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## ARTICLE

# THE DECLINE OF CIVIL DISCOURSE AND THE RISE OF EXTREMIST DEBATE WORDS MATTER

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Most attorneys are familiar with the adage: “If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell.”<sup>1</sup> We have entered

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<sup>1</sup> This adage derives from CARL SANDBURG, *THE PEOPLE, YES* 181 (1937) (“If the law is against you, talk about the evidence,”

an age where, in any given debate, proponents of a particular position no longer seem to care about the facts or the law. They bypass all reason, attempt no civil discourse, and proceed straight to yelling. This proclivity knows no political, generational, or socio-economic bounds. It is an equal-opportunity philosophy that threatens to tear down the very foundations on which our representative republic was built; for when the objective of the discourse is simply to shout down the other side, very little of substance can be accomplished. Why have we digressed to this point? Can we change course and re-introduce the vital concept of respect for well-reasoned opinions, even if they are diametrically opposed to our own? Is it too late to salvage human dignity in the public sphere?

In my tenth-grade debate class, we discussed the elements of an effective argument. We learned that great debaters were the ones who had a good grasp of the facts, understood both sides of an argument, and methodically laid a foundation in support of their position. Ineffective debaters were the ones who did not understand the facts, relied on unsubstantiated sources, and, more often than not, attacked the other side's motives and character, neither of which is relevant to the substance of the issues being debated. Attacking your opponent, we were told, is a sure sign of your own weakness.

Despite this maxim of debate, individuals across a range of professions, socio-economic groups, and political parties have no reservations about using the "yell like hell" philosophy as the first, and sometimes only, course of action. Whether they are politicians, comedians, musicians, or authors, they have filled the public forum with anger, accusations, unfair generalities, and unfounded conclusions about the character of "the

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said a battered barrister. "If the evidence is against you, talk about the law, and, since you ask me, if the law and the evidence are both against you, then pound on the table and yell like hell."").

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other side.” They oppose the other side’s positions not on merit, but on their hatred of “the other side.” A few recent examples illustrate the escalating problem: (1) a presidential candidate accused another nation of “bringing drugs, and bringing crime, and their rapists” to America;<sup>2</sup> (2) another presidential candidate, though acknowledging ahead of time that her comment would be “grossly generalistic,” stated that half of the supporters of the other candidate belonged in a “basket of deplorables;”<sup>3</sup> (3) a California political leader led a profane chant against the President while he and a crowd of supporters used a profane gesture;<sup>4</sup> (4) a late-night comedian used his national platform to insult the President with a series of escalating comments too offensive to reprint here;<sup>5</sup> (5) a musician included in his concert a message displayed in giant letters across several large video screens disparaging the President;<sup>6</sup> and (6) following a terrorist attack in London in June

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<sup>2</sup> Adam Gabbatt, *Donald Trump’s Tirade on Mexico’s ‘Drugs and Rapists’ Outrages U.S. Latinos*, THE GUARDIAN (June 16, 2015), <https://www.theguardian.com/us-news/2015/jun/16/donald-trump-mexico-presidential-speech-latino-hispanic>.

<sup>3</sup> Angie Drobnic Holan, *In Context: Hillary Clinton and the ‘Basket of Deplorables’*, POLITIFACT (Sept. 11, 2016), <http://www.politifact.com/truth-o-meter/article/2016/sep/11/context-hillary-clinton-basket-deplorables/>.

<sup>4</sup> Peter W. Stevenson, *California Democrats Give Trump the Finger*, WASH. POST (May 22, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/05/22/california-democrats-give-trump-the-finger/?utm\\_term=.68888af76d0e](https://www.washingtonpost.com/news/the-fix/wp/2017/05/22/california-democrats-give-trump-the-finger/?utm_term=.68888af76d0e).

<sup>5</sup> Sarah Taylor, *Stephen Colbert Eviscerates Donald Trump in Vulgar, Insult-Laden Network TV Rant*, THE BLAZE (May 2, 2017), <http://www.theblaze.com/news/2017/05/02/stephen-colbert-eviscerates-donald-trump-in-vulgar-insult-laden-network-tv-rant/>.

<sup>6</sup> William Cummings, *What Blew Up the Liberal and Conservative Media Bubbles This Week*, USA TODAY (June 1, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/06/01/this-week-trending-liberal-conservative-posts/102355218/>.

2017, a Louisiana congressman posted in a Facebook message that “radicalized Islamic suspect[s]” should be denied entry into America and that we should “[h]unt them, identify them, and kill them. Kill them all.”<sup>7</sup> I could continue ad nauseum, because there are any number of websites dedicated to documenting the ridiculing of various individuals or groups, including climate scientists on one side or the other, politicians of all kinds, celebrities, those of various religious faiths, and many others.<sup>8</sup>

The advent of social media has compounded the problem. The perceived potential to communicate, quite literally, to *the entire technology-connected world* is an intoxicant many cannot resist. This potential inflates one’s sense of self-importance and emboldens one to say or write whatever it takes to “go viral.” This desire naturally leads to extremism because a well-reasoned,

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<sup>7</sup> Ken Stickney, *Louisiana Congressman on Radicalized Islam: ‘Kill Them All’*, USA TODAY (June 5, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/06/05/louisiana-congressman-radicalized-islam-kill-them-all/102519398/>.

<sup>8</sup> I would be remiss in not acknowledging that, sometimes, actions speak louder than words. Within a forty-eight hour period of the initial drafting of this article, I noted one celebrity who posed for photographs holding a likeness of the decapitated, bloody head of the President, *see* Libby Hill, *Kathy Griffin Shocks in Gory Photo Shoot with Donald Trump’s (fake) Head*, L.A. TIMES (May 30, 2017), <http://www.latimes.com/entertainment/la-et-entertainment-news-updates-may-kathy-griffin-shocks-in-gory-photo-1496183372-htmstory.html>, while another individual hung a noose inside the National Museum of African American History and Culture. Lorraine Boissoneault, *Noose Found in National Museum of African American History and Culture*, SMITHSONIAN MAG. (May 31, 2017), <http://www.smithsonianmag.com/smithsonian-institution/noose-found-national-museum-african-american-history-and-culture-180963519/>). Each act oozes the kind of vitriol that suppresses thoughtful discourse on important issues.

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calm, methodical approach rarely rises to the top of a search engine result. In a recent example, a host on a prominent cable news network responded to a tweet from the President with his own tweet using vulgar language and calling the President “an embarrassment to America,” “a stain on the presidency,” and “an embarrassment to humankind.”<sup>9</sup> The host later apologized, but not before his tweet went viral.<sup>10</sup>

Moreover, the ability of any individual or group to create its own “publication” at little cost and disseminate it widely has led to the predominance of extreme language and “fake news.” Many such websites, blogs, posts, and other similar media have no need of and no use for journalistic integrity. These new media, in turn, cause once-respected news organizations to lean toward extreme fringes in an effort to compete with the more sensationalistic elements on the internet. This pushes venerated reporters to blur the line between fact and opinion. In short, the media is caught in a “spin cycle” that will not slow down. The perceived demand for constant access to new and salacious news stories means that in-depth investigative journalism, which mandates a time-consuming, methodical approach to interviewing and verifying sources, is shunted to the side in favor of whatever rumor or innuendo is the “flavor of the moment.” Owners and stockholders of legitimate media demand revenue; revenue is generated by advertisers who require ratings and increased subscription bases, which apparently are generated only through “gotcha” headlines, unverified speculation, and outrage. We, the consumers, watch, click on, purchase, and download this drivel. And on it goes.

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<sup>9</sup> Josh Feldman, *CNN Host Reza Aslan Apologizes for Calling Trump a ‘Piece of Sh\*t’*, MEDIAITE (June 4, 2017), <https://www.mediaite.com/online/cnn-host-reza-aslan-apologizes-for-comments-calling-trump-a-piece-of-sht/>.

<sup>10</sup> *Id.*

One commentator summarized his thoughts on this topic in a recent article:

[W]e're moving toward two Americas—one that ruthlessly (and occasionally illegally) suppresses dissenting speech and the other that is dangerously close to believing that the opposite of political correctness isn't a fearless expression of truth but rather the fearless expression of ideas best calculated to enrage your opponents.

. . . For one side, a true free-speech culture is a threat to feelings, sensitivities, and social justice. The other side waves high the banner of “free speech” to sometimes elevate the worst voices to the highest platforms—not so much to protect the First Amendment as to infuriate the hated “snowflakes” and trigger the most hysterical overreactions.<sup>11</sup>

What does the decline in civil discourse have to do with the law? Consider the impact extreme language has had on national immigration policy. In *International Refugee Assistance Project v. Trump*,<sup>12</sup> the United States Court of Appeals for the Fourth Circuit framed the issue as follows: “whether [the Constitution] protects Plaintiffs’ right to challenge an Executive Order that in text speaks with vague words of national security, but in context drips with religious intolerance, animus, and

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<sup>11</sup> David French, *David French: The Threat to Free Speech*, COMMENTARY MAG. (June 27, 2017), <http://www.commentarymagazine.com/politics-ideas/david-french-threat-free-speech/>.

<sup>12</sup> 857 F.3d 554 (4th Cir. 2017), *cert. granted and stayed in part*, 137 S. Ct. 2080 (2017), *vacated as moot*, No. 16-1436, 2017 U.S. LEXIS 6265 (Oct. 10, 2017).

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discrimination.”<sup>13</sup> The case addressed President Trump’s executive orders that seek to prohibit “foreign nationals who ‘bear hostile attitudes’ toward [America]” from entering the country for a certain period of time.<sup>14</sup> In analyzing whether the plaintiffs could pursue a cause of action to stop the implementation of these orders, a majority of the Fourth Circuit found it relevant and probative to consider “public statements by the President and his advisors and representatives at different points in time, both before and after the election and President Trump’s assumption of office.”<sup>15</sup> After recounting various public statements in which President Trump described “hatred [and] danger coming into our country,”<sup>16</sup> and claimed that “Islam hates us,”<sup>17</sup> the court agreed with the plaintiffs’ claim that there was an “anti-Muslim message animating [the second executive order].”<sup>18</sup>

Following an extensive review of what the court believed to be binding precedent on the constitutional issue, the majority concluded that if the plaintiffs make “an affirmative showing of bad faith” that is “plausibly alleged with sufficient particularity” against the government’s proposed action, then the court may “‘look behind’ the challenged action to assess its ‘facially legitimate’ justification.”<sup>19</sup> The court then determined that it must “step away from our deferential posture and

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<sup>13</sup> *Id.* at 572.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 575.

<sup>16</sup> Donald Trump (@realDonaldTrump), TWITTER (Dec. 7, 2015, 1:47 PM), <https://twitter.com/realdonaldtrump/status/673982228163072000?lang=en>.

<sup>17</sup> 857 F.3d at 576.

<sup>18</sup> *Id.* at 575–76, 576, 578.

<sup>19</sup> *Id.* at 590–91 (quoting *Kerry v. Din*, 135 S. Ct. 2128, 2141 (2015) (Kennedy, J., concurring)).

look behind the stated reason for the challenged action.”<sup>20</sup>  
The court noted that

Plaintiffs point to ample evidence that national security is not the true reason for [the second executive order], including, among other things, then-candidate Trump’s numerous campaign statements expressing animus towards the Islamic faith; his proposal to ban Muslims from entering the United States; his subsequent explanation that he would effectuate this ban by targeting “territories” instead of Muslims directly; the issuance of [the first executive order], which targeted certain majority-Muslim nations and included a preference for religious minorities; [and] an advisor’s statement that the President had asked him to find a way to ban Muslims in a legal way. . . .<sup>21</sup>

The court then concluded that “Plaintiffs have more than plausibly alleged that [the second executive order’s] stated national security interest was provided in bad faith . . . .”<sup>22</sup> Although the court acknowledged that it could not engage in “judicial psychoanalysis of a drafter’s heart of hearts,”<sup>23</sup> it had a duty to consider “the action’s ‘historical context’ and ‘the specific sequence of events leading to [its] passage.’”<sup>24</sup> Moreover, the court determined that “as a reasonable observer, a court has a ‘reasonable memor[y],’ and it cannot ‘turn a blind eye to

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<sup>20</sup> *Id.* at 591.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 592.

<sup>23</sup> *Id.* at 593 (quoting *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 862 (2005)).

<sup>24</sup> *Id.* at 593 (alteration in original) (quoting *Edwards v. Aguillard*, 482 U.S. 578, 595 (1987)).



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the context in which [the action] arose.”<sup>25</sup> The Fourth Circuit concluded that

[t]he evidence in the record, viewed from the standpoint of the reasonable observer, creates a compelling case that [the second executive order’s] primary purpose is religious. Then-candidate Trump’s campaign statements reveal that on numerous occasions, he expressed anti-Muslim sentiment, as well as his intent, if elected, to ban Muslims from the United States. For instance, on December 7, 2015, Trump posted on his campaign website a “Statement on Preventing Muslim Immigration,” in which he “call[ed] for a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on” and remarked, “[I]t is obvious to anybody that the hatred is beyond comprehension. . . . [O]ur country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life.”<sup>26</sup>

In response to the Government’s arguments that the stated purpose of the executive order was secular in nature, that it banned persons of all religions from the designated countries, and that it did not ban Muslims from countries other than the designated countries, the majority commented that the executive order’s “practical operation is not severable from the myriad statements explaining its operation as intended to bar Muslims from

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<sup>25</sup> *Id.* (quoting *McCreary*, 545 U.S. at 866).

<sup>26</sup> *Id.* at 594.

the United States.”<sup>27</sup> Regardless of one’s political perspective, religious views, or thoughts on the legal analysis employed by the Fourth Circuit, there can be no doubt that the primary focus of this important legal case was on one thing: language.<sup>28</sup> A candidate’s use of words that some considered ill-advised and inflammatory resulted in a United States Court of Appeals blocking implementation of an executive order that otherwise constituted a facially legitimate exercise of executive discretion. Words matter.

Though certainly not on the same scale as *International Refugee*, other recent litigation has hinged on the ill-advised use of words. In 2014, a high school student in Minnesota was suspended due to a two-word tweet (“actually yes”) he sent off campus and after school hours in response to a Twitter inquiry about a rumored occurrence between the student and a teacher.<sup>29</sup> The student sued, alleging, among other things, that his First Amendment rights had been violated.<sup>30</sup> The school district responded to the complaint by arguing that the student’s tweet was “obscene” and therefore not protected

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<sup>27</sup> *Id.* at 597.

<sup>28</sup> It should be noted that three judges on the Fourth Circuit dissented in *International Refugee*, arguing that the court had no precedential basis for “look[ing] behind” the Government’s “facially legitimate and bona fide” exercises of executive discretion,” *id.* at 639 (Niemeyer, J., dissenting) (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972)), and had no just cause for “consideration of campaign statements to recast a later-issued executive order . . . .” *Id.* at 639 (Neimeyer, J., dissenting).

<sup>29</sup> Cyrus Farivar, *Lawsuit Over Two-Word Tweet—“actually yes”—Can Move Ahead, Judge Finds*, ARSTECHNICA (Aug. 15, 2015), <https://arstechnica.com/tech-policy/2015/08/lawsuit-over-two-word-tweet-actually-yes-can-move-ahead-judge-finds/>.

<sup>30</sup> *Sagehorn v. Indep. Sch. Dist. No. 728*, 122 F. Supp. 3d 842, 848 (D. Minn. 2015).

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by the First Amendment.<sup>31</sup> The district court cited Supreme Court precedent holding that “it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.”<sup>32</sup> The district court concluded, however, that the tweet in question was not patently obscene and that the issue should be left for the jury to decide.<sup>33</sup>

Much of the debate surrounding the legal implications of word use and word choice can be traced back to the United States Supreme Court’s decision in *Brandenburg v. Ohio*,<sup>34</sup> a 1969 free speech case. Clarence Brandenburg was a Ku Klux Klan (“KKK”) leader in rural Ohio who invited a reporter to attend a KKK rally in 1964.<sup>35</sup> Portions of the rally were recorded and broadcast on a local television station and Brandenburg was later convicted of “advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform . . . .”<sup>36</sup> The Supreme Court reversed Brandenburg’s conviction and declared the Ohio statute on which the conviction was based unconstitutional.<sup>37</sup> In so holding, the Court stated,

[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or

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<sup>31</sup> *Id.* at 853 (citing *Kois v. Wisconsin*, 408 U.S. 229, 230 (1972)).

<sup>32</sup> *Id.* (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986)).

<sup>33</sup> *Id.* at 854.

<sup>34</sup> 395 U.S. 444 (1969).

<sup>35</sup> *Id.* at 445.

<sup>36</sup> *Id.* at 444–45 (alteration in original).

<sup>37</sup> *Id.* at 449.

producing imminent lawless action and is likely to incite or produce such action.<sup>38</sup>

The Court then concluded:

[W]e are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments.<sup>39</sup>

However, there are limits to the First Amendment's protective reach. In 2006, the Supreme Court of Michigan issued a controversial opinion addressing public comments made by an attorney about appellate judges who were hearing his client's case.<sup>40</sup> After the attorney obtained a large jury verdict for a client in an earlier medical malpractice case, a three-judge panel of the Michigan Court of Appeals reversed the award and directed entry of a judgment notwithstanding the verdict.<sup>41</sup> The court of appeals commented in its decision that the conduct of the plaintiff's attorney during the trial was "truly egregious" and that it "completely tainted the proceedings."<sup>42</sup> Within a few days of the release of this decision, on a then-daily radio program the attorney hosted on a local station, the attorney made highly derogatory and offensive comments about the three appellate court judges who issued the

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<sup>38</sup> *Id.* at 447.

<sup>39</sup> *Id.* at 449.

<sup>40</sup> *Grievance Adm'r v. Fieger*, 719 N.W.2d 123 (Mich. 2006).

<sup>41</sup> *Id.* at 129. *See generally* *Badalamenti v. William Beaumont Hosp.-Troy*, 602 N.W.2d 854, 862 (1999).

<sup>42</sup> *Badalamenti*, 602 N.W.2d at 860; *see also Fieger*, 719 N.W.2d at 129.

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opinion.<sup>43</sup> Not surprisingly, Michigan's Attorney Grievance Commission filed a formal complaint against the attorney, alleging that his public comments violated several provisions of the Michigan Rules of Professional Conduct.<sup>44</sup>

On appeal, a majority of the Supreme Court of Michigan noted that the legal profession, unlike other professions, "impose[s] upon its members regulations concerning the nature of public comment."<sup>45</sup> "The First Amendment implications are easily understood in such a regulatory regime," and the Supreme Court of Michigan "has attempted to appropriately draw the line between robust comment that is protected by the First Amendment and comment that undermines the integrity of the legal system."<sup>46</sup> The court concluded that "these rules are designed to prohibit only 'undignified,' 'discourteous,' and 'disrespectful' conduct or remarks. These rules are a call to discretion and civility, not to silence or censorship, and they do not even purport to prohibit criticism."<sup>47</sup> The court then determined that the attorney's disparaging comments about the three judges "warrants no First Amendment protection when balanced against this state's compelling interest in maintaining public respect for the integrity of the legal process."<sup>48</sup>

Finally, the majority sought to address the objections of its dissenting colleagues, who concluded

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<sup>43</sup> *Fieger*, 719 N.W.2d at 129.

<sup>44</sup> *Id.* at 130. The subsequent disciplinary proceedings in *Fieger*, which involved an appeal to the Attorney Disciplinary Board in Michigan, are convoluted and irrelevant to this Article, and therefore this Article does not discuss those proceedings. *See generally id.* at 130–31.

<sup>45</sup> *Id.* at 131.

<sup>46</sup> *Id.* at 131–32.

<sup>47</sup> *Id.* at 135.

<sup>48</sup> *Id.* at 142 (citing *United States v. O'Brien*, 391 U.S. 367, 377 (1968)).

that the attorney's disparaging public comments should be protected by the First Amendment:

In their repudiation of “courtesy” and “civility” rules, the dissents would usher an entirely new legal culture into this state, a Hobbesian legal culture, the repulsiveness of which is only dimly limned by the offensive conduct that we see in this case. It is a legal culture in which, in a state such as Michigan with judicial elections, there would be a permanent political campaign for the bench, pitting lawyers against the judges of whom they disapprove. It is a legal culture in which rational and logical discourse would come increasingly to be replaced by epithets and coarse behavior, in which a profession that is already marked by declining standards of behavior would be subject to further erosion, and in which public regard for the system of law would inevitably be diminished over time.<sup>49</sup>

Additionally, our nation's college campuses are increasingly marked by divisive, extreme, and abusive language, as well as attempted censorship:

- In 2015, a professor at the University of Missouri attempted to prohibit a video journalist from recording video at a student protest. The professor yelled, “Who wants to help me get this reporter out of here? I need some muscle over here.”<sup>50</sup>

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<sup>49</sup> *Id.* at 144.

<sup>50</sup> Justin Moyer, Michael Miller & Peter Holley, *Mass Media Professor Under Fire for Confronting Video Journalist at Mizzou*, WASH POST (Nov. 10, 2015), <https://www.washingtonpost.com/>

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- In 2015, a faculty training guide distributed by the University of California cautioned faculty members against using words and phrases that could result in “microaggressions,” including the phrase “America is the land of opportunity.”<sup>51</sup>
- A 2016 Gallup poll found that thirty-one percent of college students say they frequently or occasionally hear someone at their college making “disrespectful, inappropriate or offensive comments” about others’ race, ethnicity, or religion, while fifty-four percent of students surveyed said the climate on their campus “prevents some people from saying what they believe.”<sup>52</sup>
- In 2017, a professor at Evergreen State College sent an email (that was then posted to Twitter) objecting to an event called “Day of Absence,” in which white students and teachers were asked to leave campus for the day so that students of color could organize and attend discussions about race.<sup>53</sup> Student protestors concluded the professor

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news/morning-mix/wp/2015/11/10/video-shows-u-of-missouri-protesters-and-journalism-professor-barring-media-coverage/?utm\_term=.7581e8f24914.

<sup>51</sup> Nick Gillespie, *This Counts as a Microaggression: “America is the Land of Opportunity”*, REASON FOUNDATION (JUNE 15, 2015), <http://reason.com/blog/2015/06/15/this-counts-as-a-microaggression-america>.

<sup>52</sup> GALLUP, FREE EXPRESSION ON CAMPUS: A SURVEY OF U.S. COLLEGE STUDENTS AND U.S. ADULTS 4, 18 (2016).

<sup>53</sup> Susan Svrulga & Joe Heim, *A Washington State College, Caught Up in Racial Turmoil, Remains Closed Friday After Threat of Violence*, WASH POST (June 2, 2017), [https://www.washingtonpost.com/news/grade-point/wp/2017/06/02/evergreen-state-caught-up-in-racial-turmoil-remains-closed-friday-after-threat-of-violence/?utm\\_term=.e517f9009028](https://www.washingtonpost.com/news/grade-point/wp/2017/06/02/evergreen-state-caught-up-in-racial-turmoil-remains-closed-friday-after-threat-of-violence/?utm_term=.e517f9009028).

was racist and demanded he be fired, and threats of violence prompted the school to close for two days.<sup>54</sup>

- In February 2017, a professor at Fresno State University tweeted, “to save American democracy, Drumpf must hang. The sooner and the higher, the better.”<sup>55</sup>
- In 2017, two conservative commentators were banned from the campus of DePaul University for using “inflammatory speech.”<sup>56</sup>
- Harvard’s campus newspaper, *The Crimson*, reported in June 2017 that ten students who had been admitted into the incoming freshmen class had their admissions rescinded when the school discovered sexually explicit and/or racially insensitive memes in a private Facebook chat.<sup>57</sup>

Despite this disturbing trend, an analysis by CNN reporter Elliott C. McLaughlin concluded that students “will listen to speakers they disagree with if they’re

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<sup>54</sup> *Id.*

<sup>55</sup> Melissa Etehad, *Fresno State Professor Placed on Leave After Tweeting “Drumpf Must Hang”*, L.A. TIMES (April 19, 2017), <http://www.latimes.com/local/lanow/la-me-ln-fresno-professor-paid-leave-20170419-story.html>.

<sup>56</sup> Kassy Dillon, *After Protests and Riots, Free Speech is MIA on College Campuses*, THE HILL (Feb. 3, 2017), <http://thehill.com/blogs/pundits-blog/education/317719-after-protests-and-riots-free-speech-is-mia-on-college-campuses>.

<sup>57</sup> Hannah Natanson, *Harvard Rescinds Acceptances for at Least Ten Students for Obscene Memes*, HARV. CRIMSON (June 5, 2017), <http://www.thecrimson.com/article/2017/6/5/2021-offers-rescinded-memes/>.



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civil.”<sup>58</sup> He cited as an example a 2015 speech Senator Bernie Sanders gave at Liberty University, a well-known Christian college in Virginia. One student commented that although she and most of her fellow students disagreed with Senator Sanders’s views on a variety of topics, she listened to his speech and thoughtfully considered his comments about alleviating poverty in light of her own beliefs, saying “[e]veryone I talked to was glad he came,” and that “[i]t’s important to communicate with those we disagree with.”<sup>59</sup>

Thus, there can be no doubt that the First Amendment is the great constitutional protector of free speech, as it should be, but it is not without its limits. For purposes of this article, the question is not whether divisive, rude, profane, or derogatory language is constitutional. In most instances, it is certainly protected speech. Instead, the question is whether, in an age where one’s words can be disseminated immediately to millions of people across multiple digital platforms, such language contributes anything useful to society. As Shakespeare’s great character Falstaff said, “The better part of valor is discretion . . . .”<sup>60</sup>

I believe a significant majority of Americans, who I dub the “Middle Majority,” abhor extremist, hate-filled rhetoric, regardless of which end of the political spectrum produces it. The average American, I maintain, finds the vitriol spewed by white supremacists as distasteful as the far-left’s radicalized malevolence directed at our current President. As one commentator explained, “[r]age and sanctimony always spread like a virus, and become

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<sup>58</sup> Elliott C. McLaughlin, *War on Campus: The Escalating Battle Over College Free Speech*, CNN (May 1, 2017), <http://www.cnn.com/2017/04/20/campus-free-speech-trnd/>.

<sup>59</sup> *Id.*

<sup>60</sup> WILLIAM SHAKESPEARE, *THE FIRST PART OF KING HENRY THE FOURTH*, act 5, sc. 4.

stronger with each iteration.”<sup>61</sup> And yet, the Middle Majority feels helpless to stop, or even slow down, this bullet train of bitterness.

The Middle Majority does, however, hold the keys to reversing this descent into hostility and hyperbole. One answer, as is often the case in a capitalist society, lies in our wallets. We can choose to weaken the impact of extremism by refusing to buy that person’s book, or subscribe to that magazine, or watch that television program. We can refuse to click on that story, and, more importantly, ignore the link to that advertiser’s website. Companies take notice when clicks, sales, and ratings fall. It is high time we reacted to extremists in a way that relegates them to the shadows from whence they came. While I will support that person’s constitutional right to speak, I also believe in our right to react to that speech in a way that minimizes its impact on society and opens the door for more thoughtful, well-reasoned, *civil* discourse. For those who seek a more proactive approach, remember that advertisers crave your dollars. The marketplace compels companies to react in a way that maximizes profit. If enough people register disgust with that company spokesman, or author, or You-Tuber, advertisers will react swiftly to distance themselves from the extremism, and the influence of the extremists will ebb over time. It is the failure to react that leads to the normalization of the extreme.

A second key lies in our own access to the public forum. The Middle Majority needs to contribute to the debate as often as possible in a way that rejects extremism and replaces it with logic and calm, articulate reasoning. It is not a sign of weakness to acknowledge valid points made by those who oppose your view. It furthers the public interest to seek common ground and offer suggestions that move the country forward, as

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<sup>61</sup> Peggy Noonan, *Rage is All the Rage, and It’s Dangerous*, WALL ST. J., June 17-18, 2017, at A13.

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opposed to the ongoing stalemate left in the wake of dogmatic extremism. Compromise is not a four-letter word. As one former president memorably stated, “Let us never negotiate out of fear. But let us never fear to negotiate.”<sup>62</sup> It is high time we reject extremism of all kinds, show respect for various viewpoints through civil discourse, and seek common ground for the good of our communities, our states, and our nation.

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<sup>62</sup> John F. Kennedy, President of the U.S., Inaugural Address (Jan. 20, 1961), <https://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Quotations/Inaugural-Address.aspx>.