Message from the Incoming Editor in Chief and the Incoming Executive Editor

Dear Alumnus,

We are pleased to present you with the latest edition of the VLR Alumni Newsletter! Building on the strong foundation left to us by our alumni, the Vanderbilt Law Review has enjoyed another successful publication year. This May, the Law Review will publish the fourth issue of Volume 68. Under the leadership of the 2014–15 Senior Board, we have been able to publish Articles and Notes on impactful legal topics. Furthermore, the Law Review has maintained a high degree of professionalism throughout the entirety of the year, meeting deadlines and working effectively with renowned authors. While the exiting Senior Board would be too humble to admit it, there is no doubt: this year was a great success for VLR.

Next year’s Senior Board has already begun to lay the groundwork for the remaining issues of Volume 68. The Articles Committee is pouring over thousands of submissions, and the 1L Write-On Competition is only one month away. While much work lies ahead, we are excited to have the opportunity to carry on the Law Review’s great legacy.

We want to thank all of our alumni for their continued support, and we are committed to further develop our alumni relations. To facilitate more interaction between all VLR members, we would love to hear from you. We invite you to complete the alumni survey included in the newsletter and to let us know of any news, ideas, or updates for the VLR community.

Sincerely,

G. Alexander Nunn (J.D. ’16), Editor in Chief, Vanderbilt Law Review
Samiyyah R. Ali (J.D. ’16), Executive Editor, Vanderbilt Law Review

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- Student Note Highlight
- Introducing the incoming Senior Board
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Photo Courtesy of the Vanderbilt Bar Association
Chief Judge Diane Wood Visits VULS

In late January, Chief Judge Diane Wood of the United States Court of Appeals for the Seventh Circuit visited Vanderbilt Law School on invitation from the Law Review. Her trip to Nashville marked one of the law school’s largest and most successful speaking events in the past few years, as interest in Chief Judge Wood’s lunchtime talk rivaled that seen with Justice Clarence Thomas’s visit just last year. Such a great turnout was to be expected, however, as Chief Judge Wood brought a wealth of experience to the event. Her significant accomplishments, which range from her time as a tenured professor at the University of Chicago to her appointment as one of the first female judges on the Seventh Circuit, attracted students and faculty alike.

Chief Judge Wood’s day at Vanderbilt Law School began with the Law Review, as small groups of members were able to meet with the Chief Judge ahead of her lunchtime lecture. Without a doubt, these small sessions constituted an invaluable experience for the Law Review members. After brief introductions, the conversation with Chief Judge Wood took a warm tone as her engaging, welcoming personality encouraged members to ask a wide range of questions. Major discussion topics centered around her perception of what makes an ideal law clerk, her experience in the legal academy, and her favorite opinion, *Bloch v. Frischholz*, 533 F.3d 562 (7th Cir. 2008).

After the small group sessions concluded, Chief Judge Wood joined Professor Suzanna Sherry in Flynn Auditorium to address the Law School as a whole. In this broader session, Chief Judge Wood focused on her time on the bench, discussing the process by which she reaches decisions in various cases, her interactions with her colleagues on the Seventh Circuit (including Judges Richard Posner and Frank Easterbook), and her experience as one of the leading female jurists in the nation. Chief Judge Wood also fielded questions from the student body in attendance, addressing inquires about judicial realism, the efficiency of the federal court system, and the ramifications of *Citizens United*.

The success of the Chief Judge Wood’s visit to Vanderbilt offers great opportunity for future events. As talk of Chief Judge Wood’s lunchtime address continues to fill the halls of the law school, the possibility of turning judicial speaking events into an annual occurrence has already gained traction. In this way, the Law Review will continue to make meaningful bonds with leading jurists around the nation, thereby strengthening the reputation and impact of the journal.
For our Spring Roundtable, the case under discussion was *Williams-Yulee v. The Florida Bar*. The issue to be decided in *Williams-Yulee* is whether Florida’s canon of judicial conduct that bars judicial candidates from personally soliciting campaign funds violates the First Amendment. This case has important implications for judicial campaigning, as currently thirty-nine states hold judicial elections for at least some of their judges and at least twenty have adopted rules of judicial conduct that prohibit judicial candidates from personally soliciting campaign funds. Precipitated by a sharp split among both federal and state appellate courts, *Williams-Yulee* presents a conflict between the scope of protection of political speech afforded by the First Amendment and the need for judicial impartiality and integrity.

This year’s Spring Roundtable had more contributors than any of our previous roundtables. Authors Robert O’Neil, Ruthann Robson, Chris Bonneau, Shane Redman, David Earley, Matthew Menendez, Stephen Ware, Charles Geyh, Burt Neuborne, Michael DeBow, and Brannon Denning all shared their thoughts on the issues in *Williams-Yulee*. In deciding this case, the first issue the Court will have to resolve is the appropriate level of scrutiny to apply to Florida’s canon of judicial conduct. Most of the authors agree that such a content-based restriction on political speech requires the application of the most exacting standard of strict scrutiny, and believe that this is the standard the Court will apply. However, a few authors believe that a more deferential standard of “closely drawn” scrutiny should apply because personal solicitation of campaign funds is a hybrid of speech and nonspeech activity. Moreover, they argue that judicial candidates are different from other political candidates because the former needs to preserve its impartiality, independence, and integrity in the eyes of the public.

After deciding the appropriate level of scrutiny, the Court must then consider whether Florida’s canon withstands constitutional scrutiny. The level of scrutiny is important because under strict scrutiny, Florida would have to show that its canon is narrowly tailored to a compelling government interest. As a standard that is often referred to as “strict in theory, fatal in fact,” none of the authors appear optimistic that Florida’s canon would survive strict scrutiny. In fact, in *Republican Party v. White*, the Supreme Court case most similar to this one, the Court applied and struck down under strict scrutiny Minnesota’s “announce clause,” which prohibited judicial candidates from announcing their views on disputed legal and political issues. On the other hand, if closely drawn scrutiny is applied, Florida’s canon has a much better chance of passing constitutional muster. Under that standard, Florida only has to show that its canon is closely drawn to a sufficiently important government interest.

One last point of interest is the impact that the Court’s decision in *Williams-Yulee* will have on judicial elections. In their article, Bonneau and Redman argued that the Court’s decision will have little to no impact on future judicial elections. But regardless of its effect on judicial elections, one thing is certain: the regulatory structure of states that elect judges will surely be viewed in a different light.

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2014–2015 VLR Awards

Candidate’s Award: Mary C. Nicoletta

Editor’s Awards: Mary Julia B. Hannon & Kourtney A. Traina

Morgan Prize: Jean C. Xiao

Myron Penn Laughlin Note Award: Daniel J. Hay
Forthcoming Articles

March 2015

Elise C. Boddie, “The Sins of Innocence in Standing Doctrine” (VLR)
Should white plaintiffs always be able to challenge considerations of race in affirmative action programs? Conventional standing doctrine requires plaintiffs to show that the contested practice has caused a concrete, personal harm. Yet in affirmative action cases courts seem to have quietly dispensed with this requirement. Some scholars attribute this to inherent expressive or stigmatic harms associated with racial classifications. This Article contends that a more complex dynamic is at work. It identifies and critiques an “innocence paradigm” that presumes harm to white litigants from affirmative action. This Article fully explores the role that racialized conceptions of innocence play in structuring standing analysis.

Laura Napoli Coordes, “The Geography of Bankruptcy” (SSRN) (VLR)
Large companies routinely file bankruptcy cases in venues that have no meaningful connection to the company, its operations, or its stakeholders. This practice divorces bankruptcy and venue from their ties to location; disrupts the fundamental balance underlying the Bankruptcy Code by shifting the focus exclusively to the needs of sophisticated parties; and shuts out parties who have a right to participate, contravening due process and raising fairness concerns. To solve these problems, this Article proposes new procedures making venue considerations mandatory in large bankruptcy cases.

The norm of one-person–one-vote with majority rule treats people fairly by giving everyone an equal chance to influence outcomes but fails to give proportional weight to people whose interests in a social outcome are stronger than those of other people—a problem that leads to the familiar phenomenon of tyranny of the majority. Various solutions that have been tried or proposed over the years to correct this problem (supermajority rule, weighted voting, cumulative voting, etc.) all badly misfire in various ways, for example, by creating gridlock or corruption. This Article proposes a new form of political decisionmaking based on the theory of quadratic voting.

Alan M. Trammell, “A Tale of Two Jurisdictions” (SSRN) (VLR)
In this Essay, the author notes that the Supreme Court has crystallized and significantly narrowed the scope of general jurisdiction. At the same time, however, the question of specific jurisdiction that has divided the Court for nearly thirty years and produced an unstable body of case law. Rather than treating general and specific jurisdiction as distinct concepts, the author argues that they should be viewed as two axes demarking the contact necessary for a court to assert jurisdiction over a person. From there, the author demonstrates how the Court’s near unanimity regarding general jurisdiction can help clarify specific jurisdiction. (Most importantly, footnote 8 is the best footnote VLR has ever published.)

April 2015

Derek W. Black, “Federalizing Education by Waiver” (SSRN)
In the spring of 2013, Secretary of Education Arne Duncan told states he would use his statutory power to waive violations of the No Child Left Behind Act, but only on the condition that they adopt his new education policies—policies that had already failed in Congress. This Article argues that this exercise of power was both unconstitutional and beyond the scope of authority delegated to the Secretary by Congress. This Article has already received significant press attention, including in the Washington Post and from leading education scholar Diane Ravitch.

Shu-Yi Oei and Diane Ring, “Human Equity? Regulating the New Income Share Agreements” (SSRN)
New “income share agreements” (“ISAs”) enable an individual to raise funds by pledging a percentage of her future earnings to investors for a certain number of years. This Article addresses public policy and legal issues that ISAs raise and suggests that we adopt a case-by-case approach that examines each ISA’s distinct characteristics and treat it legally the same as an analogous financial arrangement.
Nicholas O. Stephanopoulos, Eric M. McGhee, and Steven Rogers, “The Realities of Electoral Reform” (SSRN)
This Article first empirically examines whether voters’ and legislators’/legislatures’ preferences at the state level are aligned. This Article further examines how different state electoral policies—including (1) franchise access, (2) party regulation, (3) campaign finance, (4) redistricting, and (5) governmental structure—affect the responsiveness and alignment of legislative policy with voter’s preferences.

Jay Tidmarsh, “The Costs Budget” (bepress)
In order to reduce litigation expenses, this Article proposes controlling litigation spending directly by requiring the parties to file and stay within litigation budgets. After describing the workings of a costs-budget system (already in use in the UK), the Article addresses practical, political, and constitutional critiques.

May 2015

Samuel L. Bray, “The Supreme Court and the New Equity” (SSRN)
With respect to remedies, the line between law and equity has largely faded away. However, surprisingly, in the last fifteen years, the Supreme Court has consistently reinforced the line between legal and equitable remedies, and it has treated equitable remedies as having distinctive powers and limitations. This Article narrates and evaluates the Court’s jurisprudence in these recent equity cases.

Alexandra Natapoff, “Misdemeanor Decriminalization” (SSRN)
Seen as a potential cure for crowded jails and an overburdened defense bar, misdemeanor decriminalization is becoming increasingly popular. Many states are eliminating jail time for minor offenses, such as marijuana possession and driving violations, and replacing those crimes with “nonjailable” or “fine-only” offenses. This Article explores the darker side of misdemeanor decriminalization, including the deprivation of procedural protections for defendants and the policy’s disproportionate adverse impact on poor defendants who would not be able to afford these fines and would end up incarcerated anyway.

W. Kip Viscusi, “Pricing Lives for Corporate Risk Decisions” (SSRN)
In doing cost-benefit (or risk) analyses for product features, companies have priced fatality risks and regulatory penalties too low. The inadequacies of companies’ safety culture can be traced to the hostile treatment of corporate risk analyses by the courts. This Article proposes that companies place a greater value on lives at risk by using the value of a statistical life, a measurement used by government agencies, and that companies be given legal protections for conducting and taking actions based on accurate risk analyses.
For many incoming freshmen, college is viewed as a path towards better job opportunities, higher wages, and a more satisfying career path. However, tuition costs have risen consistently over the past several decades, making student loans a practical necessity for most college students. Unfortunately, these soaring student loan debts are negatively impacting the financial future of not only recent college graduates, but also the nation as a whole: the $1.2 trillion in student loan debt held by Americans represents more unsecured debt than even credit cards; forty percent of households headed by someone under the age of thirty-five have student loan debt. A recently published note, “Proposed Legal Constraints on Private Student Lenders,” focuses on private student loans, a source representing $150 billion in student loan debt. Unlike federal loans, many private lenders provide rates to students based on their creditworthiness. Many lenders use variable interest rates, which fluctuate with the market interest rates. These variable rates lead to uncertainty in both the borrowing and repaying of the student loans, and often lead to much higher interest rates than fixed-rate loans. “Proposed Legal Constraints” proposes in the short term instituting enhanced disclosures for high-cost loans and improving students’ ability to find low-cost options. For a long-term solution, the note argues that lenders should be required to consider a student’s future ability to repay the loan before lending, a solution that may lead to a decrease in overborrowing and default rates and lessen the loan burden on students entering the job market.

Fat Tuesday in the Law Review Suite
Thanks to Eva Dossier (EIC ’11), Law Review members celebrated Mardi Gras in style this year with two king cakes straight from New Orleans.

Photo Courtesy of Daniel Hay
G. ALEXANDER NUNN, Editor in Chief
Alex, a Dallas, Texas native, studied finance and accounting at The University of Arkansas. Joining a line of lawyers in his family and enticed by the opportunity for close relationships with faculty at Vandy, Alex headed to law school. However, this former ballboy for his hometown NBA Mavericks hasn’t abandoned athletic pursuits; he still makes time for golf, basketball, and the melancholy of cheering on his Kansas City Chiefs.

SAMIYYAH R. ALI, Executive Editor
After her early years in Atlanta, Georgia, Samiyyah headed to Duke for her psychology degree. Once her rugby playing days in Durham came to an end, she took her talents to Ohio State where she earned an M.A. in Higher Education and Students Affairs. She parlayed this degree into a full-time position running Greek Life for the University. At VLS Samiyyah cherished the opportunity she had to meet the Vandy’s first black law school graduates, who paved the way for what our school is today. When she isn’t busy making her famous baked macaroni and cheese, Samiyyah loves to listen to Nashville’s live music—as long as it isn’t karaoke.

CHRISTOPHER S. SUNDBY, Senior Articles Editor
Chris grew up in Lexington, Virginia, before departing for Oberlin College and earning a degree in neuroscience. Vanderbilt provided a perfect opportunity to continue his educational trajectory with its joint J.D./Neuroscience Ph.D. program. Outside the classroom, Chris finds himself in the water, kite surfing in Spain or working as a Scuba Diving instructor in Miami. Fortunately, the lure of law school was enough to pull Christopher onto dry land thanks to his passion for the law, cultivated through many years with his father, an accomplished legal scholar and professor.

MATT J. GORNICK, Senior Notes Editor
From his home in Branchburg, New Jersey, Matt headed to NYU where he graduated in 2009 with a double major in Journalism and English & American Literature. Before VLS, Matt took a government-focused career path, moving from his summer job as a park ranger in undergrad to his position with the National Coalition for Homeless Veterans in D.C., where he served as Policy Director. However, Matt has not abandoned his passion for writing; one major motivator for his coming to law school was to improve those skills, and he still makes time for songwriting in his free time.

LAURA K. MCKENZIE, Senior Managing Editor
Laura was raised in St. Louis, Missouri, before heading to the “Big Apple” to pursue her Art History degree at NYU. The collegial atmosphere at Admitted Students’ Day drew Laura to Vandy, where she has since learned to recognize every member of her section by voice. Laura’s interest in the law sprung from her love of solving puzzles, one of which she solved at her first Vandy football game where the “go Dores” chant led to the realization that the term “Double Dore” didn’t refer to someone who had gone through Vandy’s “Doors” twice.

CHRISTOPHER J. CLIMO, Senior En Banc Editor
Chris left the sandy beaches of Clearwater, Florida, for Nashville to pursue a degree in the Economics of Global Health at Vandy. This Double Dore says VLS was an obvious choice for law school. He has come to call Nashville home and has every intention of continuing to live and practice in the city he describes as combining all the benefits of a thriving metropolis with the comforts of a small town. When Chris makes it out of the Law Review suite, you can find him either working on his cooking skills or in the great outdoors, hiking, mountain biking, sailing, or skiing.
In November 2014, the *Vanderbilt Law Review* published its most recent symposium issue, *The Role of Federal Law in Private Wealth Transfer*. The articles and comments published in the issue were the result of the symposium of the same title held at Vanderbilt in February 2014 with the help of Professor Jeffrey Schoenblum, Joseph Quinn (2013-2014 Symposium Editor), and Ellen Hunter (2014-2015 Symposium Editor). Although private wealth transfer has long been viewed as clearly within the province of state law, federal law plays an increasingly important role in such transfers. As Professor Schoenblum wrote, “federal law is the central consideration in premortem and postmortem planning for private wealth transfer.”

Accordingly, while the pieces within the issue spanned a broad range of topics, from the age-old Rule Against Perpetuities (Steven J. Horowitz & Robert H. Sitkoff, “Unconstitutional Perpetual Trusts”) to the emerging issue of the disbursement of digital assets such as a valuable Twitter account in probate (Naomi Cahn, “Probate Law Meets the Digital Age”), federal law’s ever expanding influence on private wealth transfers was the underlying theme of the issue. As a prime example of this, Mark Ascher’s article, “The Federalization of the Law of Charity,” provides a comprehensive account of the evolution of the law of charity from historically being a matter of the state to the current status of the law of charity, where “just about the only charity-related law that really matters is federal.”

However, in spite of federal law’s advancement, several authors expressed concerns about whether this evolution of private wealth transfer law is desirable. For example, Ascher noted that federal law’s increasing regulation of the law of charity has resulted in patchwork laws that are overly complex, increasing the costs of both operating charitable organizations and charitable giving. Additionally, in “Destructive Federal Preemption of State Wealth Transfer Law in Beneficiary Designation Cases: *Hillman* Doubles Down on *Egelhoff*,” John Langbein questions the Supreme Court’s decisions in *Egelhoff v. Egelhoff* (2001) and *Hillman v. Maretta* (2013) that ERISA preempts state divorce revocation statutes. These statutes generally serve to disinherit an ex-spouse in a will executed before the divorce took place, under the assumption that the testator would not have included the ex-spouse as a beneficiary had the testator had the opportunity to revise the will after the divorce. According to Langbein, the Court’s decisions stand in opposition to “the core policy value of state wealth transfer law, which is to implement the transferor’s intent.”

Given the increasing dominance of federal law in private wealth transfers and the concerns over its effects, one might wonder how much further federal law could advance. James Pfander and Michael Downey considered that question in the context of probate in their article, “In Search of the Probate Exception.” Pfander and Downey first examined the justifications for the probate exception, which strips federal courts of jurisdiction over certain probate matters. According to Pfander and Downey, the exception is rooted in the Constitution’s “case or controversy” requirement, and when the rule of decision is found in state law, federal courts do not have constitutional authority to adjudicate noncontentious or ex parte proceedings. However, as Pfander and Downey noted, Congress could significantly narrow the scope of this exception by assigning probate administration to federal courts through legislation supported by a variety of constitutional grounds—indicating that federal law’s expansion into the realm of private wealth transfers may not be anywhere near a stopping point.
VLR Alumni Survey

It is our fervent desire to keep alumni informed of the recent activities of the journal and to build relationships among current members and alumni. The information you provide is crucial to the success of our alumni network, so thank you! Your responses will not be shared with anyone outside of the Vanderbilt Law School community.

Please take a moment to complete the survey [here](http://tinyurl.com/kvge92x).

If you are having trouble with the link above, please copy and paste this URL into your browser: [http://tinyurl.com/kvge92x](http://tinyurl.com/kvge92x)

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**THE VANDERBILT PAW REVIEW**

When it comes to pups, Larry is as studious they get. He stays motivated by keeping his eyes on the prize, hoping to one day become VLR’s inaugural Senior Treats Editor.

Photo Courtesy of Margaret Dodson