling the redistricting process in these states would have the greatest impact on determining how both state legislative and congressional district

# A Monumental Fight for City Speech



From left to right Professors Blank, Brady, and Schragger discuss municipal free speech.  
Photo courtesy of *The Law Weekly*

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Columns Editor

Against the backdrop of the recent violence in Charlottesville and statues shrouded in black, a distinguished panel of law professors held a discussion on Monday night entitled "Do Cities Have Free Speech Rights? Confederate Monuments, Sanctuary Cities, and State-Local Conflicts." At issue was whether cities have or should have free speech rights that override state laws restricting their expression.

Professors Richard Schragger and Molly Brady, both of whom study local governments, cities, and property, participated, as well as Professor Yishai Blank, a visiting professor at Harvard Law School and professor at Tel-Aviv University who studies land use and local government. The three professors discussed the relationship between states and cities, with a focus on Virginia and Charlottesville. One of the main issues discussed was whether a city such as Charlottesville might have a free-speech argument against the state's ban on removal of Confederate statues. In other words, as Schragger put it, is the city being "forced to speak" by the state's ban?

Brady gave a brief history of Virginia's ban on monument removal, which went into statewide effect in 1904. The state's ordinance, § 15.2-1812, prohibits localities from disturbing or interfering with war monuments, although it's gone through

several iterations since its original focus on Confederate monuments. In its current form, it covers all additional wars since the Civil War. She said the issue now is "what happens when the city no longer wants to be associated with the message of the monuments, but the state is forcing them?" While cities have largely been beholden to state regulations, they have gained some rights against the state, such as in the realm of takings doctrine.

Blank suggested it might be possible to conceive of a regime where cities were granted free speech rights and compared cities to corporations, which under decisions such as *Citizens United*, have been treated more like individuals when it comes to free speech. He noted that there are pros and cons to this approach, and that for "city speech," the line between expression and action is a very difficult one. He said city speech could encompass maintaining statues, raising flags, Black Lives Matter signs on town halls, or be as broad as covering lobbying activities, which are currently covered for corporations. "But if all this is protected under the First Amendment," he said, "there could be huge ramifications."


One potentially positive ramification might be that cities could counter corporate influence in politics. Blank also noted that the state's politics is more recently reflecting partisanship on the national level, and giving cities First Amend-


ment rights might prevent federal and state encroachment on local politics. But he was careful to emphasize that cities wouldn't be totally unregulated in their speech, since they would still have to show a compelling interest. And some cities might use opt-out mechanisms for citizens so that their money would not be used for speech with which they disagree.

Schragger explained that our concept of cities is not that of an individual entity with rights, but rather as an entity of the state that exercises power. At the same time, they're also subordinate to the state, creating tension. He discussed SB 4 introduced in Texas, which would not only ban cities from becoming sanctuary cities, but would keep cities from endorsing such policies. He also noted that there was nothing Charlottesville could have done to prevent Unite the Right or Ku Klux Klan members from openly carrying weapons during their rallies, because state law preempts them from doing so. And of course, if the city wants to remove confederate monuments, the state forbids it. In effect, he said, the city "can only speak in the form of monuments at the state's sufferance."


"We might say as a policy matter, it doesn't make sense for the state to decide what monuments to put up in any locality," he continued. "Why would they care?" States might decide to regulate cit-


## around north grounds


 Thumbs up to Breitbart for uncovering the Washington Post's tactics for gathering research, interviewing witnesses, and taking their time to gain permission from the subjects before publishing. Us in the business call these tactics "investigative journalism."


 Thumbs down to adults destroying their Keurig machines after the company pulled advertising from Fox News. Maybe it's ANG's addiction to coffee speaking, but ANG thinks the only thing stupider is thinking that a 14 year old can give consent to a 30 year old.


 Thumbs up to Amazon buying the rights to bring Gilmore Girls back for another revival--a tri-vival? Whatever it is, whenever it is, ANG will follow where you lead.

 Thumbs down to Stephen T. "Mindseye" Parr for Daylight Savings time and this accursed darkness. ANG had been feeling okay about Parr given the lovely autumn weather, but this dark-at-5-o'clock business has ANG remembering all of Parr's misdeeds, especially last winter's lack of snow and the rain for Foxfield this year. Get it together, Parr!

 Thumbs up to all the people predicting more intense Thanksgiving conversations about politics. ANG, for one, is happy that ANG's marital status, alcoholism, and membership in vampire societies won't be the ONLY topics of intense, uncomfortable disagreement.

 Thumbs down to a certain professor calling ANG "old" when ANG would NEVER call him "short and fat?" Oh well, ANG tries so hard to be his friend--and maybe someday that will happen!

 Pour one out for Notre Dame ("and Georgia, haha." -Goldman, C.J.) ANG feels for ya. Especially because ANG now has to hear from people who once had a two-hour layover in Miami about what big Hurricane fans they are.

 Thumbs up to everyone who saw the equine outline on p. 6 and thought of zebbras, not horses. #fascinoma, folks!

## ELECTION

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boundaries would be drawn. Drawing new district lines in states with the most redistricting activity presented the opportunity to solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.

... REDMAP's effect on the 2012 election is plain when analyzing the results: Pennsylvanians cast 83,000 more votes for Democratic U.S. House candidates than their Republican opponents, but elected a 13-5 Republican majority to represent them in Washington; Michigan voters cast over 240,000 more votes for Democratic congressional candidates than Republicans, but still elected a 9-5 Republican delegation to Congress. Nationwide, Republicans won 54 percent of the U.S. House seats, along with 58 of 99 state legislative chambers, while winning only 8 of 33 U.S. Senate races and carrying only 47.8 percent of the national presidential vote.

With the 2020 Census fast approaching, the Republicans have already gone to work shoring up their firewall against fair elections. One of their lower-profile recent efforts has been hobbling the Census Bureau, which the GAO recently placed on its "High Risk List," citing pernicious un-

derfunding, inadequate IT systems, and untested procedural changes. Republicans have moved to cut back on human enumerators in favor of online responses, with the apparent overall objective of suppressing the count in low-income and minority

84 votes), the 40<sup>th</sup> District (by 115 votes), and the 27<sup>th</sup> District (by 125 votes). Republicans led or had been declared the winners in all of them. In all, eleven races had been decided by a margin of less than five percent—the widest, the 100<sup>th</sup> District,

the statehouse.

So, what did the Democratic Party of Virginia try this time to avoid a repeat of 2016's drubbing? Same-old, same-old: not content to let the populist (and popular) former Representative Tom Perriello go uncontested

real Democrat, after all—not like Ralph Northam, whose votes for George W. Bush in 2000 and 2004 we're apparently supposed to forgive because he "didn't pay much attention to politics" at the time.

And so on. Point being, less than a year after an election cycle in which the Democratic establishment's compulsive habit of putting its thumb on the scale nearly tore the party apart, their solution for rebuilding trust in the leadership was *to do it all over again*, but this time with a milquetoast ex-Republican as nominee. That it (mostly) worked is a testament less to Northam's non-existent political instincts than it is to Virginia voters being well and truly fed up. Not that Northam still didn't do his utmost to throw the election.

Faced with a blitz of racist Gillespie TV and radio ads, Northam couldn't muster the guts to stand up for minority Virginians. Instead, he rushed to co-opt the Right's policies, pledging to ban so-called "sanctuary cities" and report undocumented immigrants to ICE. Rather than pledge to raise Virginia's minimum wage from the federal floor, the best Northam could offer Virginian workers were limp, vacuous buzzwords like "job training," "apprenticeships," and "STEAM." Again and again, Northam opted to play within the constraints

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Failed Republican gubernatorial candidate Ed Gillespie next to a screen capture from his campaign television ad. Photo illustration: Yahoo News; photos: Steve Helber/AP; screen capture from ad, Getty Images

neighborhoods and skewing representation. Democrats, for their part, seem to just be counting on the voters rescuing them in time to avoid another lost decade, which makes it that much more galling that the Democratic Party of Virginia made such a pathetic showing last week.

At press time, four Delegate races had a margin of less than one half of one percent: the 94<sup>th</sup> District (by 13 votes), the 28<sup>th</sup> District (by

by a mere 1004 votes. In a further ten races, the Democratic Party failed to field a candidate at all. These are not wave election numbers: these are missed opportunities. Voter suppression and gerrymandering played their roles, but it is hard to deny that even the slightest improvement in voter enthusiasm—fewer than a hundred additional votes spread across the right districts—could have given the Dems

in the primary, Governor McAuliffe, Virginia Attorney General Mark Herring, Dominion Energy, and the entire Virginia Democratic House and Senate Caucuses threw their weight behind Lieutenant Governor Ralph Northam. Sure, Perriello had already received the endorsements of Bernie Sanders, Elizabeth Warren, and Khizr Khan, but what did they know? Everyone knows that Bernie Sanders isn't a

## Running From the Law, and How You Can Too

First, I will admit, I'm biased—I find sick joy in running long distances. However, I would like

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to offer this modest proposal—that you, too, can and should be a runner. To demonstrate, I would like to offer a totally "objective" list of the pros and cons of running.

**Pro:** Running improves your fitness level. Studies have shown that regular running improves bone density, strengthens joints, and improves aerobic endurance. Improved aerobic endurance means that you will have an easier time doing other vigorous activities (escaping zombies, racing to class, etc.).

**Con:** Running hurts. There are two kinds of pain associated with running, the good kind and the bad kind. The first is general muscle fatigue and soreness, this is the good kind, pain is weakness leaving the body. The second kind is the bad kind—it's the kind that feels like you sprained something, bruised something, or pulled a muscle. If you rolled an ankle you have a pretty good idea where this pain comes from. If you have shooting or sharp pain when you run any variety of things could be wrong (muscle imbalance, shoes, inflammation). Normally this can be addressed with better shoes and a visit to the physical therapist—but it needs to be taken seriously.

Speaking of shoes: **Pro:** You get an excuse to buy new shoes,

and who doesn't love new shoes?! Depending on the type of shoe and your running form, you need to replace your shoes every 300–500 miles. Run

**Con:** Running shoes are expensive! But when you amortize the cost of the shoes they are cheaper than a lot of the alternatives, like double bypass surgery.

per mile. So two miles burns a beer, ten miles burns five beers! That will almost make up for your night at Bilt. And the calorie burn doesn't stop when you stop

into the fresh air and gives you a chance to be one with the squirrels.

**Con:** Running is boring. When you run on a track or a treadmill, running IS boring. You can alleviate boredom by finding better scenery or listening to music. If you are still bored, you might need to lower your standards for entertainment.

**Pro:** Running improves mental health. Running has been shown to have a variety of positive effects on mental health, including improving focus and creativity, improving ability to learn and retain new information, alleviating anxiety and reducing symptoms of depression. They don't call it a runner's high for nothing! Running also helps you sleep better and we all know that law students can use more and better sleep.

**Con:** It takes time. Running, eating, and sleeping all take time, but so does checking in on Facebook, but Facebook doesn't make you svelte and improve your mental focus. Given the myriad of benefits running provides dedicating an hour out of your otherwise busy day will be worth it.

\*Disclaimer: There is no right or wrong way to run; fueling, shoes, distance, and exertion level all need to be tailored to your personal preference. There are many sects of the running community that think their way is the right way. The only right way is the way that works for you.

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Badass who moonlights as a law student, Wade Foster, puts everyone else to shame.

Photo courtesy of Facebook

more, get more shoes! Running also gives you an excuse to buy other brightly colored articles of clothing—shirts, socks, shorts, hats—the options are endless! As an aside, brightly colored clothing is encouraged not just for the fabulous fashion statement you make wearing it, but also to help drivers see you and not run you over (this is especially important as the days get shorter—consider adding reflective items to your obnoxious neon mix).

**Pro:** Running burns calories. The exact number is a function of your body weight, your fitness level, your level of effort, and the distance you run. There are multiple calculators online to help you figure out how many calories you are burning,<sup>1</sup> but a general rule is about eighty calories

1 <https://www.runner-world.com/tools/calories-burned-calculator>

running, running increases your metabolism throughout the day.

**Con:** Running a lot means being hungry a lot and that leads to eating a lot. Eating a lot takes time and money. But, is an excuse to eat really such a bad thing?

**Pro:** Running gives you a reason to get out of the library and go commune with nature. There are miles and miles of trails and farm roads close to the Law School. Running gets you out

# Dr. Kate Gibson: Lawyer-Counselor to Future Lawyers

Dr. Kate Gibson, J.D., Psy.D., is at UVa Law because of a sharp yet delib-

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erate shift in career path and life outlook. After receiving her law degree from Harvard Law School, Dr. Gibson followed the natural route of many students of top law schools, beginning her career in the Washington, D.C. office of the firm now known as WilmerHale. Dr. Gibson practiced corporate law, work she described as law on a macro level. With a laugh, she added that it was fun to spot ads for the companies whose deals she was working on around town. However, the Big Law pace of life was as grueling then as it is now. Family health issues compounding this existing stress eventually prompted Dr. Gibson to reconsider her path.

This reevaluation led Dr. Gibson to the realization that she found working with clients on an individual level most fulfilling. Personal experience piquing her interest in clinical psychology, Dr. Gibson tested this potential new career through volunteer work. Even considering such a change was a big step; Dr. Gibson describes herself as an "incre-

mentalistic," just as do many law students, for whom diverting from the clear path ahead is often a challenge. However, feeling that it was her vocation, she applied for and matriculated to The George Washington University's professional psychology doctorate program. This program in clinical psychology allows candidates to focus their studies on clinical work; there is no dissertation component or phar-

CAPS until heading north to the Law School three years ago. In contrast with CAPS, where students, from first-year undergrad to doctoral candidate are served by a much larger organization, Dr. Gibson has found working at the Law School means focusing on a single, more distinct community. This has afforded her greater flexibility in working with students, who in turn tend to have more in common,

described as a head start in understanding law student stress, although she also suggested that changes in the legal profession have only increased this pressure in the intervening years. She enjoys working with a student body which she described as bright and rich in life experience, but also with an administration she has found to be smart, competent, and, perhaps most importantly, very invested in its students.

Having recently surpassed a decade of Charlottesville living, Dr. Gibson describes the town as much smaller than where she previously lived, but as punching above its weight in terms of the arts, speakers, and things going on in general. Though characterizing herself as more of a spectator than a participant, Dr. Gibson is an avid supporter of the arts, mentioning the Paramount Theater and Heritage Theatre Festival (UVa Drama's summer theatre program) as particular favorites. She also enjoys exploring the history and environs surrounding Charlottesville, where the mountainous landscape contrasts sharply with that of Massachusetts, where she grew up, and sampling Charlottesville's ever-expanding restaurant scene (her favorite is Bang!). When she has a chance to relax, Dr. Gibson is an enthusiastic reader,

preferring to mix novels and history books.

As we enter the holiday season, one of the most stressful times of the year even without finals looming, and students' hours spent studying and anxiety both crest, Dr. Gibson also enters a busy period. Dr. Gibson emphasized that she tries her utmost to make time for all students who seek her counsel, and maintains a daily open hour from 2:00 until 3:00 P.M. In terms of services offered, she provides one-on-one counseling sessions, and maintains a referral list of other therapists and psychiatrists in the broader Charlottesville community who may be better able to provide services on a longer-term basis. Dr. Gibson also noted that law students have access to CAPS on Main Grounds, including their crisis services (in-office from 8:00 A.M. until 4:30 P.M. daily, with phone availability after hours) and excellent group programs.

Advice for anyone at any time of the year? "As a general rule, humans do better when connected authentically." While being able to talk openly to whomever, be it a friend, family member, or professional, may not be a magic solution, it most definitely is helpful.

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Illustration courtesy of Charles Schultz

macological training (only psychiatrists are able to prescribe).

In 2006, Dr. Gibson joined the staff of Counseling and Psychological Services (CAPS) on Main Grounds as a predoctoral intern. She remained after receiving her doctorate, working at

and the chance to learn the rhythms of the Law School. Dr. Gibson remarked that working at the Law School has been a unique opportunity to combine both phases of her career arc; vivid memories of the stress of 1L grades and summer job hunting give her what she

## You (Yes, You Specifically) Need to Get Out the Vote

Right now, control of the Virginia House of Delegates may be determined by just

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nineteen provisional ballots. The Virginia Department of Elections reports that in the House of Delegates' Ninety-Fourth District, encompassing Newport News, incumbent David Yancey (R) is currently winning by just thirteen votes over Shelly Simonds (D). This .06% difference is remarkable given that, in 2015, Simonds lost to Yancey by 15.2% in a race that had almost 10,000 fewer votes than this year's. Now, there are two major differences between the 2015 off-year election and the 2017 off-year election, one being the raging dumpster fire of endless controversy and senselessness that is the Trump presidency and the second being that 2017 included the gubernatorial and other executive statewide races in Virginia. However, I do not want to focus on why different stimuli created an uptick in voting, but rather on voting itself and why getting out the vote matters so much, even in higher turnout years.

Virginia delegate districts contain approximately 80,000 constituents. In the Ninety-Fourth District, 78.6% of these constituents

are of voting age. Almost 88% of the approximately 63,000 possible voters in this district are registered. Yet, even in 2017, only 23,878 people voted, 43.1% of registered voters. Compare that to the Commonwealth as a whole where, according to the *Virginian Pilot*, 47% of registered voters exercised their franchise this year. That sad figure is actually a record turnout for gubernatorial elections not seen in twenty years. Similarly, the 43.1% voting rate in the Ninety-Fourth District is impressive historically. In 2015, only 27.5% of voters turned out. Thousands and thousands of possible votes were never cast at all.

Low voting rates inherently create legitimacy issues in representative government on a conceptual level. Does a representative who wins a plurality of less than half of the electorate really have a claim to be a representative of their constituents? The way election results are reported completely obscures conceptual legitimacy concerns by only focusing on percent of the turnout. This obfuscation is not due to any malevolence or negligence. Turnout and the votes cast are simply the measure for election that our system is built around. Still, it is disconcerting to know how few people are determining the outcomes in our elections, particularly in non-presidential years. In

the last three presidential elections, the percentage of the total Virginia electorate that voted was in the low 70s, and the only way to know how few are voting is to look at the absolute numbers.

Practically speaking, this low level of voting does not just affect elections; it affects governance. The current governor, Democrat Terry McAuliffe, broke the record for most bills vetoed in Virginia history after just three years in office. This is not simply due to the fact that the General Assembly is controlled by the Republican Party, because McAuliffe only vetoed 18 of 880 bills that made it to his desk between March 2016 and March 2017, but those bills he did veto, as the *Washington Post* characterizes them, consisted of "cutting support for Planned Parenthood, imposing more requirements on voter registration, restricting absentee voting and expanding access to hand-guns." I do not want to get into the merits of these bills, but I do want to point out that according to most of the available polling on these issues the majority of Virginians did not and continue not to support them, though slimmer majorities oppose these policies depending on the exact framing of each issue.

This brings us back to the Ninety-Fourth District. For the next four years, Vir-

ginia will again be led by a Democratic administration. Yet, whether Governor-elect Ralph Northam has to veto an absurd number of bills that the majority of Virginians do not support, or merely a normal number of bills that is more representative of the normal push-and-pull of legislative politics, may be determined by an incredibly thin margin. There are actually three other delegate races that are close enough for a state-funded recount, but the Ninety-Fourth District's razor thin margin highlight the fact that your individual vote does not just help determine who represents you, but also the amount of concrete power all representatives of your political persuasion may have.

Last Tuesday the Democrats were able to organize effectively enough to win state-wide races by huge margins. Northam won the governor's mansion by almost nine points. Even without the four still contested districts, the Democrats won an unprecedented shift in legislative power by winning fifteen seats outright, up to forty-eight seats after only holding thirty-three of the 100 before the election. Many of these individual votes were not the "one" vote that decided the race, but I think the framing of voting efficacy as first past-the-post efficiency is inherently ridiculous because the margin of votes itself expresses

legitimacy in various ways. Nevertheless, concrete power rather than expressive support in Virginia may be decided by somewhere between one and thirty-two votes in the Ninety-Fourth District—a district, like many others, where literally tens of thousands of additional votes could have been cast but were not.

This is why getting out the vote matters. A small group of dedicated people of both parties organized get-out-the-vote (GOTV) operations in the Ninety-Fourth District, just like small groups did in every district across the Commonwealth. Even just a small amount of additional work on either side would decide the election in the ninety-fourth district, almost certainly would affected the three other recount races, and could have generated more comfortable leads for winners in all the other delegate races across the state. This year, dozens of UVa Law students were part of those small groups working for the party or independent candidate that best aligns with them and spent the past two months canvassing.

I was one of those law students. Personally, I hate canvassing. There are few things I dislike more than knocking on the doors of strangers and interrupting their lives



# LAW WEEKLY FEATURE: Court of Petty Appeals

The Court of Petty Appeals is the highest appellate jurisdiction court at UVA Law. The Court has the power to review any and all decisions, conflicts, and disputes that arise involving, either directly, indirectly, or tangentially, the Law School or its students. The Court is comprised of four associate justices and one Chief Justice. Opinions shall be released periodically and only in the official court reporter: the Virginia Law Weekly. Please email a brief summary of any and all conflicts to [jmg3db@virginia.edu](mailto:jmg3db@virginia.edu).

## Class Talkers v. Trash Talkers, 70 U. Va. 482 (2017)

GOLDMAN, C.J., joined by HALL and JANI, JJ.

The Court certifies two classes of individual students regarding the same issue: talking in class. The trial court consolidated both the classes of plaintiffs and defendants together in classes referred to as “Trash Talkers” and “Class Talkers.” Trash talkers were awarded summary judgment in an opinion by Judge Ranzini that stated simply: “Please shut up.” The Class Talkers appealed. Upon appeal, this esteemed Court took the case to resolve this contentious issue once and for all.

The facts are not disputed, are identical in each case, and are as follows:

At various points in class, Class Talkers will audibly and sarcastically make disruptive noises such as signs, snorts, cackles, laughs, and gestures such as nodding their heads vigorously, turning to the students seated next to them to make a comment, and will generally make their approval or disapproval of a statement made by a professor and/or student known by means too numerous to cite in this opinion.

The Trash Talkers are the consolidated complaints by students, professors, faculty, and custodial staff who are “annoyed and offended by the snide comments” or have otherwise “been personally victimized by the Class Talkers.”

The Trash Talkers claim that judgmental noises are a distraction from class to the point where they are effectively barred from meaningful participation.

The Trash Talkers bring these claims under our Doctrine of Decent Behavior.

To decide whether claims fall under the Doctrine of Decent Behavior, we must first decide whether the behavior is “annoying.” Because most of our

cases turn on this determination, we have established the Chief Justice Haden’s Annoyance Test: Would a reasonably prudent law student (1) roll their eyes at the behavior, (2) find the behavior in question disruptive, and/or (3)(a) irritating, (3)(b) bothersome, (3)(c) nettlesome, (3)(d) vexing, (3)(e) or any other synonym for the word ‘annoying’ found on Merriam-Webster Dictionary. Furthermore, this Court may

Student Affairs does not accommodate for “being an asshole,” and a majority of students at this school have the ability to control offensive outbursts, at least during class time.

Now, for our favorite part: damages.

If one does not feel free to fully participate or learn in class it is as if they did not attend that class at all. Tuition for the 2017-2018 year for a nonresident is \$61,300<sup>2</sup> per year (not includ-

cease and desist letter to the Class Talkers. In the future, if the Class Talkers are so anxious that they absolutely must say something, we suggest using iMessage like everyone else.

We remand back to Judge Ranzini to calculate the monetary damages because we hate math. Give the Trash Talkers something for IIED, we trust your discretion.

Affirmed.

VANDERMEULEN, J., dissenting

I agree with my esteemed colleague, THE CHIEF JUSTICE, in nearly all the sentiments expressed by her opinion for the Court. Class Talkers are surely a plague upon all right-thinking people, but are they not protected by the Constitution of these great United States? The emanations and penumbra of the First, Thirteenth, Fourteenth, Eighteenth, and Twenty-First Amendments surely protect the right of jerks to be jerks. I would echo what Justice Oliver Wendell Holmes beautifully wrote in the seminal *Buck v. Bell*: “Three generations of imbeciles are enough.” Does not the security of our glorious nation rely upon the freedom of individuals? See *Korematsu v. United States*; Cf. *Minersville School District v. Gobitis*, rightfully restricting Jehovah’s Witnesses from handing out handbills. (“National unity is the basis of national security. To deny the legislature the right to select appropriate means for its attainment presents a totally different order of problem from that of the propriety of subordinating the possible ugliness of littered streets to the free expression opinion through handbills.”) *Lochner v. United States* guides this court’s jurisprudence. If New York bakers cannot be forced to work fewer than 80 hours per week, can gunnery 1Ls be forced to shut their pieholes? I am forced to conclude, with great reliance upon *stare decisis*, that they cannot.

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“Appellants contest that their behavior is involuntary and that by their nature as law students they “have an uncontrollable urge to demonstrate our superior intellect to everyone within our vicinity at all times.”

-C.J. Goldman

deem any behavior annoying. We know it when we see it.<sup>1</sup>

The Trash Talkers allege that the Class Talkers’ behavior meets every prong of our test, as they unanimously roll their eyes at the defendants and have stated that the behavior impedes their ability to learn and fully participate in class for fear of mockery by the Class Talkers. This Court agrees: This behavior is unequivocally annoying.

Appellants contest that their behavior is involuntary and that by their nature as law students they “have an uncontrollable urge to demonstrate our superior intellect to everyone within our vicinity at all times.”


Appellants have not persuaded the Court that this is an actual ailment. They failed to produce a single doctor’s note stating this particular affliction,

ing books and supplies, rendered useless because what’s the point if you can’t concentrate in class?). The Trash Talkers note that the Class Talkers are more subdued in classes such as Civil Procedure with Professor Nelson and Federal Courts with Professor Jefferies, where all students, even Class Talkers, are too afraid to make sudden movements. Those classes should be subtracted from the total owed to Trash Talkers.

The violation of the Doctrine of Decent Behavior is clear. The Honorable Chief Justice of the Court and the Honorable Associate Justices (oyez!) have even felt mockery and distress from the behavior of the Class Talkers. Though the Appellees didn’t ask for this, we also find the behavior illegal and have written and affirmed our own

<sup>1</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 197 (Stewart, J., concurring).

<sup>2</sup> <https://content.law.virginia.edu/financialaid/annual-cost-attendance-budget>



## Virginia Law Weekly

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**EDITORIAL POLICY:** The *Virginia Law Weekly* publishes letters and columns of interest to the Law School and the legal community at large. Views expressed in such submissions are those of the author(s) and not necessarily those of the *Law Weekly* or the Editorial Board. Letters from organizations must bear the name, signature, and title of the person authorizing the submission. All letters and columns must either be submitted in hardcopy bearing a handwritten signature along with an electronic version, or be mailed from the author’s e-mail account. Submissions must be received by 12 p.m. Sunday before publication and must be in accordance with the submission guidelines. Letters and/or columns over 1200 words may not be accepted. The Editorial Board reserves the right to edit all submissions for length, grammar, and clarity. Although every effort is made to publish all materials meeting our guidelines, we regret that not all submissions received can be published.

## Faculty Quotes

**D. Olliar:** [Discussing New Kids on the Block] “Anyone who followed them knew that Jordan was the cutest.”

**J.C. Jeffries, Jr.:** “Who here has taken Legislation? Caleb Nelson? Well he’s a brilliant young man and I’d take anything he taught me, but I’ve always been somewhat skeptical that it’s actually a topic.”

**D. Brown:** “[Discussing *Washington v. Gladstone*] I’m only letting my daughter apply

to colleges where she can buy pot illegally.”


**P. Grossi:** “Computer’s are gonna kill us all; we don’t have to worry about Trump.”

**K. Kordana:** “Harvard has \$230 billion in the bank and hasn’t blown it all. I sure would have. Spend it on a party.”


*Heard a good professor quote?*  
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# “Family Freak Out” Favorites

In 2015, Saturday Night Live correctly pointed out that Adele’s “Hello” was the

Kendall Burchard (she/her/hers) '19 Guest Columnist



cure to most, if not all, family feuds during the holidays.

With few topics safe from heavy politicization, here’s a playlist for talented, critically acclaimed artists to express your frustrations about our society to your family members without directly involving yourself in what will surely be an uncomfortable conversation.

When Explaining How Law School is Going – Ozzy Osbourne, “Crazy Train”

You think you have a cognizable claim for intentional infliction of emotional distress against most members of the faculty, and if you think you’ll win it, you haven’t outlined Torts yet. Let the song speak for you

When Harvey Weinstein, Kevin Spacey, or Roy Moore Come Up - Beyoncé’s “If I Were a Boy”

Because when your family suddenly becomes very invested in the presumption of innocence after a man has been accused of making sexual advances against a 14-year-old, sometimes you just gotta let Bey speak truth for you.

When Someone Asks if You

are Dating Someone - Daya, “Sit Still, Look Pretty”

No. I’m in law school. Do you know anything about the distribution of marital property after divorce? Do married people really know what they’ve gotten themselves into?<sup>1</sup>

When You’re a Victim of “The Turkey Dump” – Miranda Lambert, “Mama’s Broken Heart”

Your well-meaning family members may want to console you after a break up. It’s sweet. But emotions are high. Law school is hard. Grab a glass of wine, remind yourself that limiting distractions before finals is for the best, and remind your family that you’ll bury their sorry butt on the curve.

When You are Doing the Turkey Dumping - The Pussycat Dolls, “I Hate This Part”

Explaining why you broke up with your significant other can be as exhausting as explaining why you aren’t in a relationship and why you just got dumped. There’s no winning.

1 Cf. *Obergefell v. Hodges*, 135 S.Ct. 2584, 2600 (2015) (“Marriage responds to the universal fear that a lonely person might call out only to find no one there.” So can dogs, Justice Kennedy. And good friends. And coworkers because BigLaw hours. Shush).

So How Bout That Election in Virginia? - Imagine Dragons, “Believer,” and/or R.E.M., “It’s the End of the World”

Maybe you’re pumped. Maybe you’re pissed. Maybe your family feels similarly, or maybe they don’t. Maybe play whichever song sums up your feelings quietly... with headphones in. Maybe you should avoid anything that broaches politics like the plague. Maybe that’s just me?

When Your Family Asks About Your Law School Friends – twenty one pilots, “Heathens”

Depending on your Crim class and who among your classmates have designated as the murderers/murder victims in your professor’s hypos, you may be “lovin’ on the murderer sitting next to you” or be located next to a “psychopath.”<sup>2</sup> Or maybe your friends are still insufferable after OGI, and they are the heathens “ask[ing] you who you know.” Sound about right?

When Climate Change Comes Up - Toto, “Africa”

Yes, “bless the rains down in Africa.” Apparently Charlottesville also needs some

2 Do psychopaths qualify for the insanity defense? Anyone in Bonnie’s class know? § G? §A?

rain. Houston and Puerto Rico, however, need less. Play “Africa” and hope that everyone begins to sing along to arguably one of the best songs of all time and forgets their personal grudges against Al Gore, Leonardo DiCaprio, and the majority of the scientific community.

When the NFL Comes Up - Lady Antebellum, “Need You Now”

Knee-d...you now. Get it? Get it?

...I’ll see myself out. When Trump’s Twitter Comes Up - Elton John, “Rocket Man”

Because if Trump continues to pick a fight with the “short and fat”<sup>3</sup> leader of North Korea Rocket Man may answer with a bang.

When The Russian Probe Comes Up – Who Freaking Knows, “Take Me Out To The Ball Game”

Because Mueller = UVA Law = collegial = softball. Hey, let’s talk about softball instead!

3 His words, not mine. @realDonaldTrump, Twitter (Nov. 11, 2017 4:48 PM), <https://twitter.com/realDonaldTrump/status/929511061954297857> (“Why would Kim Jong-un insult me by calling me ‘old,’ when I would NEVER call him ‘short and fat?’ Oh well, I try so hard to be his friend - and maybe someday that will happen!”).

When a “Did You...Did You Just Say THAT?!” Moment Occurs - Mariah Carey, “All I Want for Christmas Is You”

This song will thoroughly confuse your family and is sure to provoke an alternate discussion about the proper time to begin to celebrate other upcoming winter holidays, be it Christmas, Hanukkah, or what have you. Someone will also probably start dancing. Distractions can be a blessing.

When, Despite Your Best Efforts, You Tell Off a Family Member and Immediately Regret It - Taylor Swift, “Look What You Made Me Do” / Demi Lovato, “Sorry Not Sorry”

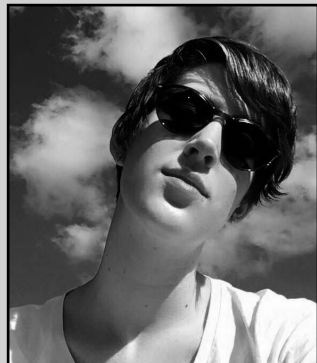
Less about avoiding the discussion, more about how to make yourself feel better after. Whoops. But you were justified, right?

When You’ve Made It Through the Meal – Queen, “We Are the Champions”

Family still intact? No one’s lives taken/seriously threatened? Convinced the people who have otherwise stormed out of the room to come back to the table? You’ve accomplished what many before have failed to do, and your efforts should be generously rewarded.

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## HOT BENCH



Amy Cameron Duncan '19 (she/her/hers)

1. Where can you find the best margarita in NYC?

Well, I wouldn’t say that it’s the best margarita in New York, but my favorite place to drink a margarita in New York is Lucky Dog in Brooklyn. Because, really, what’s better than drinking a ridiculously gigantic margarita in a backyard surrounded by thirty dogs?

2. What is your favorite word?

Petrichor. It means the smell that comes after a rain.

3. Where did you grow up?

All around the DC area, but I went to high school in Alexandria, VA.

4. If you could meet one celebrity, who would it be and why?

Dame Helen Mirren be-

cause she kicks a lot of ass and generally seems like she would be an incredibly good time.

5. What event are you most excited for on the Uva calendar?

The PILA Shaping Justice Conference! That’s mostly a shameless plug because I’m co-directing it with Ryan Snow, but I think it’s really going to be incredible this year.

6. If you had to pick one song to play non-stop in the background of your life, what would it be?

Picking one song to play in the background forever sounds absolutely horrendous, but I have been listening to “Ran” by Future Islands pretty much constantly for the past few weeks...

7. If you were a superhero, what would your superpower be?

I have always wished that I had the power to fluently speak the native language of anyone I met, including the ability to understand jokes and idioms. I’m not exactly sure what kind of superhero that would make me, but it’s a power that I’ve always wished I had.

8. What’s something you wish you’d known about law school before coming to UVA Law?

2L is harder than 1L for a lot of people. Apparently they don’t like to tell 1Ls that for fear that they’ll drop out, but I think I’d have preferred

to know. And on that note, don’t be afraid to get involved, but also don’t take on leadership positions unless you are actually excited about doing the work associated with them.

9. If you could live anywhere, where would it be?

Berlin, though I don’t have a good explanation as to why.

10. What’s your least favorite sound?

My alarm.

11. What’s the best gift you’ve ever received?

My grandmother sent me a \$100 chipotle gift card out of the blue right before finals last year and it was AMAZING.

12. Backstreet Boys or \*NSYNC?

Boyz II Men. Seriously, they were just better. I saw them in Philly this summer and they’re still incredible.

13. What is the best concert you have ever been to?

I got super lucky a few years back and randomly ended up at this party that Talib Kweli was performing at. Seeing one of my favorite artists in such a small setting was pretty unbeatable.

14. If you could make one rule that everyone had to follow, what would it be?

No posting “facts” that have no basis whatsoever in actual fact on social media.

## ELECTION

continued from page 2

imposed upon him by his opponent, as if daring to dream just a little bit bigger would somehow make him a less sober and realistic candidate than a professional lobbyist pretending to be a good old boy. Had Northam been even an iota more sincere, he should have had no difficulty rolling over Gillespie, a carpetbagger from New Jersey whose strategy consisted of wrapping himself in

the Stars and Bars and dog-whistling about “Southern Heritage.” Northam could with minimal effort have brought another half-dozen seats along on his coat-tails. Instead, we’re going into the all-important 2019 House of Delegates elections with a Republican majority, and the Democratic Party is too busy patting each other on the back to realize how close they came to losing everything.

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# Be a part of Virginia Law history.

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Mondays at 6:00 pm in SL279

CITIES

continued from page 1

ies when desiring uniformity or when there is oppression of minorities, but those arguments aren't especially compelling in the case of monuments. Schragger posed the question of whether a first amendment doctrine could remedy the vulnerability of cities, as well as whether we want it to.

Brady noted that in the context of takings law, special doctrines were created to address the rights of municipalities. She suggested that a similar doctrine for the speech of cities might be a baby step toward addressing some of these issues. Blank brought up the ways cities are treated like corporations, such as in the bankruptcy context. He noted that in the federalism context, we have safeguards for states, such as representation in Congress, but an equivalent representation of cities' at the state level might be seen as unconstitutional due to the one-person, one-vote doctrine.

One audience member brought up the possibility of using referenda for citizens of a city to decide to remove a statue, and asked if such a mechanism might be permitted. The panelists agreed that this strategy would get closer to representing the speech of the citizens, but that generally, in Dillon's Rule in states like Virginia, the state would win in the end. Blank mentioned a ref-

erendum from the 1980s in Washington, D.C. on medical marijuana, the votes of which Congress kept from being counted. That move provoked widespread disapproval and Blank agreed that a referendum gets closer to the nexus of the city and the citizens of the city.

On the question of current politics in Virginia, Schragger said that both Governor McAuliffe and Attorney General Mark Herring have come down on the side of localities in deciding whether to take down monuments, although exit polls from the recent Virginia elections showed people favoring keeping monuments by a margin of about sixty to thirty. "What puzzles me as a conceptual matter is why the state would care, and yet the state cares deeply—the citizens—the culture, they care deeply even if they've never seen the monuments."

While the debate over speech rights of cities has yet to be resolved, it's certain that contentious issues like Confederate monuments and sanctuary cities will keep it alive.

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CANVASS

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to talk about something as personal and potentially antagonizing as politics. But this is how elections are won on the ground level; not by changing minds door-to-door, which is not supported by the data, but by actively ensuring your own supporters get out and vote. Looking back, I probably spent fifteen to twenty hours spread over the past two months going door-to-door in various neighborhoods around Charlottesville and Albemarle County. Fifteen to twenty hours over the course of two months is an unbelievably small sacrifice for someone

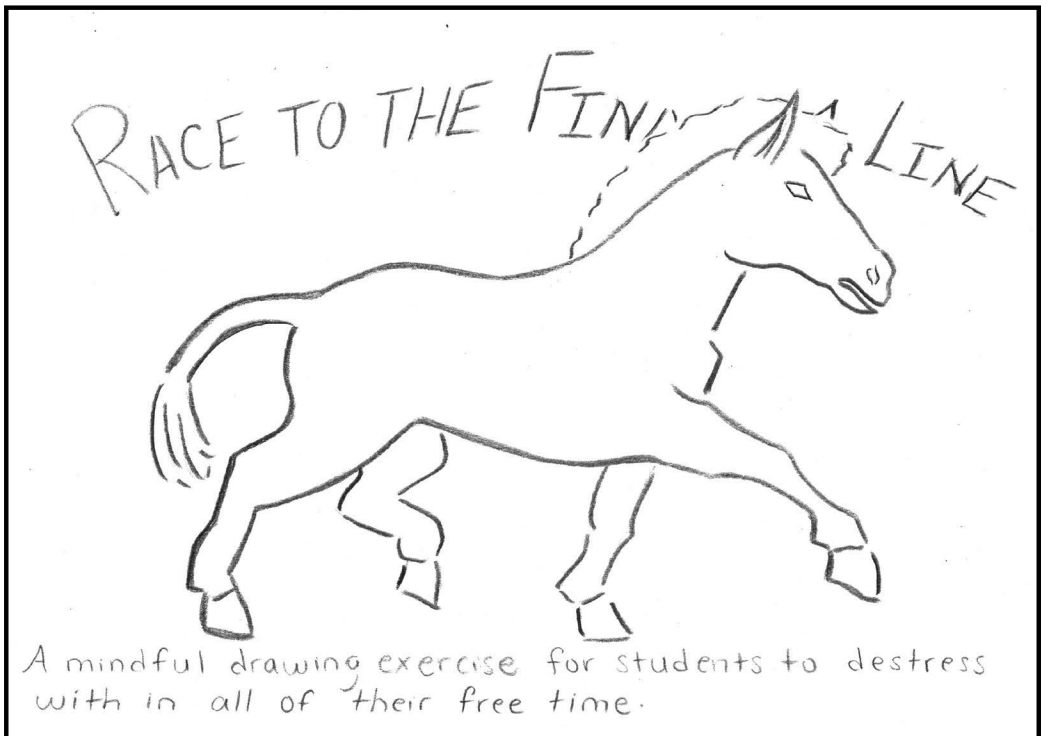
with as flexible a schedule as a law student has. Others did way more and spent all of Election Day providing rides, directing people to their polling places, and any other manner of supportive activities. The aggregate result of all this work was a historic sweep for Democrats. If the Ninety-Fourth District had just a few more people getting out the vote on either side, the future balance of power in the Commonwealth of Virginia would be much clearer. Even just one or two people spending a single afternoon going door to door or phone banking could have gotten out enough votes to determine the Ninety-Fourth District.

There are a lot of post

mortems being written about this election in Virginia and what it means for the Commonwealth and the nation as we move into congressional midterms elections in 2018. Some of those are interesting, and some of them may even turn out to be correct. But the only true take away one can glean from any election is that voting matters. You must vote. You should tell everyone you know to vote. But, if you really want to do more than just hope that an appropriate aggregate of other voters express your voting preferences, then you need to get out the vote.

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Cartoon By Ali



THE DOCKET

TIME	EVENT	LOCATION	COST	FOOD?
<b>WEDNESDAY – November 15, 2017</b>				
11:30 AM	Litigating for Liberty: Tales from the Trenches with Alan Gura	WB 101	Free	Yes, Chik-fil-A
12:00 PM	BLSA Teach-In: "Place, Race, and Public Health"	Purcell	Free	Yes, Pearl Island
12:00 PM	Cyber Operations: Is It Possible to Apply 20th Century International Law to 21st Century Cyber Capabilities? (The Devil Is in The Details)	Caplin Pavilion	Free	Yes
12:00 PM	Faculty Ideas in Progress: "The Attack on American Cities," With Professor Rich Schragger	WB 121	Free	Yes, with RSVP
5:30 PM	Blaxploitation: 100 Years of Blackness in Italian Cinema	UVa Nau Hall	Free	No
6:00 PM	Dinner Table Series: Joe Charlet on Class and Intersectionality	Caplin Pavilion	Free	Yes
<b>THURSDAY – November 16, 2017</b>				
12:00 PM	CARE Career & Summer Job Panel	WB 129	Free	Yes, but RSVP
1:00 PM	Asian Invisibility and Overcoming Apathy Lecture	Caplin Pavilion	Free	Not sure
5:00 PM	Student Bar Association Thursday Social	Spies Garden	Free	Yes
<b>FRIDAY – November 17, 2017</b>				
5:30 PM	Legal Observer Training	Caplin Pavilion	Free	Yes
6:00 PM	Shared Shabbat	Scott Commons	Free	Yes, Al Carbon with RSVP
<b>SATURDAY – November 18, 2017</b>				
All Day	Charlottesville Book Fair	CitySpace	Free	No
12:00 PM	Harry Potter and the Order of the Phoenix	Alamo Drafthouse Cinema	\$10	EMO HARRY!!!
<b>SUNDAY – November 19, 2017</b>				
5:30 PM	FLAVA and VALS Pre-Thanksgiving Potluck!	The Pavilion Clubhouse	Free	Potluck, so bring a dish
<b>MONDAY – November 20, 2017</b>				
5:00 PM	Compassion for Others	Auditorium of the Albert and Shirley Small Special Collections Library at UVA	Free	No
<b>TUESDAY – November 21, 2017</b>				
12:00 PM	Turkey's Constitutional Saga: Culture, Tradition, and the Modern State	Purcell	Free	Yes, Mezeh

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