

# VIRGINIA

TOWN & CITY

The magazine of the Virginia Municipal League

VOL. 54 NO. 7 SEPTEMBER 2019

## Embrace a tradition of progress

Roanoke exemplifies the spirit of opportunity in Southwest Virginia



### Inside:

The year in review  
Cyber-attack ransoms  
Supreme Court preview  
...and more!

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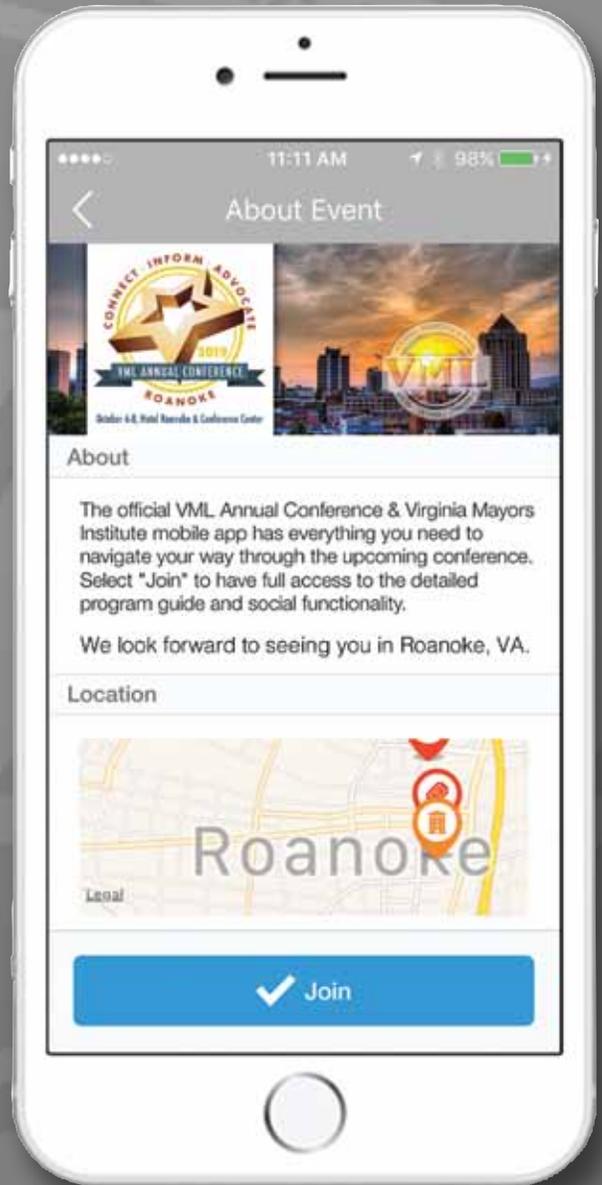
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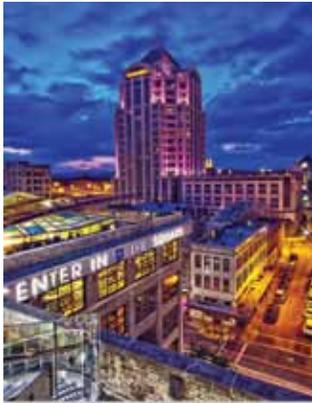


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On the cover

Roanoke is the place to be October 6-8 for VML's 2019 Annual Conference. As this stunning image from regional photographer Christopher Scott shows, the Star City continues its long tradition of energetic growth.

Welcome to Roanoke

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Greetings to the attendees of the Virginia Municipal League Annual Conference!

As Mayor, it is my pleasure to welcome you to Roanoke, a seven-time All-America City and the first-ever All-America City Hall of Fame Winner. Hosting the 2019 VML Annual Conference is a great opportunity for us to showcase all the exciting things happening in our All-America City.

While you are here, take time to venture out and explore our downtown. Experience our pedestrian-friendly Market Square with local farmers and craftsman from the region. Our streets are lined with a number of historic buildings that have been renovated into lofts, apartments, and commercial space.

Another "must see" is Center in the Square with its museums and aquariums. I also invite you to take a short walk through downtown and across Franklin Road to our award-winning Elmwood Park, the City's signature park, which hosts festivals and concerts throughout the year.

Roanoke is a beautiful October setting for outdoor fun. Our greenways and bike paths are easily accessible from Hotel Roanoke. Lick Run Greenway is on the other side of Wells Avenue (which runs parallel to Hotel Roanoke), and Mill Mountain Greenway begins in Elmwood Park off Jefferson Street (behind the Main Library). A great way to enjoy the outdoors is on a bike and, thanks to Zagster, several bike share stations are accessible downtown.

And you can't leave Roanoke without visiting the Star on Mill Mountain. That's why we've scheduled a "Walk to the Star" for Sunday, October 6—a brief outing to Mill Mountain that will lead you straight to the Star and a breathtaking overlook of the Roanoke Valley.

We hope you will enjoy your time with us, and urge you to discover for yourself the many things that make our City so special.

Welcome to Roanoke!

Sincerely,

Sherman P. Lea  
Mayor

# When opportunity knocks, Roanoke answers

**E**VEN BEFORE ITS INCEPTION, Roanoke was a community that seized opportunities. Consider that in 1852, when the Virginia and Tennessee Railroad came to the Roanoke Valley, the Town of Big Lick (which preceded Roanoke) literally moved the center of town in order to be on the route. This bold move established a better location for businesses and jobs related to the railroad industry and contributed to the growth that would lead to the formation of the City of Roanoke 30 years later.

Thanks in part to this way of thinking, Roanoke has continued to grow and prosper in the ensuing years. Today we continue to follow the example of those early community leaders by using our natural and built environments to make the most of opportunities to flourish.

## A record of achievement

The City of Roanoke is a progressive, forward-thinking community nationally recognized for its outstanding government practices and programs. Municipal awards and accomplishments include:

- **Seven-time recipient of All-America City designation.** The National Civic League bestowed this title to Roanoke in 1952, 1979, 1982, 1988, 1996, 2012, and 2017.
- **First-ever All-America City Hall of Fame winner.** The National Civic League presented this award to the City in 2019.
- **Leader of the Star City Reads program,** a national award-winning initiative focused on ensuring all children in the City can read proficiently by the end of third grade. This program's success garnered Pacesetter Awards from the Campaign for Grade Level Reading for four consecutive years.
- **Nationally accredited departments,** including the Police Department, Police Training Academy, 911 Center, and Parks and Recreation Department; and an internationally accredited Fire-EMS Department. Roanoke was one of the first jurisdictions in Virginia to have its building inspection program internationally accredited.



National publications that have featured Roanoke's outdoor amenities and quality of life include:

- "One of AARP's Top 10 Destinations" AARP.com, 2018

**"Opportunities are like sunrises. If you wait too long, you miss them."**

- William Arthur Ward

- "A Top Destination for a Solo Road Trip" CarRentals.com, August 2018
- "One of the Top 100 Best Places to Live" Livability, 2019
- "A Family Trip to Virginia's Blue Ridge" Well Traveled Child, February 2019
- "A Top Valentine's Day Getaway Destination" World Property Journal, February 2019

## Natural environment: The mountains are calling

Along with its neighboring localities, the City of Roanoke uses the opportunities that come with its "Virginia's Blue Ridge" designation to promote the recreational, economic, and cultural advantages of the community and to build its reputation as an exceptional place to live, work, play and, of course, visit.

Thanks to Visit Virginia's Blue Ridge, the region's official destination marketing organization, Roanoke is included in recognitions such as such as America's East Coast Mountain Biking Capital, IMBA Silver-Level Ride Center, Top Mountain Town, and Top Trail Town. This summer, Visit Virginia's Blue Ridge announced with great fanfare that Roanoke will serve as a multi-year host venue for the Carilion Clinic IRON-MAN® 70.3® Triathlon starting in 2020.

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Roanoke is the largest city on the Blue Ridge Parkway. The legendary Appalachian Trail is minutes away, and the Blue Ridge Parkway is a five-minute drive, with attractions such as the Peaks of Otter mountains and lodge, Chateau Morrisette Winery, and picturesque Mabry Mill. In addition, the parkway offers hundreds of miles of hiking and biking trails, and scenic drives.

Roanoke manages 60 parks, six greenways, and more than 90 miles of paved and natural surface trails, located in both urban and outlying areas of the city. Examples include

its signature downtown park, Elmwood, which hosts outdoor festivals and concerts throughout the year; and Carvin's Cove, the second largest municipal park in America, located on the outskirts of the city.

One of Roanoke's most successful outdoor events is the annual GO Outside Festival held every October at River's Edge Sports Complex. In 2018, the festival drew 38,000 attendees from across the country. The three-day event with free concerts, outdoor activities, and races is presented through a partnership with the Roanoke Outside Foundation.



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## Built environment: Downtown comes up

Private developers in Roanoke’s business community have availed themselves of federal and state historic tax credit opportunities to renovate many of Roanoke’s historic downtown buildings for residential and commercial use. The result: a newly vibrant downtown Roanoke with year-long activities, 70-plus restaurants and more than 40 retailers. Once in decline, the downtown population has mushroomed to more than 2,500 residents in recent years.

One of the most iconic reclaimed structures is the Roanoke City Market Building, which houses food vendors, along with a popular top-floor community gathering space. The building anchors the Commonwealth’s oldest continuously operating open-air market, the Historic Roanoke City Farmers’ Market, which offers an inviting display of fresh fruits, vegetables, flowers, and plants during growing season, as well as handcrafted items, unique jewelry, and other art objects.



COURTESY OF VISIT VIRGINIAS BLUE RIDGE

The recent sale of the Heironimus building in Downtown Roanoke promises more retail space and apartment living. Mast General Store will be one of the new tenants in the building.



## Active partnerships: Working together to achieve more

Roanoke has taken advantage of business opportunities to grow and strengthen our community and our economy. The city works side by side with local organizations and agencies to establish partnerships for growth.

A good example is Carilion Health System. In 2002, Roanoke advocated and supported Carilion's plans to build a medical campus in the city starting with the Carilion Biomedical Center. When Carilion Clinic and Virginia Tech created a unique public-private partnership aimed at transforming healthcare in Roanoke, the city once again seized the opportunity to support their plans. Construction of the Virginia Tech Carilion Research Institute, a Carilion Clinic outpatient building, and the Virginia Tech Carilion School of Medicine were the outgrowth of that partnership. Last year the city supported and set the stage for the expansion of biomedical research with the new Fralin Biomedical Research Institute at VTC, enhancing medical research and education in Roanoke.

Roanoke has developed a unique partnership with the business, medical, and educational communities to create the Roanoke Innovation Corridor, which will attract top neuroscience and biomedical researchers, tech entrepreneurs, physicians, and medical students from across the world. (See article included in this issue of *Virginia Town & City* on page 9.)

Thanks to collaboration between the city, Roanoke County and the City of Salem, broadband is up and running in the Roanoke Valley through the Roanoke Valley Broadband Authority. Localities are confident in its potential to make our business communities attractive to new companies, as well as allow local businesses to increase their competitiveness.

And Roanoke could not pass up the chance to be a partner in the Western Virginia Regional

Industrial Facility Authority. This authority, which comprises six government entities—the Counties of Botetourt, Franklin, and Roanoke; the Cities of Salem and Roanoke; and the Town of Vinton—enables collaboration on economic development projects. As a first project, Roanoke City, Roanoke County, and the City of Salem worked together to acquire and develop a nearly 110-acre site on Wood Haven Road for the purpose of attracting innovative manufactures and/or R&D operations looking for a high-quality, high-visibility location to complement their brand.

## Quality of life: Art thrives in the city

Visual arts are an intrinsic part of the Roanoke cityscape. A walk in Elmwood Park takes one to the “Art in Roanoke” exhibit. A drive over the new Franklin Road Bridge provides the opportunity to see depictions of the historic southwest neighborhood's architecture on its columns. A downtown stroll means passing the numerous galleries displaying works of local artists. A visit to



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## Raonoke, VA

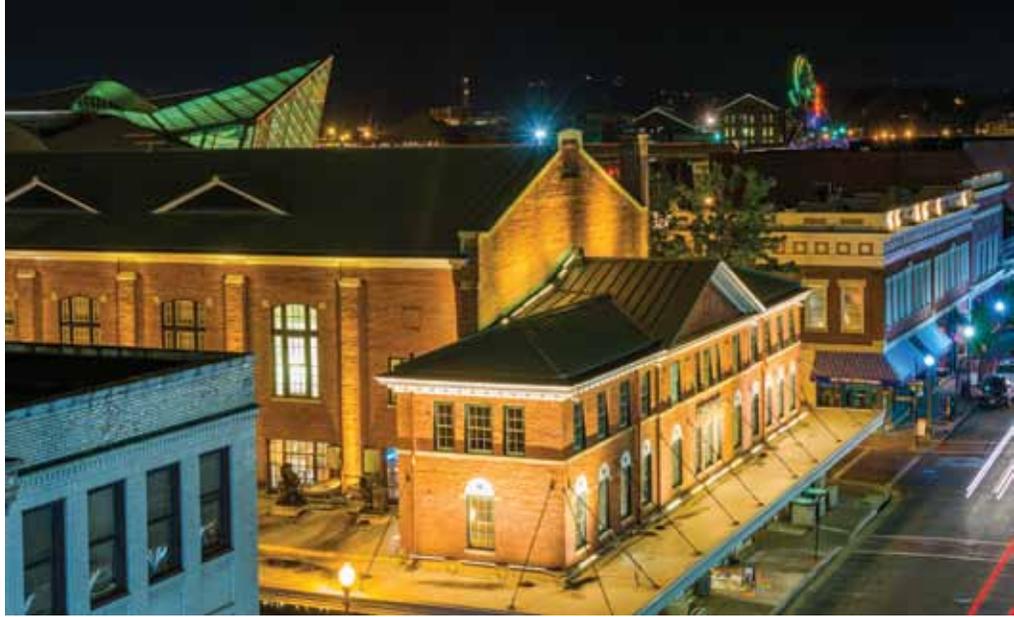
the Taubman Museum of Art provides the chance to see original works by national and international artists.

Roanoke is rich in the performing arts as well. The Roanoke Symphony Orchestra, Opera Roanoke, Roanoke Ballet, and Mill Mountain Theatre offer performances that tickle the ears and dazzle the eyes. Some of the biggest names in the entertainment world have appeared at the Jefferson Center, the Berglund Center, and the Elmwood Park Amphitheater.

## Roanoke loves learning

Roanoke's leaders are passionate about ensuring that all the city's citizens have opportunities to learn so when presented with an opportunity to improve the city's libraries, they seized it. The result: Over the past decade, the City has renovated and expanded all its library branches to provide state-of-the-art services to citizens in all areas of the city. The most recent project, the new Melrose Branch Library, opened in July.

Opportunities to learn are not limited to the city's libraries and schools. Visitors to the Center in the Square downtown find plenty of ways to increase their knowledge and in many cases have fun at the same time. The Center in the Square is home to the Roanoke Pinball Museum, Harrison Museum of African American Culture, Roanoke Starcade, and the Science Museum of Western Virginia.



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## Take the opportunity to visit Roanoke

Clearly, the City of Roanoke has a track record for making the most of opportunities. So, with the VML annual conference coming to Roanoke this year, don't let your opportunity to visit the Star City pass you by. Attend this year's conference and experience the greenways, trails, arts, downtown, and other offerings that set Roanoke apart. 

**About the author:** *Melinda Mayo is the Communications and Media Officer for the City of Roanoke.*

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# At the Intersection of Next “Health”: Roanoke’s Innovation Corridor

A TEAM OF NURSES and physicians weave their way through the organized chaos that is a typical trauma bay, gathering equipment, calling out vitals and checking over the patient. Calls and responses can be heard and equipment beeps and wails, as the patient moves from one stage of resuscitation to the next. Sarah Henrickson Parker, who has a PhD in human factors and industrial/organizational psychology, watches as the team does their work. Dr. Parker has worked in healthcare for 13 years, so it’s not entirely unexpected to find her in a busy hospital. But Parker isn’t in a real trauma bay. Rather, she’s in a remodeled trolley barn that houses the Carilion Clinic Center for Simulation, Research, and Patient Safety (Sim Center). Opened in February 2018, the Sim Center’s mission is to improve the delivery of health care for Carilion Clinic’s patients by providing high-quality simulation experiences for learners through integrated education, clinical practice improvement, and research. It’s an

ultramodern training ground and research and development hub that offers a transformative way to serve patients. It’s also just one of the remarkable things happening along Roanoke’s Innovation Corridor.

## The journey from “Train City” to “Brain City”

To understand the development of Roanoke’s Innovation Corridor, a brief history lesson is needed. That history extends back to 2007, when the tireless efforts of healthcare, academic, and government officials culminated in an announcement that Virginia Tech and Carilion would be creating a jointly operated medical school and research institute to be patterned after Harvard Medical School’s Health Sciences Technology Program and Cleveland Clinic’s Lerner College of Medicine. The program would also feature small class sizes (40 students per



COURTESY OF CARILION CLINIC

## Roanoke's Innovation Corridor

class) and be located directly adjacent to downtown Roanoke along South Jefferson Street on what would become the Virginia Tech Carilion (VTC) campus.

Over the next decade, this partnership would pay undeniable dividends for the region, with Carilion Clinic and the Virginia Tech Carilion School of Medicine and Research Institute (re-christened in 2018 as the Fralin Biomedical Research Institute at VTC) employing nearly 1,700 on campus and having a combined impact of \$214.3 million in Fiscal Year (FY) 2017. Those numbers are expected to increase significantly in the near future, with the combined entities expected to employ 3,147 and have a combined impact of \$465.2 million by FY 2026. With so much growth taking place so quickly, it was easy to see what former City Manager Chris Morrill coined as Roanoke's transition from "Train City to Brain City."

## Critical mass

In 2016, having decided that things had reached a critical mass, Virginia Tech and Carilion announced their intention to develop a health sciences and technology district along South Jefferson Street. Shortly thereafter, Morrill began convening monthly meetings of the various stakeholders who would become invaluable partners in these efforts, including Virginia Western Community College and the Roanoke Regional Partnership. At the outset, discussions focused on identifying synergies around which a plan could be formulated, centered on and around the South Jefferson Street area.

In the meantime, the area in and around the Corridor continued to develop rapidly. In 2017, Richmond-based WVS Companies opened a 127-unit apartment building directly across from the VTC Campus. Situated on a 22-acre parcel that had previously been home to a lumber company, warehousing, and a bridge and iron works, the apartments were now part of a development, rechristened as "The Bridges," that contain another 150-unit apartment building, retail, and a performing arts venue, as well as the aforementioned Carilion Sim Lab. A performance agreement with the City signed in 2012 aided in the construction of roads and installation of utilities and served a valuable two-pronged mission of revitalizing a previously dormant piece of land while also accommodating some of the housing and dining needs of the VTC and Carilion community.

In January 2018, Carilion, the Jefferson College of Health Sciences (Jefferson College), and Radford University announced that Jefferson College would merge into the Radford family of colleges and departments, formally establishing Radford University Carilion. The new program will be based in Roanoke and will be yet another bold public-private partnership for Carilion. Upon becoming official in July 2019, Radford will have the second largest nursing program in Virginia.

On the workforce development front, programs have emerged to meet the need on several fronts. The Gill Memorial Building, a three-story former hospital that is home to the Regional Acceleration and Mentoring Program (RAMP), sits just north of Elm Avenue and across the street from the City's Main Library Branch. The genesis of the program came in response to feedback from the entrepreneurial community about



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the City needing to be more active in promoting and enabling entrepreneurship within our region.

With that feedback and the potential spinoff businesses from the Virginia Tech Carilion Research Institute (VTCRI) in mind, the City began searching for locations in which to house a business startup accelerator. A property swap with Carilion and the Western Virginia Water Authority gave the City a prime location on the southern edge of downtown and less than a mile north of the improvements, which would be financed by a grant provided by the Virginia Department of Housing and Community Development. To ensure RAMP functions in a truly entrepreneurial fashion, day-to-day operations are managed by the Roanoke Blacksburg Technology Council, with the educational curriculum provided by Virginia Western Community College. The City serves as landlord for the facility, provides nominal funding for RAMP, and is regularly involved with cohort events.

In 2016, RAMP opened its doors to an initial cohort of five companies. To date, 15 companies spread over three cohorts have helped create a dozen new jobs for our region. In addition to its three core partners, RAMP has also benefitted from the generous support of the private sector and other regional local governments, not to mention the countless hours volunteered by a team of dedicated members. Three years in, people are taking notice.

"In our third class, we're building traction," said RAMP Director Mary Miller. "We've been accepted to GAN (Global Accelerator Network) and our 'Pitch & Polish' clinics are full, with a waiting list. And, our alumni companies are coming back to help other start-ups."

But Miller and the RAMP Program haven't been complacent in the face of success. "If we get this right, we'll identify companies we can grow," she said. "The needs of those companies change from concept to growth. Our goal is to get them the next level of help they need."

In addition to the efforts at RAMP, the invaluable work of nurturing of new businesses is also taking place in a newly remodeled building in the City's Northwest neighborhood. Aptly named "The Humble Hive," this business incubation center is the brainchild of The Advancement Foundation, a nonprofit organization that seeks to initiate, develop, and coordinate strategic action across various sectors. In 2015, TAF launched the Gauntlet, a comprehensive business development program and competition that helps main street and high growth companies develop business strategies that provide a roadmap to success. Through the Humble Hive, those resources could now be targeted toward a specific neighborhood.

“We saw the need for these sorts of business services in Northwest,” said Patterson. “With an investment from the City and the resources TAF has developed through the Gauntlet, we knew we could meet that need.”

Although such efforts may currently be focused on a specific neighborhood, City Manager Bob Cowell sees this work as servicing Roanoke's larger efforts to expand economic equity to other neighborhoods within the City.

“Economic equity is a priority of our City Council,” stressed Cowell. “By investing in the Humble Hive and similar initiatives, the City is leveraging its resources to help potential business owners from economically distressed areas learn what it takes to make their ideas a reality.”

In terms of the Innovation Corridor, Cowell sees such investments as part of the City's efforts to ensure all citizens and businesses have equal access to opportunities within the city regardless of location.

“It's not lost on the City that helping these business owners become competitive will pay dividends in the future,” Cowell said. “And, that could mean on Main Street, in the boardroom, or in the Corridor.”

By the time Cowell began leading meetings for the Innovation Corridor Steering Committee in 2018, the group had grown to more than a dozen organizations, including Radford University, Valleys Innovation Council, and the Roanoke Blacksburg Technology Council. Convinced the City was best positioned to serve as the convener, he encouraged the group to think less in terms of prescribed geographic locations and more in favor of a mindset focused primarily on the corridor's growing portfolio of dynamic innovation assets. With the committee's approval, he tasked a team comprised of representatives from several of those organizations, led by City Economic Development staffer Marc Nelson, to develop the marketing and branding tools that would promote those assets.

The result was Roanoke Innovates, a portable and inclusive brand that captures the spirit of innovation and entrepreneurship that exists citywide. In addition to a new website ([roanoke-innovates.com](http://roanoke-innovates.com)), the team worked with North Carolina-based consultants Vitalink and AndiSites to develop logos, a branding guide, and a toolkit aimed at helping individuals, businesses, and other interested parties seamlessly integrate into the Roanoke Innovates ecosystem.

Also key to the Roanoke Innovates campaign is the notion

that Roanoke is a place in which a person can obtain a true work/life balance, where a researcher or an entrepreneur can ride a bike to work along our greenway in the morning, perform cutting-edge work all day, and then be a member of the community at night.

“The Innovation Corridor is nestled into a vibrant community that is big enough for people to do important work, but also intimate enough for them to be embraced by the community,” said Cowell.

“We're not Boston or Silicon Valley, which is sort of the point,” Henrickson Parker, the Sim Lab Director, agrees. “My husband is a musician, I love doing improv comedy, and we have two kids,” she said. “I've lived in Minneapolis and Washington, D.C., where it's very difficult to find time for all those things. But here the region and the work are intertwined in a way that allows us to do all of them.”

Not to say that developing the Corridor has been without its challenges. While doing cutting-edge work in an affordable, vibrant outdoor community has been key to the success of the Innovation Corridor, the pull of larger communities like Richmond, Washington, D.C., and North Carolina's Triangle Region (consisting of Raleigh, Durham, and Chapel Hill) has caused much of the in-demand talent being produced by Radford, Virginia Tech, and other schools to leave the area after graduation. Similar issues sometimes arise in drawing established professionals to the region, with concerns about air travel and work for trailing spouses most often cited by recruiters.

Erin Burcham, Director of Talent Solutions for the Roanoke Regional Partnership, occupies the important role of reversing that trend.

“The Roanoke Regional Partnership is taking a proactive approach to talent attraction and retention to support regional business and innovation growth,” she said.

On that front, Burcham has taken to studying the problem from multiple angles, teaming with other regional groups to obtain a grant from the state that has allowed them to examine this “Brain Drain” in depth, as well as working closely with area companies to attract talent to the area.

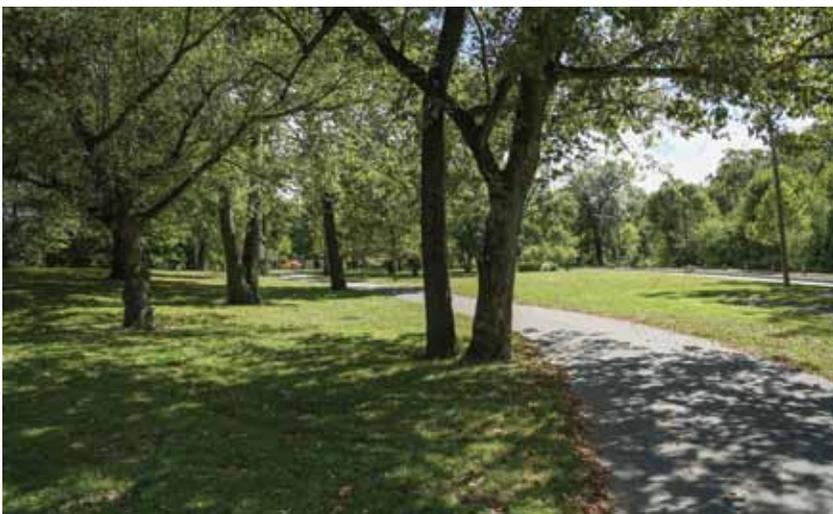
Back at the Sim Lab, Sarah Henrickson Parker is finishing up another busy day. Seated in her compact corner office, modern apartment buildings and the VTC Campus visible through the floor to ceiling windows behind her, she ponders what makes Roanoke's Innovation Corridor different.

“The relationship between Virginia Tech and Carilion has a startup mentality,” she said. “Which means, you can have an impact, even in a big hospital system.”

“You have scientists, doctors, and entrepreneurs all situated within a few miles of one another,” Henrickson Parker continued. “There is a hunger and a curiosity that allows places like the SIM Center to implement amazing bench-to bedside discoveries. We really are building what next ‘Health’ looks like.” 

**About the author:** *Marc Nelson is Special Projects Coordinator for Innovation and Economic Inclusion in the City of Roanoke's Economic Development Department.*

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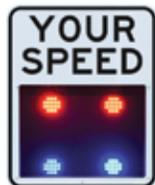
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# Cyber-attacks: Should you pay a ransom?

**P**UBLIC BODIES CONTINUE TO GARNER unwanted headlines for falling victim to ransomware and other cyber-based attacks. Although these types of attacks regularly target both private and public sector entities, those that affect the public sector are often more visible because crucial municipal services may be disrupted. Unfortunately for local governments and the citizens they serve, the greater the disruption and outrage, the larger the ransom demand. Moreover, criminals have seen that public entities will pay ransoms to avoid these disruptions and that these payments are often covered by insurance. This means cyber incidents targeted to government entities aren't going away anytime soon and are only likely to increase.



## To pay or not to pay? Yes, there is a question.

Law enforcement and the U.S. Conference of Mayors advise against paying ransom since it encourages more attacks. However, while refusing to pay may be in the best interest of the aggregate, it may not necessarily be in the best interest of the public body experiencing the attack. Consider the following recent examples:

- Two large U.S. cities chose not to pay a ransom to avoid a cyber-attack. This decision resulted in a disruption of services and millions in costs to rebuild IT systems and upgrade security and served as an example of what municipalities could suffer as a result of not meeting ransomware demands.
- Two ransomware attacks in Florida – in which the municipalities chose to pay the ransom – led to a greater awareness that these payments are often covered under a cyber insurance policy. This not only informed criminals of the types of limits associated with cyber coverage, it incentivized them to exploit the basic economic principle of price elasticity of demand (i.e. the demand to maintain services does not decrease as the price of the ransom goes up).

The bottom line is that there are costs and options that each public body must evaluate for itself when deciding whether to meet a ransomware demand. These considerations include the importance of the locked files, the degree of confidence in their system backups, and the risk tolerance for lost data as it relates to their backup and recovery strategy.

## How much risk can you handle?

The lower a municipality's risk tolerance, the greater the need for a solid backup and recovery strategy. One public body's tolerance may be four hours without systems and/or data. For others, the tolerance may be several days. The backup and recovery strategy should be routinely reviewed to address evolution of commonly used ransomware code, some of which has now been designed to bypass firewalls and infect backup systems. Of course, tolerance must be considered separately if backups are infected with ransomware as well as the operational systems.

## Mitigate your risk

The best way to avoid a ransom is to have the appropriate controls and protection in place to minimize the likelihood of being infected with ransomware. Following these events, the public wants to know why more was not done to protect the entity's systems and data. So, if an incident does occur, having the appropriate controls and protection in place can reassure the public that everything is being handled in the best manner possible.

Cyber security mitigation includes three focus areas: physical, technical, and administrative. An effective strategy has elements from all three and should be reviewed regularly to adapt to emerging and evolving threats.

- **Physical controls** include measures to protect hardware and monitor access to buildings, offices or server rooms. Key fobs (which limit access to secure areas based on job role), security cameras, and fire suppression systems are common examples of physical controls.
- **Technical controls** include tools to prevent unauthorized access to electronic systems, or tools that highlight potentially malicious emails. These includes antivirus software, firewalls, and email filters. More advanced options include penetration testing, vulnerability testing, and phishing testing. It is recommended that these more advanced tests be performed at least once a year.
 

Given the increase in the frequency of phishing and fraudulent emails, an excellent technical control is to set an alert for any email originating outside of an organization. This is often displayed in a highlighted line with wording such as: ***Notice: This message originated outside of <Organization's Name>. Use caution when opening attachments, clicking links or responding to requests for information.***
- **Administrative controls** include information technology, systems, policies, and procedures as well as training. These are often the most effective means for preventing a cyber incident. Staff are the last line of defense yet are often the weakest link in the defense chain. Criminals exploit human weaknesses such as eagerness to please or tendency to click links, open attachments or secure credentials. So, while time consuming, staff training has the greatest potential to prevent a cyber incident for your organization. 

**About the authors:** VRSA is Virginia's largest group self-insurance pool. It provides auto, property, liability, and workers' comp coverage to local governments, schools and authorities.

# Public power is hometown power



**T**urning on a light ... turning on the oven ... turning on a computer. They all require electricity. Thanks to the members of the Municipal Electric Power Association of Virginia, more than a quarter million residents across the Commonwealth don't have to worry if there will be power to turn on, because it's always there. MEPAV members are your not-for-profit, community-owned

utilities that provide reliable and safe electricity at a reasonable price. Our commitment to the communities that we serve goes beyond keeping the lights on and appliances running. Our success is intertwined with that of each family and local business. MEPAV is part of a vital American tradition that makes communities better places to live and work. It's a tradition that works.



MUNICIPAL ELECTRIC POWER ASSOCIATION OF VIRGINIA

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Salem  
VPI & SU  
Wakefield



# Get ready!



## Download the VML App

Stay connected and get instant updates on sessions, schedules and more.

Search: Virginia Municipal League in your device's App Store.

**CONNECT**  
We're including plenty of opportunities to socialize, network and have fun including outings around Roanoke, a Sunday evening reception followed by a game night, a morning guided run and group yoga, and a Host City Night in Market Square (to name just a few).

**INFORM**  
This years' roster of speakers includes experts, leaders and professionals from a range of public and private sector organizations to provide knowledge and perspective on the topics that will matter most in the coming year..

**ADVOCATE**  
The annual business meeting and election of officers will take place Tuesday morning and will include the presentation and adoption of proposed 2020 Policy Statements and the VML Legislative Program.

**FOCUS**  
Most conference activities, including general sessions, break-outs, and the exhibit hall, will take place at the Hotel Roanoke & Convention Center located at 110 Shenandoah Ave., Roanoke VA 24016.

**More information as well as links to register are available at [www.vml.org](http://www.vml.org)**

# A message from VML President Anita James Price

**S**ERVING AS VML'S PRESIDENT in 2019 has been an amazing experience and I want to thank everyone – local officials, board members and VML staff – who made this one of the most rewarding experiences in my years of public service. Thank you! I urge you to be involved in VML. VML depends on its local officials to give their talent and time, but as is the case with every volunteer activity, you get back so much more than you give. The opportunities to learn, meet fantastic people from every corner of the Commonwealth, and contribute to the betterment of our communities is an incredible experience. Please take advantage of it!

In reflecting on this year, I believe we can all be proud of our legislative accomplishments. More money is available for broadband grants, the proffer process was improved, local governments gained the authority to regulate dockless scooters, and school divisions may now set their own school calendars. And think of the potential for improving the redistricting process! Who would have thought at the start of 2019 that we'd end it only one session and one referendum away from better ensuring that voters select their representatives?

So, much was accomplished in 2019. But equally important is what was not accomplished thanks to our concerted efforts in dealing with the General Assembly. We successfully defended local taxing authority, deferred unpalatable changes to the annexation statutes and resisted costly changes to our accounting systems. All told, it was a good year for local governments in Virginia!

2019 was also a great year for VML events. January seems like ages ago, but those of us (and there were many) who attended VML's Legislative Day in Richmond during the General Assembly know it was a rewarding day. Governor Ralph Northam and Secretary of Transportation Shannon Valentine were the featured – and well-received – speakers. Thanks to all our local governments for participating and ensuring that your locality's presence is felt in the capital when it matters most.

Speaking of outstanding attendance, VML had a great turnout at its conference for Newly Elected Officials in Abingdon and a superb regional dinner in Marion. Our appreciation to the town officials and the Mount Rogers Planning District Commission for being such exceptional hosts.

As we all know, partnerships make all organizations stronger. VML is fortunate to have close working relationships

with great organizations such as the Virginia Association of Counties (VACo) – with whom we are exploring avenues for cooperative ventures such as the annual Finance Forum – and the National League of Cities. NLC staff attended our policy committee meetings and the Congressional City Conference held this past March in Washington was an amazing gathering of decision makers and dedicated leaders. Those who know

me know that I am passionate about educating young people and I strongly believe we've got to be part of preparing the next generation to take over the reins of government. I was very excited and proud that high school students from Roanoke had the chance to participate in this meeting and to learn about local government.

Without question, the most painful moment during my tenure as president came when I learned that one of our member localities had suffered a horrific mass shooting. Indeed, regardless of where we live, we were all deeply saddened by what happened in Virginia Beach this past May. VML and communities across the state and the nation mourned with the city and extended what help we could. VML's Legislative Committee had a very constructive, honest discussion of workplace safety issues in the immediate

aftermath and, with the effects of that sad event continuing to reverberate today, those discussions are sure to continue.

Moving forward, VML will be conducting a survey of its members to ensure that the organization is best meeting your needs and expectations. Please participate! We need to hear what you think we are doing well and what we could be doing better. VML has been a beneficial, strong organization for localities for over 100 years and I'm pleased to have played a part (however small) in continuing that tradition. With your input and support, I am confident we will position ourselves to become even better and even stronger in the years to come.

I look forward to seeing all of you in Roanoke for the annual conference. Thank you again!



**Anita James Price**

*Anita James Price*

**Anita James Price**  
Council Member, City of Roanoke  
President, Virginia Municipal League

# VML Executive Committee



**Thomas R. Smigiel Jr.**  
President-Elect  
*Council Member, City of Norfolk*



**Jill Carson**  
At-large member  
*Vice Mayor, Town of Pennington Gap*



**Willie Green**  
At-large member  
*Council Member, City of Galax*



**Bill Rush**  
At-large member  
*Town Manager, Town of Marion*



**Bridge Littleton**  
At-large member  
*Mayor, Town of Middleburg*



**Laurie DiRocco**  
At-large member  
*Mayor, Town of Vienna*



**A.D. "Chuckie" Reid**  
At-large member  
*Vice Mayor, Town of Farmville*



**Patricia P. Woodbury**  
Immediate Past President  
*Council Member, City of Newport News*



**Jon Stehle**  
City Section Chair  
*Council Member, City of Fairfax*



**Sean Polster**  
Town Section Chair  
*Council Member, Town of Warrenton*



**John Rowe**  
Urban Section Chair  
*Mayor, City of Portsmouth*



# VRSA Training: Partners in Risk Management

VRSA offers a variety of no-cost training options for members throughout the Commonwealth to provide continuing education and promote risk management. Upcoming training courses are listed below with additional trainings and dates to come.

Members can register on the VRSA website at: [www.vrsa.us](http://www.vrsa.us).

## 2019 VRSA Fall Workshops

### Topics Include:

- Workplace Civility: Is It Me Or Is It You?
- Workers' Compensation Challenges for Public Entities
- Knock Knock... VOSH is Here!
- Building a Culture of Risk Management
- Dissecting an Employment Practice Liability Claim: Woulda, Coulda, Shoulda

### Dates/Locations:

- Thursday, Sept. 19: Williamsburg
- Friday, Sept. 20: Fredericksburg
- Thursday, Sept. 26: Wytheville
- Friday, Sept. 27: Lynchburg





## Additional upcoming training includes:

**Training: OSHA At A Glance** - Sept. 19, South Hill; Nov. 13, Winchester

**Training: Use of Force Assessment for Supervisors** - Sept. 19, Warrenton; Sept. 20, Staunton; Oct. 3, South Hill; Oct. 4, Wytheville; Oct. 21 - Smithfield

**Webinar: Supervisor Training - Recruiting and Hiring in Today's Market** - Oct. 23

**Webinar: VA Center for School Safety Partners with VRSA** - Oct. 21

**Webinar: VRSA's Bullying and School Violence Resources** - Oct. 22

**Cyber Roundtable Recognizing Cyber As A "Today" Risk** - Nov. 6, Glen Allen

**Webinar: Diversity Issues in the Workplace** - Nov. 20

**Training: Reasonable Suspicion and Emotional Intelligence** - Nov. 21, Marion

**Webinar: Supervisor Liability** - Dec. 11

**Arrest, Search and Seizure Training for Officers and Supervisors** - Feb. 18 - Danville; Feb. 19 - Salem; March 3 - Warrenton; March 4 - Waynesboro; April 29 - Williamsburg; April 30 - Richmond

**Gordon Graham Seminar on Risk Management** - April 16, Fairfax

**2019 Annual Meeting** - May 8, Glen Allen

**Member engagements, trainings and roundtables are continually being added to the training calendar. Visit: [vrsa.us/events/](https://vrsa.us/events/) to see what is new!**



**D**URING THIS PAST YEAR, VML continued to serve its central role of advocating for local government interests at the state and federal level, offering educational programs to local officials, communicating news on topics and programs of greatest interest to local officials and providing information of vital importance to local officials on their roles as members of a council or board.

## Lobbying and advocacy

The positions that VML takes on legislation before the General Assembly and issues before state committees and agencies are based on VML's legislative program and policy statements. Those documents are developed by the members of the legislative committee and policy committees and are adopted at VML's annual business meeting. VML is grateful to the members of these committees for their many contributions. VML also thanks the many local officials who responded to our action alerts and requests for information, primarily during the legislative session but also throughout the year.

We were successful in making sure more money is available for broadband grants, improving the proffer process, ensuring that local governments have the authority to regulate e-scooters, and in giving school divisions the discretion to set their own school calendars. We defended local taxing authority, deferred unwanted changes to the annexation statutes and avoided costly changes to our accounting systems.

Additionally, we worked to make the improvements to redistricting the best feasible scenario for localities and will strive to ensure that the 2020 session brings those anticipated improvements to fruition.

## VML Legislative Day

VML's Legislative Day on January 24 included remarks from Governor Northam as well as an overview of I-81 and other transportation initiatives by Secretary of Transportation Shannon Valentine.

The seemingly interminable renovations of the General Assembly Building meant another year of navigating the labyrinth of the venerable Pocahontas Building where legislative offices and meetings are temporarily located, but again local officials persevered and made the most of their trip to the Capitol!

As in past years, Legislative Day included a reception for the members of the General Assembly and the administration that allowed local officials to network and exchange information with each other and with state officials.

## Policy Committees and Legislative Committee

The work of VML's six policy committees and Legislative Committee throughout the year form the basis of our advocacy. This year all six policy committees met July 18 in Richmond for a robust series of meetings that covered a wide variety of topics that included affordable housing, human trafficking, peer-to-peer vehicle rentals, broadband, and opportunity zones. The Legislative Committee began meeting in June and will hold its final meeting on October 6, the opening day of VML's annual conference in Roanoke.

## Education and training

### Annual Conference and Virginia Mayors Institute

The 2018 VML annual conference in Hampton provided workshops and presentations on a wide variety of pressing topics ranging from mis-assigned voters to expanding access to broadband; from an update on opioid lawsuits to a look at the future of energy in Virginia. The conference also proved to be a fantastic opportunity for delegates to network at breaks and social events including a fabulous host city night at Fort Monroe.

The Mayors Institute focused on leadership and included sessions on FOIA, COIA, social media strategies and more!

### Finance Forum

The 2019 Finance Forum was held January 8 and included sessions on health and human resources budget issues, NextGen 9-1-1, and opportunity zones. Once again, the session, which is sponsored jointly with the Virginia Association of Counties, offered the perfect opportunity to learn more about pertinent topics before the General Assembly took them up in session.

### Newly Elected Officials Conference

VML held two conferences aimed at helping newly elected officials and those looking for a refresher on topics essential to the work of elected officials and their staff. The first was held in conjunction with the Finance Forum in Richmond on January 8 so that the two groups could come together to hear presentations on the upcoming budget.

# 2019 Annual Review

The second was held in Abingdon on April 23 and was followed by a Regional Dinner event that evening in Marion. The Newly Elected Officials conferences cover topics such as the Freedom of Information Act (FOIA), good governance and citizen engagement, Conflict of Interests Act (COIA), council-manager relations and liability for public officials.

## Communications

VML communications ensure that our members learn about the issues, events and stories that affect them most. The 2019 editorial calendar for our magazine *Virginia Town & City* outlined a series of themes for each issue that included topics such as housing, energy, disruptive economies and youth services. Our July/August issue focused on tourism and featured the results of our inaugural “Virginia You Love” survey contest. A new feature in the magazine – “Across Our Great Virginia” – is a blind interview series that each month brings two officials from different parts of the Commonwealth together to share their experiences. Look for more themes as well as new series and features coming in 2020.

VML’s email newsletter – published every other week when the legislature is not in session and more frequently during session – provides valuable, regular updates on league activities and efforts as well as topical, time-sensitive news and opportunities for our members. A comprehensive update and rebranding for this channel of communication will be completed in the coming months.

Further, VML annually publishes a guide to the Freedom of Information Act, Conflict of Interests Act and Public Records Act that is a valuable resource for local officials who are charged with reading and understanding those laws.

## Awards and acknowledgements

### Innovation Awards

The annual VML Innovation Awards recognize outstanding achievements in local governments across Virginia. The program – which began under the name “Achievement Awards” 43 years ago – is recognized as Virginia’s highest honor in local government creativity.

In 2018, the City of Falls Church won in the category of Environmental Quality and took home the coveted President’s award for launching Virginia’s first curbside collection program targeting the “last frontier” in recycling: food and organic waste. The Town of Leesburg was the winner for Lifelong Learning for its walking tour app and the City of Fairfax placed first in Communications for the Fairfax City Minute – a daily, entertaining video about city events, issues, and happenings. The award for Community and Economic Development went to the Town of Clifton Forge for rehabilitating a former CSX site and the City of Lynchburg finished first in the Quality of Life category for its Community Action Team initiative.

## HEAL Cities & Towns Campaign

The HEAL Cities & Towns Campaign provides free technical assistance to local government leaders to help them adopt healthy eating and active living policies and practices.

The city of Hopewell and town of Warrenton as well as the city of Charlottesville and Prince George County earned platinum designation. The towns of Big Stone Gap, Bluefield, Dumfries, Crewe, Lovettsville, Middleburg and Wytheville earned Gold designation. The cities of Fairfax, Roanoke and Staunton as well as the town of Haymarket earned Bronze designation.



## Green Government Challenge

The Virginia Municipal League’s Go Green Virginia initiative (GoGreenVa) recognizes that communities need to take innovative steps to reduce energy usage and promote sustainability.

The Green Government Challenge is a friendly competition designed to encourage implementation of specific environmental policies and practical actions that reduce carbon emissions. 2018 recipients included Vienna at the Certified Green Government level; Ashland at the silver level; Fairfax at the gold level; and Alexandria, Arlington County, Blacksburg, Charlottesville, Falls Church, Herndon, Hopewell, Newport News, Prince George County, Purcellville, Radford, Richmond, Roanoke, Staunton, Virginia Beach, and Williamsburg at the platinum level.

The challenge will be revamped in the upcoming year so be on the outlook for the new program in the coming months.

## "If I Were Mayor" essay contest

Promoting good local government is important to VML, and our annual essay contest provides students the opportunity to reflect on the important role of elected officials in their locality. Regional winners selected from around the state each received a \$150 cash prize and plaque. The awards were presented at their local council or board meetings. The statewide winner, chosen from the regional winners, received a \$250 cash prize and plaque. New this year: the runner-up from the region that received the statewide award became that region's winner. The 2019 winners were:

**Statewide winner:** Maci Mitchell of Hamilton Holmes Middle School in King William

**Region 1:** Virginia Elizabeth Stockner of E.B. Stanley Middle School in Abingdon

**Region 2:** Maria Angle of Clifton Middle School in Covington

**Region 3:** Kaitlyn Hull of Kate Collins Middle School in Waynesboro

**Region 4:** Sadie Henshaw of Kenston Forest Middle School in Blackstone

**Region 5:** Lily Konopka of Ronald Regan Middle School in Haymarket

**Region 6:** Haylee Burnett of Auburn Middle School in Warrenton

**Region 7:** Samera Blowe of James S. Russell Middle School in Lawrenceville

**Region 8:** Luz Pinto Consuelo of Academy for Discovery at Lakewood in Norfolk

## Staff updates

**Sue Mellen** joined VML as Chief of Staff in April. In this role she handles administration, finance and human resources for the league. Mellen comes to VML after more than 30 years of finance-related positions with James City County where she was most recently the Director of Financial and Management Services.

**Brendan Hogan** was hired as VML's Information Technology Administrator in June. His previous experience includes a long tenure with the Virginia Community College System as well as a stint with the Math Science Innovation Center.

**Mitchell Smiley** joined the league's policy staff in July. His previous positions included work as a Deputy Clerk for the U.S. House of Representatives, lobbying for the Virginia Transit Association and data analytics for the Virginia Department of Corrections.

**Josette Bulova**, VML's summer communications intern, took the lead in conducting our first "Virginia You Love" survey and helped increase VML's social media presence during her tenure. Now in her third year at Christopher Newport University, Bulova continues to assist the staff during the school year and will return for a second internship next summer.

**George Sandridge** assisted the VML policy team as part of his summer internship. Sandridge, a recent graduate of Virginia Tech, is currently a council member for the Town of Keysville and a member of the Charlotte County Planning Association.

# The Wallerstein's of summer

**M**ORTON WALLERSTEIN SERVED as the Virginia Municipal League Executive Secretary from 1921 – 1941 and VML General Counsel from 1941 – 1959. A native of Richmond and a graduate of the University of Virginia and Harvard Law School (1914), Wallerstein was an advocate for the study of government in and out of the classroom. In 1973, along with his wife Ruth, they established the Wallerstein scholarship at the University of Virginia.

Wallerstein internships and research topics are intended to be of value to Virginia local government and work under the supervision of faculty from the Cooper Center and the University of Virginia.

The Virginia Municipal League (VML), Weldon Cooper Center for Public Service at the University of Virginia (UVA), and the UVA Internship Placement Program (IPP), administer the Wallerstein Scholarship collaboratively.

## Undergraduate students

Under the Internship Placement Program, the Wallerstein Scholarship offers undergraduate students a customized placement with a pre-qualified internship matched to their career field of interest. Those interested in learning more about UVA's Internship Placement Program can visit [www.career.virginia.edu/internship-placement-program](http://www.career.virginia.edu/internship-placement-program).



**Javaria Abbasi** – Starting her senior year this fall, Javaria is majoring in Spanish and Political and Social Thought. Javaria attended Broad Run High School in Ashburn, Virginia where she was the Debate Team Captain and is currently an active Varsity member of the UVA Parliamentary Debate Society. For her summer internship Javaria worked with the Albemarle County Office of Equity and Inclusion. Javaria hopes to pursue a legal career after she completes her undergraduate studies.



**Anna Beatrice** – A junior this year, Anna is pursuing a degree in Global Studies with a focus in Environments and Sustainability. Anna was the Valedictorian of Washington and Lee High School. Her summer internship was with the Environmental Sustainability Office, City of Charlottesville Public Works Department, as the Composting Program Assistant. She was the primary point of contact for residents seeking to participate in a Residential Pilot Program. As part of her internship she created an interactive dashboard displaying emissions data from 2000, 2011 which will be made available on the City of Charlottesville website. Anna's goal is to become an attorney for an environmental protection entity.



**Joanne Kim** – A rising junior, Joanne became interested in studying journalism after attending a high school camp at James Madison University. This summer, Joanne's internship was with the Charlottesville-UVA-Albemarle County Office of Emergency Management (OEM) where she took part in the planning processes emergency management coordinators use to operate effectively during times of crisis. Joanne's work included helping modernize many documents, a branding project, and creating public outreach plans.

**Kiersen Mather** – A rising senior, Kiersen is majoring in Government with a focus on American policies. She previously gained valuable experience through her work and internships with CrowdLobby LLC, the Virginia League of Conservation Voters, and VA Our Way. This summer, Kiersen's internship was with the Albemarle County Public Schools, Department of Building Services where she helped develop an action plan for municipal buildings, as part of a larger county commitment to developing a broad climate action plan.



**Caroline Reilly** – A rising senior, Caroline is majoring in Global Public Health and Spanish. Caroline's internship was with the Albemarle County Public Schools, Migrant Aid Office, as a Migrant Advocate tutoring children and adults from migrant families in and around the Charlottesville area. She was inspired to see them so interested and enthusiastic about learning a new language and connecting with people in their new community. Her favorite part of this experience was watching her students become more confident in their language skills and in themselves.

**Trey Schulman** – A rising junior, Trey is majoring in Computer Science and Economics. Before the Wallerstein internship, Trey volunteered with CASH as an income tax assistant, aiding low-income individuals in the Charlottesville communities. Trey's internship was with the Albemarle County IT department, researching revolving loan funds exploring their potential benefits for low-and-middle income Albemarle residents. He also worked with the Albemarle Broadband Authority (ABBA) to map the households in Albemarle without high-speed internet so that the County can apply for funding to increase internet accessibility.

## Doctorate Students

Under the Phd+ program, the Wallerstein Scholarship provides funds to be applied towards tuition for intern students from differing disciplines conducting research and/or engaging in work with local governments as part of pursuing a doctorate at the University of Virginia. The Weldon Cooper Center for Public Service provide guidance for the students with each student providing 20 hours per week for the Summer and Fall Semesters. More information about the Phd+ program can be found at [www.phdplus.virginia.edu/](http://www.phdplus.virginia.edu/).



**Gopal Midha** – A student in the Curry School of Education, Gopal is currently designing and developing a leadership summit for individuals serving in local government in Southwest Virginia to be held on October 30, 2019. He is also researching successful programs of rural community leadership development across the world. In particular, he is looking at initiatives that support building capacity of local leaders to improve health outcomes, education, employment, job training and overall economic development. He hopes this research, combined with his work experience in corporate strategy and leadership, will promote strategic thinking to help revitalize the regions which were once the economic heart of Virginia.

**Dipsikha Thakur** – A student in English Literature and Language, Ms. Thakur is researching contemporary writing, training models, and approaches to reinforcing civility and civil discourse in public life. Her work with the Sorenson Institute examines model practices, such as ReconnectNC, and explores how civility and civil discourse are conducted in communities and governing bodies in Virginia through interviews with citizens and local leaders.

**Emelye Keyser** – A student in English and Literature, Ms. Keyser's work focuses on models for assessing the impact of public service work. This includes examining Centers for Public Service across the country to learn how they advance the capacities of localities to govern and operate more effectively.

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**Chair: Susan Hafeli, Utility Analyst,  
Fairfax County**

**Secretary/Treasurer: Sandra Harrington,  
VML Government Relations Associate**

THE VIRGINIA ENERGY PURCHASING Governmental Association (VEPGA) is a joint powers association created in 2002 pursuant to authority provided in the Virginia Code. VEPGA negotiates multi-year electricity contracts with Dominion Energy on behalf of its members. VEPGA also keeps its members informed of energy developments in Virginia and offers opportunities for members across the Dominion service area to collectively promote their interests and learn from each other. VEPGA's membership includes over 170 Virginia local governments, public school systems, authorities, and other governmental entities. VEPGA is governed by a Board of Directors elected by its members.

VEPGA's Joint Action Committee meets quarterly with Dominion to identify and resolve operational issues, including those involving construction and streetlighting. Meetings of VEPGA's Energy Efficiency and Conservation Committee include presentations on topics including best practices

and emerging technologies, while VEPGA's Innovative Supply Side Initiatives Committee explores alternative energy options of interest to VEPGA members.

VEPGA's annual spring meeting offers sessions that address educational, technical, and policy topics, as well as opportunities to meet and network with energy professionals from across the Dominion Energy service area.

The VEPGA contract includes rate schedules designed to offer electrical service options for facilities that range from a small, house-sized office building to large school campuses. Schedules address small, medium, and large accounts according to energy usage, all-electric buildings, pumping stations, and traffic control, street, and roadway lighting. The contract also provides a low-cost option for the purchase of renewable energy credits.

Learn more at [www.vepga.org](http://www.vepga.org).



**President: Pete Mensinger, Special Projects  
Manager, Department of Code Administration,  
City of Alexandria**

**Executive Director: Sandra Harrington,  
VML Government Relations Associate**



- Mensinger

THE VIRGINIA BUILDING and Code Officials Association (VBCOA) is a statewide network of more than 1,000 building safety professionals dedicated to the protection of the health, safety, and welfare of all persons who live, work, or visit the Commonwealth of Virginia. Since 1929, VBCOA has worked to foster relationships with groups dedicated to promoting safety and the uniform interpretation and enforcement of regulations.

VBCOA was awarded the 2018 Chapter of the Year by the International Code Council. The ICC is supported by over 380 chapters worldwide and consists of groups of code officials and industry related professionals. The Chapter of the Year Award is the Code Council's highest and was presented to VBCOA due to VBCOA's focus on community engagement, mentoring, leadership, succession planning and training.

This year, VBCOA has been working to expand the High School Technical Training (HSTTP) in Virginia. The HSTTP provides students with training that helps them prepare for a career as a code professional. This training

program brings ICC code certification to high school students in building trades, architectural drafting, and vocational training programs throughout Virginia. Virginia continues to lead the nation in this program with 24 participating schools.

President Mensinger has stressed the importance to VBCOA's culture and future for leaders to teach, train, and develop their personnel, therefore, training and education remains a core function. VBCOA holds two large conferences a year focusing on leadership development, technical training, and compliance industry trends, in addition to monthly training opportunities in one of the eight regions around the state.

VBCOA maintains a strong partnership with the Department of Housing and Community Development (DHCD) and other organizations involved in the codes industry such as the Virginia Fire Prevention Association (VFPA), Virginia Plumbing and Mechanical Inspectors Association (VPMIA), and Women in Code Enforcement (WICED).

For more information about VBCOA, visit [www.vbcoa.org](http://www.vbcoa.org).

**President: C. James Ervin,  
Town Manager, Town of Rocky Mount**

**Executive Secretary: Janet Areson,  
VML Director of Policy Development**



THE VIRGINIA LOCAL GOVERNMENT Management Association began a new year with changes to its membership structure intended to broaden participation by new managers and by additional current and emerging management professionals within local government. Managers new to VLGMA/Virginia now receive a free year of membership to encourage them to find a home within their statewide local management community. Local governments who typically have five or more staff members in VLGMA now have an “agency” membership that reduces the overall membership cost for them and encourages more communities to promote membership to emerging management leaders in their organizations.

VLGMA continues to offer opportunities for members to learn and grow in the management field. The Association hosts two training conferences each year that spotlight current issues (e.g., broadband, 2020 Census, election technology and security, recruiting and retaining volunteer fire and EMS) and professional development topics (e.g., crisis communications skills; coaching and connections). VLGMA also offers semi-annual one-day seminars geared toward its “deputies, assistants, and others” network. Each meeting is hosted by a different community and offers both learning and networking opportunities.

Finally, the Association serves as a partner in the International City/County Management Association (ICMA) coaching program, which offers a series of no-cost webinars and articles on management and professional development topics for the newest professionals to the most seasoned manager.

The Association continues its support of scholarships for the Local Government Certificate Program at Virginia Tech. Created by VLGMA in 2008 in cooperation with Virginia Tech, the Certificate Program gives local government staff across the state as well as students at Virginia Tech the opportunity to take up to four graduate-level courses focused specifically on Virginia local government management issues. The classes are offered on Tech’s campuses and broadcast to Tech’s Commonwealth Campus Centers throughout Virginia.

VLGMA is a state affiliate of the International City/County Management Association and is a VML affiliate organization. Nearly 400 local government professionals, along with management staff in regional authorities and commissions, retired professionals, and students are VLGMA members.

**President: Mike Stover, Director, Light and  
Power, Town of Culpeper**

**Secretary/Treasurer: Sandra Harrington,  
VML Government Relations Associate**



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All localities are encouraged to participate on policy committees. Nomination forms are sent to each locality in the spring. Let a VML staff member know of your interest or send an email to [e-mail@vml.org](mailto:e-mail@vml.org) and we will follow up with you.

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# Supreme Court Review for Local Governments 2019

By Lisa Soronen, State and Local Legal Center, Washington, D.C.

State & Local Legal Center



**T**HE VIRGINIA Municipal League is pleased to reprint this helpful and insightful look at upcoming Supreme Court activity of interest to local governments. The original article was published by the State and Local Legal Center (SLLC) in July 2019.

\*\*\*\*

*\*Indicates a case where the SLLC has filed or will file an amicus brief.*

## Big cases

In *New York State Rifle & Pistol Association Inc. v. City of New York, New York* the Supreme Court will decide whether New York City's ban on transporting a handgun to a home or shooting range outside city limits violates the Second Amendment, the Commerce Clause, or the constitutional right to travel. The Second Circuit held the law is constitutional on all accounts. Applying intermediate scrutiny, the Second Circuit held the rule was "substantially related to the achievement of an important governmental interest." It seeks to "protect public safety and prevent crime." And the court agreed with the former Commander of the License Division that premises license holders "are just as susceptible as anyone else to stressful situations," including driving situations that can lead to road rage, "crowd situations, demonstrations, family disputes," and other situations "where it would be better to not have the presence of a firearm." The Second Circuit concluded the rule doesn't discriminate against interstate commerce in violation of the Commerce Clause. First, it does not facially discriminate against interstate commerce. Licensees may still patronize out-of-state firing ranges – they just can't bring their gun licensed in New York City. Second, no evidence suggests the rule was intended to protect the economic interests of the City's firing range industry. Finally, the challengers failed to offer evidence that the rule has had a discriminatory effect on interstate commerce. While the challengers claim they have not attended out-of-city shooting events with their gun they may have attended them without their gun. The Second Circuit rejected the challengers' right to travel argument "for much the same reasons as does their parallel invocation of the dormant Commerce Clause."

In *Department of Homeland Security v. Regents of the University of California* the Supreme Court will decide whether the Department of Homeland Security's (DHS) decision to end the Deferred Action for Childhood Arrivals (DACA) program is judicially reviewable and

lawful. Three lower courts have concluded ending the policy is both reviewable and unlawful. DACA was established through a DHS Memorandum during the Obama presidency. The program allowed undocumented persons who arrived in the United States before age 16 and have lived here since June 15, 2007, to stay, work, and go to school in the United States without facing the risk of deportation for two years with renewals available. DHS rescinded DACA in September 2017 after receiving a letter from the Attorney General stating the program was unconstitutional and created "without proper statutory authority." The United States argues that a court can't review DHS's decision to rescind DACA because the federal Administrative Procedures Act precludes review of agency actions "committed to agency discretion by law." According to the United States, DHS's decision to discontinue DACA "falls comfortably within the types of agency decisions that traditionally have been understood as 'committed to agency discretion'" – particularly because this decision arose in the immigration context. The United States argues DACA may be rescinded because it is unlawful as it is a legislative rule which should have been promulgated through notice-and-comment rulemaking and is "substantively inconsistent" with the Immigration and Nationality Act.

## Employment

Title VII prohibits discrimination "because of . . . sex." In *Zarda v. Altitude Express* the Second Circuit held that discrimination on the basis of sexual orientation violates Title VII. The main opinion in *Zarda* concluded the question in this case is whether sexual orientation is "properly understood" as a "subset of actions taken on the basis of sex." The court concluded it was by looking at the statute's text. According to the court: "the most natural reading of the statute's prohibition on discrimination 'because of . . . sex' is that it extends to sexual orientation discrimination because sex is necessarily a factor in sexual orientation. This statutory reading is reinforced by considering the question from the perspective of sex stereotyping because sexual orientation discrimination is predicated on assumptions about how persons of a certain sex can or should be, which is an impermissible basis for adverse employment actions." In *Bostock v. Clayton County Board of Commissioners* the Eleventh Circuit reaffirmed its previous holding that discrimination on the basis of sexual orientation doesn't violate Title VII.

In *EEOC v. R.G. & G.R. Harris Funeral Homes* the Sixth Circuit held discriminating against transgender persons violates Title VII because it amounts to discrimination on the basis of sex stereotyping. The court also held that transgender status is protected under Title VII. The Supreme Court will review both lower court holdings. Title VII prohibits discrimination “because of . . . sex.” In *Price Waterhouse v. Hopkins* (1989) the Supreme Court held that employees may bring sex discrimination claims based on sex stereotyping under Title VII. In 2004 the Sixth Circuit extended *Price Waterhouse’s* reasoning to transgender persons as they are also engaging in “non sex-stereotypical behavior.” So that previous case controlled the outcome of *Harris Funeral Homes*. The Sixth Circuit also held that transgender status is a protected class under Title VII. *Harris Funeral Homes* argued that transgender status refers to “a person’s self-assigned ‘gender identity’” rather than a person’s sex, and therefore such a status is not protected under Title VII. The Sixth Circuit disagreed noting “it is analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex.”

The question presented in *Comcast Corp. v. National Association of African American-Owned Media* is whether a claim of race discrimination under 42 U.S.C. § 1981 fails in the absence of but-for causation. Section 1981 states “[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens.” Per its so-called “mixed-motive” theory, Title VII of the Civil Rights Act of 1964 disallows race, color, religion, sex, or national origin to be “a motivating factor for any employment practice, even though other factors also motivated the practice.” In this case an African American-owned operator of television networks sued Comcast under Section 1981 claiming its refusal to contract with the networks was racially motivated. Comcast argued that it could only be sued under Section 1981 if racial discrimination was the “but-for” reason it would not contract with the networks. The Ninth Circuit disagreed and applied the “mixed-motive” framework from Title VII to Section 1981 despite the fact that Section 1981 contains no “motivating factor” language like Title VII. In a case decided the same day where the same networks sued Charter Communications, the Ninth Circuit noted that Section 1981 guarantees “the same right” to contract “as is enjoyed by white citizens.” According to the Ninth Circuit: “If discriminatory intent plays any role in a defendant’s decision not to contract with a plaintiff, even if it is merely one factor and not the sole cause of the decision, then that plaintiff has not enjoyed the same right as a white citizen.”

## Environment

In *County of Maui, Hawaii v. Hawaii Wildlife Fund\** the Supreme Court will decide whether the Clean Water Act (CWA) requires a National Pollutant Discharge Elimination System (NPDES) permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater. Maui County injects treated wastewater from wells into the groundwater. Some of the treated wastewater reaches the Pacific Ocean. The Hawaii Wildlife Fund sued the County arguing it was required to obtain an NPDES permit under the CWA for these discharges. A party must obtain an NPDES permit if it discharges a pollutant from a point source to a navigable water. Wells are point sources and the Pacific Ocean is a navigable water. The Ninth Circuit assumed without deciding groundwater isn’t a point source or navigable waters. The Ninth Circuit held that the CWA requires Maui to get an NPDES permit in this case. It



concluded that the discharges in this case are point source discharges because “nonpoint source pollution” excludes, for example, roadway runoff that isn’t “collected, channeled, and discharged through a point source.” Here the pollutants are collected in wells. According to the lower court, they are also “fairly traceable” from the point source to the navigable water and reach the navigable water at “more than de minimis levels.”

The Anaconda Smelter, now owned by ARCO, processed copper ore from Butte for nearly one hundred years before shutting down in 1980. That same year Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or Superfund law. EPA required ARCO to pursue particular remedies. Landowners located within the bounds of the site sought two additional remedies beyond what EPA required. In *Atlantic Richfield Co. v. Christian*, ARCO argues that two provisions of CERCLA prevent the landowners from obtaining additional remedies in this case. ARCO also argues that CERCLA preempts state common-law claims for restoration beyond EPA-ordered remedies. The Supreme Court of Montana rejected all of ARCO’s arguments. ARCO first claimed the landowners were “challenging” EPA’s remedial plan. The Superfund statute jurisdictionally bars courts from hearing “challenges.” The court found no “challenge” in this case because “the Property Owners are not seeking to interfere with [EPA’s] work, nor are they seeking to stop, delay, or change the work EPA is doing.” ARCO next claimed the property owners are “Potentially Responsible Parties” (PRP), even though the EPA has never ordered them to pay for the cleanup. The Superfund statute prohibits PRPs from “conducting any remedial action that is inconsistent with EPA’s selected remedy without EPA’s consent.” The Montana Supreme Court noted the property owners have “never been treated as PRPs for any purpose – by either EPA or ARCO – during the entire thirty-plus years since the Property Owners’ property was designated as being within the Superfund site.” Finally, the Montana Supreme Court rejected the argument CERCLA preempts state common-law remediation claims pointing out that CERCLA has two savings clauses which “expressly contemplate the applicability of state law remedies.”

## States’ rights

In *Allen v. Cooper* the Supreme Court will decide whether states can be sued in federal court for copyright violations. North Carolina owns a ship pirate Blackbeard captured, renamed *Queen Anne’s Revenge*, and sunk between 1717-18. In the late 1990s North Carolina permitted a private research and salvage firm to photograph the ship. North Carolina continued to own the shipwreck and its artifacts. The company could make money from the sale of media related to the ship. Frederick Allen, who was hired by the salvage firm to take photos and videos of the ship, sued North Carolina for infringing on images Allen copyrighted. Allen claims North Carolina can be sued in federal court for infringing on his copyright because Congress abrogated states’ sovereign immunity in the Copyright Remedy Clarification Act. Both parties agree that Congress made a clear statement of intent to abrogate sovereign immunity. So, the only issue in the case is whether Congress validly exercised its power to abrogate sovereign immunity. The Fourth Circuit concluded Congress did not. In the Copyright Remedy Clarification Act Congress invoked the U.S. Constitution Article I Patent and Copyright Clause. But the Fourth Circuit pointed out that in *Seminole Tribe v. Florida* (1996), the Supreme Court held that Congress can’t use its Article I power to abrogate Eleventh Amendment immunity. Allen also argued Congress validly enacted

the Copyright Remedy Clarification Act under the authority granted to it in § 5 of the Fourteenth Amendment. North Carolina countered Congress did not validly exercise its § 5 power in enacting the Act because (1) it did not purport to rely on its § 5 authority, and (2) it did not tailor the Act to an “identified, widespread pattern of conduct made unconstitutional by the Fourteenth Amendment.” The Fourth Circuit agreed with North Carolina that in adopting the Act Congress found no widespread pattern of states infringing on copyrights “that presumably violated the Fourteenth Amendment’s Due Process Clause.”

The Immigration Reform and Control Act (IRCA) states that *any information contained* in the Form I-9, which is used to verify a person’s eligibility to work in the United States, may only be used for limited federal enforcement. The question the Supreme Court will decide in *Kansas v. Garcia* is whether the IRCA preempts states from using information contained in the I-9 to prosecute a person under state law (in this case for identity theft). A police officer pulled over Ramiro Garcia for speeding, and Garcia disclosed he worked at Bonefish Grill. An officer obtained Garcia’s I-9 and discovered the social security number he used to complete the form wasn’t his own. Kansas prosecuted Garcia for violating a state statute prohibiting identity theft. Kansas claimed it didn’t rely on the I-9 to prosecute Garcia as he also used the social security number on his state tax forms. Garcia argued the prosecution was preempted by the IRCA. The Kansas Supreme Court agreed holding that the IRCA expressly preempts using information in the I-9 to pursue state law violations. According to the court: “The language in [the IRCA] explicitly prohibited state law enforcement use not only of the I-9 itself but also of the ‘information contained in’ the I-9 for purposes other than those enumerated.” The fact the information from the I-9 was available from other sources, according to the Kansas Supreme Court, does not “alter the fact that it was also part of the I-9.” The Supreme Court added a question about whether the IRCA impliedly preempts Kansas’s prosecution of Garcia.

## Crime and punishment

The question in *Kahler v. Kansas* is whether the Eighth and Fourteenth Amendments permit a state to abolish a defense to criminal liability that mental illness prevented a defendant from *knowing his or her actions were wrong*. James Kahler was sentenced to death for fatally shooting his wife, her grandmother, and his two daughters. Kahler presented the testimony of a forensic psychiatrist who stated that Kahler was suffering from severe major depression at the time of the crime and that “his capacity to manage his own behavior had been severely degraded so that he couldn’t refrain from doing what he did.” Kahler claims he should have been able to assert an insanity defense but wasn’t allowed to under Kansas law. Prior to 1996, Kansas had adopted the *M’Naghten* rule for an insanity defense. Under that rule “the defendant is to be held not criminally responsible (1) where he does not know the nature and quality of his act, or, in the alternative, (2) where he does not know right from wrong with respect to that act.” In 1996 Kansas adopted the *mens rea* approach which “allows evidence of mental disease or defect as it bears on the mental element of a crime but abandons lack of ability to know right from wrong as a defense.” In a 2003 case the Kansas Supreme Court rejected Kahler’s argument that the *mens rea* approach “violates the Due Process Clause because it offends a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.”

In *Miller v. Alabama* (2014) the Supreme Court held that juvenile offenders convicted of homicide can’t receive a mandatory sentence of life imprisonment without parole. Instead the sentencing court must take into account how children are different from adults and only sentence the “rare juvenile offender whose crime reflects irreparable corruption” to life imprisonment without parole. In *Montgomery*

*v. Louisiana* (2016) the Supreme Court held that *Miller’s* rule applies retroactively to juveniles convicted and sentenced before *Miller* was decided. The question in *Malvo v. Mathena* is whether Lee Boyd Malvo may have his sentences of life imprisonment without the possibility of parole, issued before *Miller*, reconsidered under *Miller* even though they weren’t mandatory. In 2002 Malvo was seventeen years old when he and John Muhammad killed twelve people over the course of seven weeks. In 2003 Malvo was convicted of two counts of capital murder for his crimes in Fairfax County, Virginia. The jury chose life imprisonment without parole instead of the death penalty. Subsequently, Malvo pled guilty to capital murder in another Virginia jurisdiction and received two additional terms of life imprisonment without parole. Malvo seeks to have his sentences remanded for a determination of whether he is “one of the rare juvenile offenders who may, consistent with the Eighth Amendment, be sentenced to life without the possibility of parole because his ‘crimes reflect permanent incorrigibility.’” Warden Mathena objects to resentencing arguing that Malvo’s sentences weren’t mandatory and that “*Miller’s* new rule explicitly applies to mandatory life-without parole sentences.” Mathena claims Malvo’s sentences weren’t mandatory because Virginia judges have the discretion to suspend capital sentences. Malvo responds that judges weren’t aware of their power to do so at the time. The Fourth Circuit agreed with Malvo that regardless of whether his sentence was mandatory, broad language in *Montgomery* indicates that *Miller* “is not limited to *mandatory* life-without-parole sentences but also applies . . . to all life-without-parole sentences where the sentencing court did not resolve whether the juvenile offender was ‘irretrievably corrupt’ or whether his crimes reflected his ‘transient immaturity.’” Specifically, *Montgomery* states that *Miller* “rendered life without parole an unconstitutional penalty for a class of defendants because of their status – that is, juvenile offenders whose crimes reflect the transient immaturity of youth.”

In *Apodaca v. Oregon* (1972) and *Johnson v. Louisiana* (1972), five Justices agreed that the Sixth Amendment requires unanimous jury verdicts in *federal* criminal cases. Five Justices also agreed that jury verdicts in state criminal cases don’t have to be unanimous. In *Ramos v. Louisiana* the Supreme Court will consider overruling the latter holding in *Apodaca* and *Johnson*. Evangelisto Ramos was convicted 10-2 of second-degree murder based solely on circumstantial evidence and was sentenced to life in prison without the possibility of parole. Ramos argues that the Fourteenth Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict against the states. In *Apodaca* four Justices, in an opinion written by Justice White, looked at the “function served by the jury in a contemporary society” and rejected incorporation. Justice Powell, writing alone, adopted what Ramos describes as a “never-used-before-never-used-since theory of partial incorporation of the Sixth Amendment. Justice Powell believed that the Sixth Amendment required unanimity at the Founding, and in federal cases, but opined that the protections guaranteed by the Fourteenth Amendment were less than those offered by the Sixth Amendment.” Ramos argues that there has been “a sea change in constitutional exegesis” with regard to the application of the Bill of Rights to the states. According to Ramos, since *Apodaca* the Court has focused on a constitutional right’s “historic origins” rather than its “functional purpose.” “The historical record is clear that unanimity was an essential component of what was conceived of when the Constitution referred to juries.” Ramos also argues that since *Apodaca* the Supreme Court has “rejected the notion of partial incorporation or watered-down versions of the Bill of Rights.”

In *McKinney v. Arizona* the Supreme Court will decide whether a jury rather than a judge must weigh the factors mitigating against imposing a death sentence when the law at the time a person was

convicted allowed a judge to weigh mitigating factors. The Court also has agreed to decide whether a trial court rather than an appellate court must correct the failure to weigh relevant mitigating factors. A jury found James Erin McKinney guilty of first-degree murder related to two separate burglaries and murders committed in 1991. McKinney had PTSD from his “horrific” childhood, but the Arizona Supreme Court disallowed the sentencer to consider non-statutory mitigating evidence (including family background and mental condition) unconnected to the crime. In 1996 the trial court found the evidence of PTSD to be unconnected to the crime and sentenced McKinney to death. In 2015 the Ninth Circuit held *en banc* that the Arizona Supreme Court’s “causal nexus” to the crime test for applying non-statutory mitigating factors violates *Eddings v. Oklahoma* (1982), which held that a sentencer in a death penalty case may not “refuse to consider, as a matter of law, any relevant mitigating evidence.” The Ninth Circuit ordered that McKinney be resentenced. The Arizona Supreme Court resentenced McKinney again to death after considering his family background and PTSD. McKinney argues he should be resentenced by a jury instead of the Arizona Supreme Court because in *Ring v. Arizona* (2002) the Supreme Court held juries – rather than judges “are required to make the findings necessary to impose the death penalty.” The Arizona Supreme Court concluded Ring did not apply because McKinney’s conviction became final in 1996, prior to Ring. McKinney also argued that the Eddings violation in this case, where the trial court failed to consider relevant mitigating evidence, should be remanded to the trial court for resentencing not decided by the Arizona Supreme Court.

## Miscellaneous

In *Kansas v. Glover* the Supreme Court will decide whether it is reasonable, under the Fourth Amendment, for an officer to suspect that the registered owner of a vehicle is the one driving it absent any information to the contrary. Officer Mark Mehrer ran the license plate of a vehicle that was being driven lawfully. He discovered that the vehicle’s owner, Charles Glover, had a suspended license. He pulled the driver over and discovered he was in fact Charles Glover. Glover claimed the officer violated his Fourth Amendment rights because the officer lacked reasonable suspicion of illegal activity to pull over the car. The Kansas Supreme Court agreed. Kansas argued in favor of an “owner-is-the-driver presumption.” The Kansas Supreme Court rejected it because it is based on the “stacking” of “unstated assumptions” – that the registered owner is likely the primary driver of the vehicle and owners will “likely disregard the suspension or revocation order and continue to drive.” Assumption aren’t enough under the Fourth Amendment. The Kansas Supreme Court also noted that the presumption rests in part on what the driver does not know – who is actually driving the car. “And in evaluating whether the State has met its burden to prove the lawfulness of a search or seizure, courts cannot ‘draw inferences from the lack of evidence in the record’ because doing so may relieve the State of its burden and shift the burden to the defendant to establish why reasonable suspicion did not exist.”

In *Georgia v. Public.Resource.org* the Supreme Court will decide whether a state may copyright statutory annotations. Georgia, through a Code Revision Commission, made up of the Lieutenant Governor, the Speaker of the House, members of the Senate and House, and others, contracts with Lexis to draft the statutory annotations published in the Official Code of Georgia Annotated (OCGA). Georgia claims it may copyright these annotations. Public.Resource.org disagrees and has, among other things, copied and uploaded the OCGA on its website and made it publicly available for free. While the Eleventh Circuit noted annotations don’t carry the force of law it nevertheless held Georgia may hold no copyright to them. First,

while a private party, Lexis, is responsible for drafting the annotations it does so under the “highly detailed instruction” of the Code Revision Commission. Second, while the annotations don’t carry the force of law, they are “law-like.” “Having been merged by the General Assembly with the statutory text into a single, unified edict, stamped with the state’s imprimatur, and created and embraced by the same body that wrote the text that they explicate, the annotations have been suffused with powerful indicia of legal significance that is impossible to ignore.” Finally, the annotations are created using a process “very closely related” “to the process by which the statutory provisions were made into binding law.” “[T]he annotations are prepared by the Commission outside of the normal channels of the legislative process . . . and are not voted on individually in the way that Georgia session laws are.” But the Georgia General Assembly votes to adopt annotations like it would any other law.

In *Espinoza v. Montana Department of Revenue*, the Supreme Court will decide if a state-aid program violates a state constitutional prohibition against mixing church and state because religious institutions may participate, does discontinuing that program violate the federal constitution’s Free Exercise or Equal Protection Clauses. Montana statutes allow taxpayers to receive tax credits for contribution to Student Scholarship Organizations (SSO) that give students scholarships to attend private schools, including religious schools. The Montana Department of Revenue adopted Rule 1 disallowing religious schools to participate in the program because it concluded their participation would violate Montana’s Constitution. The Montana Supreme Court held that the Tax Credit Program violates the Montana Constitution. According to the court, the provision of the Montana Constitution entitled “Aid prohibited to sectarian schools,” is a “broader and stronger” prohibition against aid to sectarian schools than other states.” The court concluded: “Although the Tax Credit Program provides a mechanism of attenuating the tax credit from the SSO’s tuition payment to a religiously-affiliated [schools], it does not comport with the constitutional prohibition on indirectly aiding sectarian schools.” In one sentence the Montana Supreme Court stated that prohibiting state aid to religious schools in this case doesn’t violate the federal constitution.

In *Kelly v. United States*, the Supreme Court will decide whether a public official “defrauds” the government of its property by advancing a “public policy reason” for an official decision that is not the subjective “real reason” for making the decision. Former New Jersey Governor Chris Christie’s Deputy Executive Director of the Port Authority of New York and New Jersey, the Port Authority’s Director of Interstate Capital Projects, and Christie’s Deputy Chief of Staff for Intergovernmental Affairs orchestrated “Bridgagate.” Under the guise of conducting a traffic study, they conspired to reduce traffic lanes from the George Washington Bridge (the busiest bridge in the world) to Fort Lee the first week of Fort Lee’s school year, because the mayor of Fort Lee refused to endorse Governor Christie for governor. Two of the former employees were convicted of violating a number of federal fraud statutes; one was a cooperating witness. The Third Circuit accepted the United States’ argument that these convictions should stand because the former employees deprived the Port Authority of tangible property. Specifically, the court concluded the time and wages of the former employees and the 14 Port Authority employees they “conscripted” in the scheme was sufficient to deprive the Port Authority of money or property. In their *certiorari* petition the former employees argue that the Third Circuit read the fraud statutes too broadly. They claim it can’t be that “any official (federal, state, or local) who conceals or misrepresents her subjective motive for making an otherwise-lawful decision – including by purporting to act for public-policy reasons without admitting to her ulterior political goals,

## Supreme Court Review

commonly known as political ‘spin’ – has thereby defrauded the government of property (her own labor if nothing else).” If using government resources while misrepresenting a subjective motive is fraud they continue, “nearly limitless array of routine conduct” will be criminal.

In *Moda Health Plan v. United States* the Supreme Court will decide whether Congress may enact appropriations riders restricting the sources of funding available to pay health insurers for losses incurred that were supposed to be paid per federal law. The Affordable Care Act’s (ACA) risk corridor program provided that if a health insurance plan participating in the exchange lost money between 2014 and 2016 it would receive a payment from the federal government based on a formula defined in the statute. If it made money the plan had to pay the federal government based on a formula. The Government Accountability Office (GAO) identified a particular funding source the federal government could use to make payments. Congress passed appropriations riders for all three years disallowing that funding source to be used to make risk corridor payments. Over the three-year period the risk corridor program was short \$12 billion. Moda Health Plan claims it is owed \$290 million. The Federal Circuit held that the federal government is not obligated to pay the statutory formula for what it owes insurers under the risk corridor program because of the appropriations riders. The Federal Circuit concluded that the section of the ACA related to the risk corridor program is “unambiguously mandatory” and requires the federal government to “make payments at the full amount indicated by the statutory formula if payments in fell short.” However, the federal government suspended its obligation to pay the full formula amount through the riders. “Congress clearly indicated its intent here. It asked GAO what funding would be available to make risk corridors payments, and it cut off the sole source of funding identified beyond payments in. It did so in each of the three years of the program’s existence.”

Patrick Murphy killed George Jacobs. Oklahoma prosecuted Murphy. Per the Major Crimes Act states lack jurisdiction to prosecute Native Americans who commit murder in “Indian country.” Murphy is Native American. In *Carpenter v. Murphy* Murphy and Oklahoma disagree over whether the murder took place on a Creek Nation reservation. By the mid-nineteenth century, treaties with the federal government had given the Creek Nation a vast tract of land in modern Oklahoma. In 1901, the Creek Nation agreed to the allotment of tribal lands. Per the Major Crimes Act “Indian country” includes “all lands within the limits of any Indian reservation.” Congress may disestablish or diminish Indian reservations. Allotment on its own does not disestablish or diminish a reservation. In *Solem v. Bartlett* (1984) the Supreme Court established a three-part test to determine when Congress has diminished a reservation. First, courts “must examine the text of the statute purportedly disestablishing or diminishing the reservation.” Murphy argues that Congress never diminished the 1866 territorial boundaries of the Creek Nation where the murder took place. The Fifth Circuit agreed. It reviewed eight statutes allotting Creek land and creating the State of Oklahoma. The court concluded that the statutory text “fails to reveal disestablishment.” “Instead, the relevant statutes contain language affirmatively recognizing the Creek Nation’s borders.”

**About the author:** Lisa Soronen is the Executive Director of the State and Local Legal Center (Washington, D.C.). The SLLC files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments and is a resource to states and local governments on the Supreme Court.



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**Filer appointed Norfolk city manager**

**Dr. Larry “Chip” Filer** has been appointed as the city manager in Norfolk, effective Sept. 16. Prior to his appointment, Filer was the associate vice president for entrepreneurship and economic development for Old Dominion University. During his 20 years at ODU, Filer also served as the chair of the economics department and director of its MBA program. As an associate vice president at ODU, he led the creation of the Institute for Innovation and Entrepreneurship and has led ODU’s partnership with Norfolk on resilience efforts.

Filer completed his undergraduate studies in economics at Westminster College in Pennsylvania and earned his PhD in economics from the University of Kentucky.



**Onaitis tapped as Covington manager**

**Krystal Onaitis** was appointed the city manager in Covington in August. Her prior experience includes serving in various agencies in the City of Richmond, including public works and public utilities.

According to the city’s media release, Onaitis led the government side of the public-private partnership in Richmond with Ave-Point that resulted in the creation of RVA311, the online portal enabling citizens to engage government, lodge complaints and track their interactions online.

Onaitis holds a B.A. in political science and a master’s degree in public administration from Virginia Commonwealth University.



**Beauregard named assistant city manager**

**Leslie Beauregard** has been named the assistant city manager for the City of Staunton, succeeding

Steve Rosenberg, who was appointed city manager in June after serving six years as the city manager’s deputy. She will assume her new role with the City on Oct. 7.

Beauregard has worked for the City of Charlottesville for the last 16 years, including four years as the assistant city manager. Prior to that, she was the budget manager and then the director of budget and performance management. Before going to work for Charlottesville, Beauregard worked for the City of Hampton for six years, including serving as the senior

management and legislative analyst in the city’s budget and management analysis department.

Beauregard has a bachelor’s degree in political science and French and a master’s degree in public administration, both from Virginia Tech.



**Smith tapped as director of human services**

**Aileen L. Smith** was appointed as the director of human services in the City of Virginia Beach effective at the end of August. She

had been the deputy director of the department and prior to that was the deputy director of the city’s Behavioral Health Developmental Services Division. Prior to coming to work for Virginia Beach, Smith worked for the Norfolk Community Services Board in various program director capacities.

Smith has a bachelor’s degree in psychology and a master’s degree in education with a concentration in counseling from Old Dominion University.



**Grisdale comes on board as deputy town manager**

**Aaron Grisdale** is the newly appointed deputy town manager in Woodstock. Prior to this, Grisdale

was the director of the zoning and inspections department for the City of Winchester. He had worked for that department since 2006.

Grisdale served in the U.S. Army Reserves as a platoon leader, civil affairs team leader, and rear detachment operations officer. He holds an undergraduate degree from the University of Virginia.

**Personnel changes noted for city of Richmond**

Richmond City Attorney **Allen L. Jackson** has announced his plans to retire effective Nov. 1. For the past nine years, Jackson has led the office that represents the city in litigation and gives legal advice to the council and mayor.

A University of Richmond graduate, Jackson succeeded former City Attorney Norman B. Sales in May 2010. Before that, he worked for the city of Newport News from 1988 to 2010. He also completed a stint as assistant attorney general from 1981 to 1988.

**Jason Carangelo** has been appointed the commissioner of buildings for Richmond. In his previous position, Carangelo served as the building inspections administrator for the City of Savannah, GA.

Carangelo is a registered architect and

LEED accredited professional who obtained both his bachelor’s and master’s degrees in architecture from the State University of New York at Buffalo. In 2014, he served as the president of the Savannah Chapter of the American Institute of Architects.



**Hartgrove appointed associate director of VA Institute of Government**

**Charles Hartgrove** has been appointed the associ-

ate director of the Weldon Cooper Center’s Virginia Institute of Government. He was the chief deputy commissioner of the Virginia Department of Taxation. His previous experience includes serving as a deputy city manager in Lynchburg, the town manager in Ashland and Gate City and the town administrator in Middleburg.

Hartgrove obtained a bachelor’s degree in government from the University of Virginia’s College at Wise. He also received a Master of Public Administration and a Post-Baccalaureate Graduate Certificate in public management from Virginia Commonwealth University. He is a graduate of the University of Oklahoma’s Economic Development Institute and University of Virginia’s Senior Executive Institute. Hartgrove is a credentialed manager through the International City/County Management Association.

**Local officials appointed to state boards**

Governor Ralph Northam has announced several appointments or reappointments of local officials to state boards and commissions.

**Doug Powell**, General Manager, James City Service Authority, has been appointed to the Potomac Aquifer Recharge Oversight Committee.

**Lisa R. Porter** of Bristol, Executive Director and CEO, Bristol Redevelopment and Housing Authority, has been appointed to the Virginia Housing Development Authority.

**John David Smith, Jr.**, Mayor, City of Winchester and Ann Huckle Mallek, Board of Supervisors, Albemarle County have been appointed to the Virginia Board of Workforce Development.

**Natale Christian**, Executive Director, Hampton-Newport News Community Services Board, has been appointed to the Governor’s Substance Abuse Services Council.

**Larry D. Boone**, Chief of Police, Norfolk Police Department, has been appointed to the Virginia African American Advisory Board.



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