RISA GOLUBOFF: Good evening and welcome. It's wonderful to see such a wonderful turnout for this event. I am Risa Goluboff, the dean of the University of Virginia Law School. And I want to start by thanking everyone who was involved in making tonight's event happen. It's a really special event.

There are a long list, so I'm going to name them all-- UVA Law's state and local government clinic, the Center for the Study of Race and Law, the Mortimer Kaplan Public Service Center, the Black Law Students Association, the Child Advocacy Research and Education, the Public Interest Law Association, and the Virginia Law and Prison Project, as well as Rebecca Claff, who is making everything run smoothly.

On behalf of the law school and our co-host, the Frank Batten School of Leadership and Public Policy, and Dean Ian Solomon, I'm so pleased to welcome state Senator Jennifer McClellan back to UVA Law School and the University of Virginia for this evening's conversation on race equity and policymaking. As you all know, I'm sure, this evening's conversation is one of many that are happening all across the University, the Commonwealth, and the nation about the need to address persistent racial inequalities and inequities that persist in our society and in our institutions.

Tonight, our focus is on the government's ability, particularly at the state level, to address these problems and the real-world challenges and opportunities confronted by policymakers, like Senator McClellan, who are trying to address these incredibly important issues. So our conversation tonight features Senator McClellan as well as Professor Andy Bloch, who directs our state and local government law clinic, as well as a few students. So I'm going to start by introducing the senator and Professor Bloch.

Senator Jennifer McClellan is a 1997 graduate of UVA Law, and I'm so pleased she's in her orange for her Wahoo status today. She is a native of Chesterfield County. She attended the University of Richmond for college and then came here for law school. During law school, she was Notes Development Editor for the *Virginian Law Review.* She was involved in Tulsa and the Virginia Law Democrats, as well as playing a leadership role in Virginia Young Democrats statewide for all three years of law school.

She then began her practice of law at what was then Hunton and Williams law firm, which is now Hunton Andrews Kurth in Richmond. And she joined Verizon's legal department in 2002. Senator McClellan first ran for political office in 2005. She easily won her seat in Virginia's House of Delegates and became, at age 32, the youngest woman in the Virginia House. A few years later, she was the first house member to hold office while pregnant and, if my recollection serves, also the first to bring a baby into the house during deliberations.

She served in the Virginia House from 2005 to 2017. She was elected to the Virginia Senate in a special election. And she has served in the state Senate ever since. She sits on key Senate committees, including finance and appropriations, as well as the judiciary. In both the Virginia House and the Virginia Senate, Senator McClellan has been the patron of major legislation. She recently announced her candidacy for governor. The election is in 2021. If she wins, she would be the first woman to be elected governor in Virginia. And she would be the first black woman elected governor anywhere in the United States.

Excuse me, Senator McClellan is a member of the steering committee for the Democratic Party of Virginia. She is the Vice Chair of the Virginia Legislative Black Caucus, and she is a member of the Democratic National Committee. I think it is a fair understatement to say that Senator McClellan is a superstar and also possibly superhuman. So welcome, Senator McClellan. We're so happy to have you here.

In addition, let me introduce, a little more briefly, Professor Andy Bloch. He is a graduate of Yale University and Northwestern University Law School. He returned to the law school in 2019 from the Virginia Department of Juvenile Justice, which he led from 2014 to 2019. At the Department of Juvenile Justice, he was a major player in leading reforms and improvements, including reducing the population of youth in state-operated juvenile correction centers and in reforming rehabilitative programming.

Before his state government service, he directed the Child Advocacy Clinic here and also founded and served as legal director of the Just Children program at the Legal Aid Justice Center. So we are thrilled to have him back, now leading this clinic on local and state government. So, Senator McClellan and Professor Bloch will be

joined tonight by our four student moderators-- law students Jordan Lapointe, Catherine Ward, and Chris Yurell, as well as joint JD/MPP at the Batten School, joint degree student Juliet Busing.

So with those introductions and those introductory remarks, I will turn this over to Andy Bloch to kick off our conversation. Thank you all for being here.

ANDREW BLOCH: Thank you very much, Dean Goluboff. Thank you for being here and for the great introductions and supporting the event that we're doing tonight. Thank you also for welcoming me back to the law school. I'm glad to be here and excited to start this new clinic.

I want to reiterate the welcome to those in the audience and to once again thank both the law school and the dean and to the Batten School, as well, and the student organizations for sponsoring this event. I've had the privilege of knowing Senator McClellan for a number of years and had a chance to watch your thoughtful approach to legislating. Given that so much of the important policymaking on issues of race and equity happens on a state and local level, I can't really think of a better person to have as our guest speaker and to help us think about and learn about the issues we're going to be discussing today.

Senator McClellan, before I turn it over to you, I just want to give a quick overview of how this evening will work. Senator McClellan will give some prepared remarks, and following that, our student panelists will each ask a question of the Senator. During Senator McClellan's remarks, during the Q&A that's structured, I would encourage people in the audience to submit questions through the Q&A. I know that Senator McClellan wants to answer as many of those as she can and that time will permit. So please don't be shy about doing that.

So after the prepared questions, I will then relay the questions that the audience has submitted, and we'll do that for as long as time allows. And our plan is to end around 6 o'clock. So that all being said, thank you again for being here. And Senator McClellan, thanks so much for taking the time. I know you're down, as you just described before we got on, at the General Assembly right now. So we really appreciate the effort you're making to join us tonight. And I will turn it over to you. Thank you.

JENNIFER MCCLELLAN: Thank you, Andy, and thank you, Dean Goluboff, and to each of the students and everyone watching. It is a pleasure to be here with you tonight. And I'm sorry we can't be in person, but this too shall pass. And one day, we will be able to see each other again. But hopefully, this does allow people who might not have seen this conversation to see it.

And tonight's conversation is about race equity and policymaking. I want to start with a story, and I think this story will illustrate what I have seen throughout my 15 years in the General Assembly, is how we cannot fully understand how the policies that we make impact racial equity without fully understanding the history of our commonwealth, the history of our nation that leads to disparate impacts that policy may, either intentionally or unintentionally, exacerbate.

So I want to take you back to 1924. How many of you had heard of the Racial Integrity Act of 1924? And I'm sorry I can't see how many of you are raising your hands, but I see a couple of the-- OK, some of you have. It's fitting that I start with that, because the Racial Integrity Act of 1924 was a law that included Virginia's anti-miscegenation laws, the ban on interracial marriage, which was struck down in *Loving versus Virginia.* And Bernie Cohen, who was the lead attorney on that case for the Lovings, unfortunately passed away yesterday. And so I think it's fitting that we start with part of his legacy.

In 1924, the Racial Integrity Act passed, and very few people have ever heard of it since. But its impact still affects us today, and I'll show that through the following story. So in 2011, we were debating a voter ID bill on the House floor that would have required a government-issued photo ID to vote. And we were able to defeat that bill on the floor.

And later that week, I was having dinner at the governor's mansion. The Legislative Black Caucus every year has dinner with the governor, and I was sitting next to the governor. And he asked me how are we doing with race relations, which I thought, that's a pretty broad topic for dinner. I said, well, Governor, I think we've obviously come a long way. We were in the middle of the presidential administration of the first African-American president. And I said, but part of what concerns me is how our history still impacts our present in ways that overt racism alone isn't responsible for.

He said, all right, give me an example. And I said, well, we had this government-issued photo ID bill. He said, well, what's wrong with that? Shouldn't we want to prevent voter fraud? I said, all right, let's lay that aside from it. Governor, what do you need to get a government-issued photo ID? Well, you need a birth certificate. I said, well, Governor, did you know that in Virginia, as late as 1940, there were people born who didn't have a birth certificate.

Well, no, I didn't know that. Why not? Well, because the Racial Integrity Act of 1924 is the law that required recorded live births and the recording of race. The first director of vital statistics, who enforced that law until 1940, was Walter Plecker. Walter Plecker was a white supremacist-- an unabashed, proud white supremacist-- who did not believe that there was any race other than white and colored. And so on the application for a birth certificate, those were the only two options someone could check.

If you didn't check colored and he believed that you were, you didn't get a birth certificate. Many Virginia Indians did not check colored, and he did not give them birth certificates. Many mixed race Virginians, who he believed shouldn't exist at all because they violated that law, did not get birth certificates. That is part of why it took so long for the Virginia Indian tribes to receive federal recognition. Because with the stroke of a pen, he destroyed their ability to prove a line of succession, a direct bloodline to Native tribes from 1619.

And when I told this story to the governor of the Commonwealth of Virginia, he said, I had no idea. What I wanted to say, but I didn't, was, well, of course you don't. You are a middle-aged white man who grew up in Fairfax County who wasn't taught that in school, who had no reason to know it because it didn't impact your life. And until this moment, you weren't told. But I figured since it was my first time having dinner with the governor, I probably should not say that.

To his credit, the following year, when a photo ID bill did land on his desk, he amended it to allow other forms of ID for people to vote. Over time, that was amended to require a photo ID, but not a government-issued photo ID. And it wasn't until this year we were able to repeal that. And this year, by the way, we finally repealed the Racial Integrity Act of 1924.

So that is one of many examples that I could give where laws that were passed decades ago still impact Virginians today. To give you a broader picture of that, I want to take you back to how our commonwealth and how our country were founded. Because our very systems were established with a set hierarchy. You learn these dates in school. You probably did not learn the significance of them.

So let me take you back to 1607. 1607, we learned, was the year that the English settled in Jamestown. 1619, we just commemorated several significant events. 1619 was when the Jamestown settlers created the General Assembly, the oldest continuous legislature in the Western hemisphere. And they brought the idea of representative democracy by, of, and for the people. By, of, and for white, land-owning men who were here on business venture to profit off of the natural resources that, at the time, other people-- Native, Indigenous Virginians, Algonquin people-- lived on and thrived on. That is the government that was formed.

A month later, the first recorded Africans arrived on a ship, who were stolen from their country and then stolen again by pirates and traded for goods to serve the white, land-owning men who created the government. A few months later, the colonists said, well, if we're going to be permanent, we need wives. So they recruited English women to come here as wives with no rights of their own. They couldn't vote. They couldn't own property. They were here to serve their husbands.

And that is the hierarchy upon which our country was founded and our commonwealth. And during the Age of Enlightenment, about 150 years later, that is when the concept in our Declaration of Independence-- "We hold these truths to be self-evident that all men are created equal and endowed by their creator with certain inalienable rights." And then the Constitution-- "With the principle to create a more perfect union of a government by, of, and for the people."

They didn't mean all people then. And the struggle of our country ever since has been, how do we make true the ideals upon which our country was formed? How do we sync that up with the reality of how our country was formed, but more importantly, make it true today? And that is the sum total of the history of this commonwealth and of our nation.

Now, I won't walk you through the years after the Civil War, after Reconstruction. I

will just say there was sort of a struggle of-- as blacks achieve social, political, and economic power, there was often a swift backlash that resulted in Jim Crow laws. Then, in the '60s, many of them legally went away, but again, the effects did not.

When laws were passed to repeal Jim Crow, when courts struck down Jim Crow, that was not a magic wand that waved away the effects of Jim Crow. Those effects still impact all of our systems today, whether it is the impact that closing schools in five Virginia localities in response to *Brown versus Board of Education* had on those communities, whether it is the impact that racial terror lynchings after Reconstruction had on those communities, whether it is vagrancy laws or laws that were put in place in response to protests in the 1960s still impact communities today. Funding decisions for our education system that still impact schools today, redlining decisions that still impact communities today, none of that goes away with a magic wand just because a law changes.

So our challenge today is as more people who lived through Jim Crow die off, as the stories pass down in their families may not survive them, unless this history is taught in our schools comprehensively-- which it has not been-- unless our policymakers know this history-- which many don't-- unless our judges, our lawyers, our policymakers, our business leaders, our community leaders-- if they don't know this history, which many of them don't, then they can exacerbate it, whether they want to or not. And that is the challenge that we face every single day as we try to address systemic inequity that has been with us for 401 years.

And so with that sort of setting the table, I'd love to now go to the main course and answer your questions.

ANDREW BLOCH: Senator thank you very much for that introduction. And just a reminder to folks in the audience, please submit questions if you have anything you want Senator McClellan to talk about. But while you're working on that, I will introduce you to Catherine Ward, who's a student in the State and Local Government Policy Clinic. And I think she will ask the first question.

CATHERINE WARD: Thank you so much for speaking with us this evening, Senator McClellan. I would love to hear from you about some work you wrote this summer. Over the summer, you released an editorial regarding how we can heal in the midst of a pandemic

and police brutality that disproportionately harmed black and brown people. Many of your suggestions in the editorial regarding criminal justice reform came to fruition through the General Assembly Police Omni bill, Police Reform Omnibus bill in the special session. And you also wrote, "We must enact policies that uplift the marginalized and provide the tools they need to thrive in our economic, education, health, justice, and political systems."

I would love to hear from you about what steps you think, without violating the Equal Protection clause, need to be taken by policymakers at the state and local level to improve the economic status of communities of color. Thank you.

JENNIFER MCCLELLAN: Thank you, Catherine. That's a great question, and we are actually right in the midst of-- we have conference reports issued today on the Police Reform Bill, so it will likely be voted on a little bit later today. So very excited about that. And I think that is one very good example where too often in communities of color, when the police come, they treat everyone-- or there's a feeling that everyone is a suspect and not necessarily the victim of a crime or a witness to a crime.

And part of that is based on individual people. Part of that is based on some cultures that are embedded in police departments over the years. And some of that can be addressed through training, implicit bias training. But a lot of what we see is just, over the years, a breakdown in trust between police departments and some of the communities that they serve. And the only way to rebuild that trust is by holding police accountable when they engage in behavior that leads to excessive force or violates individual's civil rights.

And so the Police Reform Bill has clear criteria of things that will help do that, like banning no-knock warrants, banning chokeholds, and creating standards for use of force and a clear continuum of what would be excessive use of force and the consequences for it. I would add to that civilian review boards. We are also going to vote on legislation to allow localities to create civilian review powers with subpoena power, with investigatory power and binding recommendations.

So I think those are a few of the criminal justice reform issues. And part of it, again, is laws that were put in place, whether it's different sentences for different types of drugs that people use based on who's more likely to use those drugs, whether it's

low-level offenses, misdemeanors that were put in place to disenfranchise, frankly, black people decades ago. Starting to roll those back does not require treating anyone any differently. It is addressing that underlying inequity created by those policies.

Every area you can think of, there's an example of that. Let's take the minimum wage. The minimum wage, when it was created, excluded many types of jobs that, at the time, were held mostly by people of color, mostly women. Domestic workers is one example. And so legislation that recognizes why did these exemptions exist and roll them back. So those are just a couple of examples of things that we are working on. I could probably spend an entire hour on more, but those are the two big ones that I wanted to highlight.

ANDREW BLOCH: Thank you. Next student who's going to ask a question is Chris Yurell.

CHRIS YURELL: Thank you, Professor Bloch, and thank you, Senator McClellan, for being here. Surely, this is a wonderful evening. We're so happy to have you. So, as a legislator, you have been a central voice in the years-long fight to fully fund Virginia public schools and address inequities in the education system. Unfortunately, Virginia's state level contributions to education rank in the bottom 10 states nationally, despite Virginia being one of the wealthiest states in the country.

The lack of state funding disproportionately hurts children of color and children in poverty, as you alluded to in your opening remarks. My question would be, what should the governor and General Assembly be doing to transform Virginia's school funding system? And what role, if any, should racial equity play in the new system? Thank you.

JENNIFER MCCLELLAN: Thank you, Chris. That's another excellent question, as I'm sure all of them will be. I would say the first thing we need to do is completely overhaul the funding formula. We fund public education through what's called the local composite index. This was something created in the '70s that looked at every local government and said, what is your ability to pay for your K-12 system based on sources of income?

Now, for most localities, sources of income are based on property. That made sense, maybe, when we were an agrarian society, but it bakes inequity into the

system. Because where was wealth? Who had property? Who owned property? Who was allowed to own property? And when you base a funding formula based on how much money a particular area has, you bake inequity into the system.

It also doesn't look at what else does that local government have to pay for. Do you have high concentrations of poverty, which requires the wraparound services for your students-- you know, free meals, counseling services, trauma-informed care, health care, housing? It also doesn't look at are you a city that has 100-year-old infrastructure that is crumbling. So that's the first problem.

And then what the formula does is says, whatever you can't pay, the state will pay. And I'm making this number up. If the funding formula says Charlottesville can pay 60% of its K-12 education needs, the state only pays 40%. That's the first problem.

The second problem is we, in response to the recession, to balance the budget, put a cap on the number of support personnel that the state will pay for as part of the formula. We recovered from that recession. We never lifted that cap. So who are we talking about? We're talking about assistant principals, nurses, counselors, again, social workers, the wraparound services that are more needed in at-risk communities.

Now, who are at-risk communities? Because of redlining decisions, because of racial segregation, because of who had access to capital, who had access to banking, who had access to well-paying jobs and who didn't, over time, disproportionately, low-income, at-risk communities equal communities of color. So that's what we need to fix. And you had a system based on the dominant culture as to what should be taught.

And so all of that needs to be fixed. And I commend Andy's-- I should say Professor Bloch. The commission that he served on helps to identify how to address what is being taught in school to make sure that-- I can't imagine that's the commission you were on. There were two commissions, one to deal with what's being taught in school and one generally to deal with vestiges of racial inequity in our system that includes education.

They made recommendations that will also help. But I think fixing those formula issues also need to be addressed or we will never fully achieve equity in schools.

ANDREW BLOCH: All right, Jordan Lapointe has the next question. Thank you.

JORDAN LAPOINTE: Good afternoon, Senator, and thank you so much for taking time out of your busy schedule to speak with us. These past few months, the commonwealth, the country, and the world have seen historic grassroots movements and protests following the killings of Breonna Taylor, George Floyd, Tony McDade, and countless others at the hands of police. In light of this activism, what are your thoughts, Senator, on defunding or reallocating funds from police departments towards other social agencies and programs better suited to address nonviolent crimes, homelessness, mental illness, drug addiction, and poverty?

JENNIFER MCCLELLAN: Thank you, Jordan, for that question. I think it is common sense that if you spend the bulk of your energy and resources focused on the root causes of crime rather than responding to and punishing crime, that it just makes more sense. It's cheaper. It is better public policy. It leads to more healthy, thriving communities.

And so part of that is addressing economic disparity and poverty. But a big part of that is addressing mental health issues, addressing how individuals with intellectual or developmental disabilities interact with the police, and ensuring that we invest in a mental health system that provides people who need treatment, who need services, those services-- not relying on law enforcement to be a first responder who shows up when someone's in a mental health crisis. That often leads to death, just like in the case of Marcus David Peters. That often leads to someone being arrested for, really, behavior that shows what they need is underlying treatment.

That is the concept behind defund the police, is we have put so many jobs on police outside of just providing public safety, stopping crime, and responding to crime. And so we need to allocate our resources in a way that addresses the underlying root issue, whether it's mental health, whether it's poverty, whether it's behavior, especially in the school in the school setting.

One of the things that frustrates me the most was the rise of school resource officers was a reaction to school shootings. The likelihood of a school shooting is very low. The actual way to address a school shooting is to do a security audit of

your school, figure out where there are weak points, security risks, and then address them.

What has happened with school resource officers is they have become the default enforcer of school codes of conduct and the default enforcer of this child acts different, and therefore, there is a problem that often leads to that child being arrested or charged with-- these are real cases. Kids being charged with a misdemeanor for singing a rap song on a bus or a child being charged with a misdemeanor for kicking a trash can when he's frustrated on the way to the principal's office. When what they need is, more often than not, that underlying behavior may be showing the beginning of autism, may be showing the beginning of ADHD.

And rather than spend the resources to analyze and treat the underlying cause of the behavior, we've spent so much money hardening a school that it's created the school-to-prison pipeline that is leaving behind a generation of students, a generation of children who we have criminalized for behavior that when Andy and I were kids probably just got us sent to detention. So all of that needs to be addressed. And I don't care what you call it. I don't care what you call it, that is what we need to do.

ANDREW BLOCH: Thank you, Senator. Our final question from the panelist is from Juliet Busing.

JULIET BUSING: Hi, Senator McClellan. I'm Juliet Busing, a joint degree student at Batten and the law school in my final year out of four. Thanks for being here. Thanks for all of your service for the commonwealth. My question is a bit more on the human side.

I was wondering if you could share with us how you stay grounded when you work every day in politics and in high-level policy problem solving. What are your practices, your strategies to remember why you're there, to keep up the hope, to remember who you are, that kind of thing?

JENNIFER MCCLELLAN: Thank you for that, Juliet, and I will admit sometimes it's hard. Sometimes it's very hard. And the last seven months now have been particular-- probably among the hardest. I go back to what got me interested in government to begin with. My parents grew up during the Depression in the segregated South. And learning their

life stories-- and my grandparents' and my great grandparents' and, obviously, my love of history-- taught me that government can be a force for solving problems and progressive change.

And I got inspired-- even though I was born after they died, I was inspired by the call the service of John and Robert Kennedy and the call to make this country live up to his ideals of Dr. King and the work of everyone from over the past 401 years to make our country live up to its ideals. So when I get tired or frustrated or angry, I think about them. Whether it's my great-grandfather, who had to take a literacy test and find three white people to vouch for him to be able to vote, whether I think of my grandmother, who had 14 children in the Gulf Coast of Mississippi and none of them were able to go beyond the 8th grade except my mother, I think about them and everything they've been through and how far we've come.

But then I look at my children. Every time I tell this story, I get emotional, so I'm sorry for that. I look at my children. And I say, I can't leave to them the same fights that my parents and my grandparents and my great-grandparents fought without doing everything in my power to say, I tried to solve those problems. And so that's part of what keeps me going.

The other part of what keeps me going is everyone I've helped in my 15 years in the legislature. Whether it's a bill that I got passed that someone asked for because they had a problem, whether it's someone who called me because they couldn't get a driver's license from DMV, no matter who it is, I think about the people I've helped and the people who still need help.

Now, sometimes I just need to take a break. And so I love movies. I love television. Had I not gone into politics and I could be assured I'd be able to get paid, I probably would have been an actress or gone to Hollywood. And so when I really need to escape, I put on my favorite TV show, even if I've watched it 100 times, and just enjoy that moment. I'll listen to music. I'll go for a walk with my kids.

Because sometimes you got to put the phone down, you got to turn the computer off, you got to turn the TV off, and you just need to live in the moment and do something that brings you joy. And I remind myself-- early on in this pandemic, my daughter got a hold of my phone and recorded a little video where she just said,

give some joy in there. And so when I get to a point where I just can't take it anymore, I get some joy in there. I remember why I'm doing it, and then I push on.

ANDREW BLOCH: Great. Well, thank you to all the students for the questions and Senator McClellan for your thoughtful answers. We're going to now turn to that portion of the evening where I'm going to be relaying questions from the Q&A or the chat. And I will do my best to cover as many as I possibly can.

This is a question-- it's not explicitly about partisanship and bipartisanship, but it has to do with making connections and finding common ground. So the question raised, my question deals with finding common ground on issues around race. Many people view racism as only prejudiced behavior from private individuals as opposed to systemic policy decisions which have lasting societal impacts over time. Is it possible to reframe people's views on race over time, in your experience? If not, how can you find common ground to make positive change?

JENNIFER MCCLELLAN: That's a great question. I think everyone needs to understand that as individuals, we have biases, implicit or explicit, and that's human nature. The first step is to understand your biases and understand what they're rooted in. Racist biases are rooted in a culture of white supremacy that has been kind of ingrained in this country's subconscious.

I think you have to, whether it's race issue-- any issue, but especially race issues, you have to try to understand where someone else's perspective comes from. All of us, our beliefs, political or otherwise, are framed on our life experiences. And when you meet someone different, with different experiences, you have to take the time to listen and try to understand what their perspective and experience is to understand their belief, and you have to share yours.

And that's usually where I've been able to find common ground. That's exactly what I did, 14 years in the minority party, was try to understand why do you believe what you believe and what is it about your perspective and your life experience that causes you to believe that way. Now let me share mine, and we will find common ground. For some people, it's impossible. And with them, don't waste your time.

The vast majority of people, though, you can make progress, but you've got to be patient. And unfortunately, the burden has fallen on Black people predominantly,

not exclusively, and many other communities of color to be the ones doing all of the listening and understanding.

In the days after George Floyd's murder, I had a surprising number of people call me and just say, how do we solve racism? And I said, look, the first step is you need to look in the mirror and ask yourself a very tough question and be honest. What am I doing? Ask yourself, what am I doing on a day-to-day basis to either exacerbate, maintain, or eradicate racism and racial bias?

And if we, as individuals, every single one of us, are not willing to ask ourselves that question and reflect on that question honestly, we can't do anything about anybody else or any systems. That is the first step, is to do that with yourself, and then begin that conversation one on one in small groups. Because it's uncomfortable. And for a lot of people who don't believe they're racist-- they may not be racist, but they're race ignorant or they have a blind spot.

We need to give them the safe space to educate themselves or let us help them be educated. Otherwise, they won't ever try, and we won't get anywhere.

ANDREW BLOCH: Great. OK, this is a more specific question related to current events. In regards to Virginia's Amendment 1, which is on the ballot this fall, the redistricting commission, the Virginia Democrats, between the House and Senate, have been vocally split on whether or not to support the amendment. And the Black Caucus has been a consistently dissenting voice. I was hoping you would be able to give us your insight on the racial and equity impacts of this amendment.

JENNIFER MCCLELLAN: Great question. I think--

ANDREW BLOCH: And maybe it would be helpful explain a little bit about what it is, because I'm sure some people know a lot about it and other folks don't.

JENNIFER MCCLELLAN: Yeah, this is a great-- so the constitutional amendment would create a bipartisan commission to draw the maps for House, Congressional, and General Assembly redistricting purposes. It would be eight legislators, equally divided between Democrats and Republicans, selected by leadership, and then individual members selected by retired judges from a list provided by Democrats and Republicans. That

detail is not really in-- the amendment only goes into so much detail.

Because usually, in a constitutional amendment, you don't go into a whole lot of detail. The bulk of the detail on how it works is in enabling legislation. And therein, for some people, lies the rub. The constitutional amendment does not say anything to guarantee that the makeup of the commission will reflect the diversity of the commonwealth. And you get into legal issues around that because there's only so much you can expressly say under the Constitution, under 14th Amendment jurisprudence, on the racial makeup of anything. So that's part of the issue.

The issue also boils down to, do you want legislators to draw lines or not? So a lot of people don't like the commission because it still includes a legislative voice. When this commission draws the maps, it comes to the General Assembly. We vote yes or no. If a map can't be drawn, it goes to the state supreme court, and then they would draw the maps. We have enabling legislation that says they would appoint two special masters-- one from a list provided by Democrats, one from Republicans.

To me, the constitutional amendment focuses on the wrong question. To me, the question is not who draws the lines. It's what rules apply when they draw them. That's not in the constitutional amendment. It is in legislation we passed this year, a criteria bill that will ban partisan, racial, and prison gerrymandering. But that's not in the amendment.

So if you believe that 140 legislators shouldn't draw their own districts and that's all you are worried about, then this constitutional Amendment does that. I lived through the 2011 redistricting process. It brings out the worst in everybody, because everyone inevitably looks at how do I protect my seat, not how do I protect the integrity of the process and ensure one person, one vote in a way that does not gerrymander.

And so I am confident that for the 2021 cycle, whether that amendment passes or not, we're going to have fair maps. The question becomes, what happens in 2031? And whether the amendment passes or not, we've still got work to do to make sure the criteria get embedded in the Constitution.

ANDREW BLOCH: It sounds like, regardless of what happens today, it's going to be a work in progress.

JENNIFER MCCLELLAN: Yes.

ANDREW BLOCH: OK. All right, more questions. This is a question from one of my colleagues, Professor Kim Forde-Mazrui. And he says, what can be done to improve the quality of historically Black communities without causing white gentrification when property values predictably rise?

JENNIFER MCCLELLAN: Great question. I think it goes back to changing how localities raise money. It goes back to the fact that their tax base is entirely based-- not quite exclusively, but almost entirely based-- on property taxes. If we gave localities more diverse tools to raise money, then property values increasing wouldn't be as much of an incentive. I think that would help.

Affordable housing, in general, though, is a pure math problem. Wages, and particularly wages in communities of color, for all the reasons I talked about at the beginning of this conversation, have not kept up with the costs of construction for housing. So we've got to subsidize one side or the other. And there have been a lot of policies put in place to try to do that. And we have to make sure that we continue those policies.

So it's everything from we've had bills to include in the anti-discrimination statute for housing you can't discriminate against someone for their source of income that they use to pay their rent. We've included legislation that says you that a local government can't deny a project solely because of the number of affordable housing units. We would define that as discriminatory practice. And so there are some policies that we can put in place that make it harder to-- or make it easier to include and maintain affordable housing.

But the bottom line is we have got to give our local governments more taxing tools or diverse taxing tools so that they don't have to rely on property taxes so much. Because it's really the property taxes that make gentrification worse. Even if someone's paid off their house, or if a rental unit is paid off, the taxes continue to go up. So I think we've got to address it from both sides.

ANDREW So you mentioned a moment ago-- and I'll own up that this is my own question. You

BLOCH: mentioned a moment ago equal protection concerns and constitutional concerns when thinking about policymaking. And you also talked about the need to really both understand our past and try to address the disparities that our past has produced, the racial disparities across all systems of life in Virginia and really the country.

So to what extent do you think about the constitutional requirements when you're making policy and making choices between doing race neutral things or race specific things? And if you could talk about that for a moment, that would be great.

JENNIFER MCCLELLAN: I think about it all the time, because I'm a good UVA law grad who took Constitutional Law with Earl Dudley. So I think about it a lot. And that was a big part of the conversation in the constitutional amendment. How much do you expressly put in a constitutional amendment or in a law about the racial makeup of a commission? And can you do that consistent with the 14th Amendment?

So you have to think about it, because the last thing you want to do is pass a law that's going to get struck down. And that's why I think we tend to look more at what's the impact that we are trying to overcome, and how do we address that impact in a race neutral way? Income has become a proxy. So I think that it is constantly in the forefront of my mind.

Now, probably, the average legislator, not so much. We don't have as many lawyers. We do have legislative services who will tell us. If we have a bill that raises constitutional issues, they'll tell us. But it's up to us to decide are we going to push forward with it or not. And so I do think it's important that we think about it, because we don't want to do something that is going to be struck down as unconstitutional.

ANDREW BLOCH: Thank you. Here's another question. Could you talk about the relationship between reproductive and racial justice, particularly as it pertains to families in Virginia?

JENNIFER MCCLELLAN: So I'm going to tell you another story. After Justice Kavanaugh was confirmed, there were a lot of forums that I was invited to speak on, on what do we do if *Roe* falls. And I went to one that was predominantly Boomer white women who had been in the middle of the fight in the '70s to fight for reproductive freedom. And they were panicked.

And I was on a panel with a young Latina who worked for an abortion funder. And she said, for women of color, *Roe* is a myth. Abortion may be legal, but there's so many impediments that they can't access it. Excuse me. Because the 24-hour waiting period requires you to get another day off from work. You have to get transportation.

You may not have health insurance, particularly based on restrictions if you have the Hyde Amendment that doesn't pay for abortions in the case of gross fetal abnormality. That means that your health insurance might not pay for it. And if you're a federal employee, your health insurance won't pay for it. Hospitals won't perform procedures if you don't have insurance.

And I remember one case of someone who had a miscarriage who had to have a D&C, which is an abortion, that her health insurance wouldn't pay for in a particular circumstance. She ended up having to go to a clinic. And so all of these barriers that are put in place disproportionately impact women of color. Because again, women of color are more likely to be lower income or have a harder time accessing transportation or be in jobs that it's harder to get two days off.

So it's important to understand that legal barriers and structural barriers are just as much barriers that impact lower income people more than anybody else. And remember, even if abortion is completely legal in one state, who had the ability to go to another one, where it was legal, and who didn't? Or who had the ability to find a credible doctor who would perform a procedure safely in secret and who didn't? Who ended up in a back alley? So those are some of the different ways that reproductive health decision impacted different communities differently.

ANDREW BLOCH: All right, here's another question. The legislative efforts to address problems of racial inequity seem to increasingly be partisan in nature. And the Democrats are more often associated with efforts to address those issues than Republicans. Democrats, however, have their own bad history when it comes to race relations in Virginia and in the country. And so kind of reflecting on the past and thinking about the present, how can we make these issues bipartisan in nature?

JENNIFER MCCLELLAN: You might have stumped me there. I think it's important to remember that there have been historic realignments of the parties. And the Republican Party of

Abraham Lincoln and the Republican Party of George Wallace and the Republican Party of Donald Trump are very different. And that the Democratic Party of Harry Byrd and the Democratic Party of-- the Democrats that passed the 1964 Civil Rights Act and Voting Rights Act and elected Barack Obama are different.

I think there is a fundamental difference of opinion in the modern Democratic Party, in the modern Republican Party about what is the role of government. And I think that is part of why these issues fall out on race. But in the last four years, there has been a fundamental difference in how the parties react to white supremacists. We've got to be honest about that.

I'm not saying every Republican is a white supremacist. Do not get me wrong. There has been a reticence among the Republican Party in the past four years, more so than I would have expected, to call out white supremacy or combat it. I don't know why. But we have got to go back to what I said a little earlier. We need to have those conversations and ask people, why are you voting the way you're voting? Why are you saying the things that you're saying? Why do you believe the way you believe?

In 2016, I think a lot of Democrats reflexively assumed if you voted for Donald Trump, you're a racist. Well, not everybody that voted for Donald Trump is a racist. So in a lot of families, in a lot of friendships, in a lot of communities, there should have been a conversation. Why did you vote the way you voted? And when Donald Trump says something racist or does something racist, do you agree with him? And if not, say so.

And if we're not willing to have those conversations as individuals, it's going to be really hard to address racial equity in a bipartisan way. Because if one group of people just refuses to even acknowledge racial inequity exists or white supremacy still exists, it's going to be hard to get them on board. So we need to have those conversations.

But we need to have them in both parties. Because let me be real frank, not everybody in the Democratic party is woke. And there are different gradiations of wokeness. And there are a lot of people who aren't willing to have that internal, reflexive conversation to identify their wokeness. So that conversation has got to happen on both sides of the aisle if we're ever really going to address racial

inequity and white supremacy in a unifying way.

ANDREW BLOCH: Thank you very much for that thoughtful answer. So this is the last question. It's an easy one. It comes from the audience. What is your favorite television show? You mentioned watching your favorite television show. Inquiring minds want to know, what is it?

JENNIFER MCCLELLAN: *Lucifer,* currently. I am I am waiting with bated breath for the second half of season 5. But yeah, *Lucifer.*

ANDREW BLOCH: Very good. So I think, with that, we will wind. We're at 6:02. To people in the audience who submitted questions, thank you. You submitted many, suggesting a real appetite for conversations like these. So we will all, at the law school, do what we can to continue providing opportunities for that. If I couldn't get to your question, I apologize. But we will provide, like I said, more chances to have these really important discussions.

Senator McClellan, thank you very much. Hopefully, everyone can see why we wanted Senator McClellan to speak about these issues. Your responses were nuanced and thoughtful and brave. So we all learned a lot, and we're lucky for the time you spend with us. And we're proud to call you one of our graduates.

JENNIFER MCCLELLAN: Well, thank you.

ANDREW BLOCH: And thanks also to our student panelists for preparing and asking excellent questions. So I think, with that, we're going to conclude the event. And everybody have a good and safe evening, and I hope to see you all soon. Thank you again, Senator.

JENNIFER MCCLELLAN: Thank you, and have a good night.