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Letter from the President



When 2020 started, Independence Institute was gearing up for our usual fights – urgent fights – but fights that are now par for the course for a state dominated by the left.

Progressives were gearing up to forcefully enact a Progressive Income Tax, undermine our Taxpayer's Bill of Rights, continue to crush our energy industry, and rip privacy from donors.

Ho hum. We've seen this all

before and Independence Institute has been repeatedly victorious – but now, everything has changed – and not for the better.

The current COVID-19 crisis is just the crisis progressives so desperately needed to expand governmental authority and permanently limit our freedoms in the name of security.

Constitutional limits? Nope. At the outbreak of COVID-19, Colorado's State Legislature declared a temporary recess, bringing into question whether they will be able to reconvene after the recess if it goes longer than their normal session of 120 days. The Court decided to rewrite the constitution.

Free market innovation? Nope. Government is determining who is essential and non-essential, shutting down businesses arbitrarily in order to enforce social distancing.

Principle over politics? Nope. The same liberals who once stood for the rights of literal Nazis to freely associate in the streets are now encouraging neighbors to rat each other out to the government.

Rule of Law? Nope. We cannot peaceably assemble, worship, travel, or gather without fear of government reprisal. The same nation that fought a Revolution over tax increases is now letting our fundamental liberties slip away.

This seems like a bleak assessment of the current landscape, but Independence Institute is not sitting idly by. We are the nimblest freedom organization out there, and we have launched a full-on counterassault on this growing government overreach.

We have dominated coverage of Covid-19 on CompleteColorado.com where we provide the real news of this crisis. As so-called “journalists” peddle hysteria, Complete is a breath of fresh air amidst the coronavirus panic.

Independence Institute has also debuted our newest media capacity: Livestreaming from our “Studio B Bar” has become a weekly beacon of civil disobedience, where we gather to drink and enjoy community without the need to go through official “gatekeepers.”

Our partnership with CaucusRoom.com, the right's newest social media network, has connected thousands of liberty lovers throughout Colorado. We even livestreamed interviews with Congressman Ken Buck and Senator Cory Gardner, getting straight answers about what's actually happening in Washington.

Our Constitutional scholar, Rob Natelson, even put his well-earned sabbatical on hold just so he could battle the false information being peddled as truth. He has become the leading legal expert on how and why these lockdown orders are constitutionally dubious.

Our Center Right Coalition Meetings have continued without interruption, allowing pro-freedom groups throughout the state to collaborate and stay on message.

We have been in ongoing personal conversations with Governor Polis and provided him dozens of policy proposals to get government out of the way of private innovation and hasten the end of this crisis. And to his credit he has implemented several.


At the end of the day this crisis needs more than social distancing. It needs government distancing. We need to ignite the engine of capitalism and the innovation that comes with it. And we must not be tempted into a growing command-and-control state.

Independence Institute is hard at work on your behalf, fighting for your rights – there is still a beacon of liberty alive in Colorado!

Independence Institute has become the focal point of the resistance to the Covid-19 overreach. And we can't be successful without you. Thank you for being our partner in this fight for the soul of Colorado.

Think Freedom,

A handwritten signature in blue ink, appearing to read "John C. ...". The signature is fluid and cursive.



States' Emergency Powers still subject to the Constitution

By Rob Natelson

Americans' constitutional rights are not luxuries to be thrown away in times of crisis. They are central to our economic and social system and key to our success. To discard them is to cut our own throats.

First, the good news: Our constitutional system is flexible enough to allow government to respond to pandemics and other emergencies. Each state enjoys a vast reservoir of authority the courts call the police power. (The word "police" does not refer to the cop on the beat; it is an older usage meaning "governance.") In responding to a pandemic, states and their local governments may employ the police power to quarantine the sick, close places of assembly such as theaters and churches, provide emergency care, and require testing and vaccination. States may impose health restrictions on businesses that remain open, such as reducing business hours and requiring masks. They may restrict mass transit or take special steps to ensure vehicles are well ventilated and not too crowded. They may declare tax holidays and repeal regulations so as to reduce the burden of government.

The Spanish Flu pandemic of 1918-19 may have killed as many as 50 million people worldwide. It made COVID-19 look like a walk in the park. State and local government fought it with some of the tools I've just listed. All of those tools are perfectly constitutional. This flexibility in the face of emergency is why the late Justice Robert H. Jackson once said, "The Constitution is not a suicide pact."

On the other hand, emergencies do not cause the Constitution to vanish. The Supreme Law is flexible, but it is not dissolvable. Today, though, some state and local governments are acting as if it doesn't exist.

Although the state police power is extensive, it is still subject to the Constitution. Today, many state officials and bureaucrats are threatening constitutional rights as they never have before in time of peace. Most universally threatened is the right to travel.

The Constitution does not mention the right to travel explicitly. But the Supreme Court has found its components in the Privileges and Immunities Clause of Article IV and in the Equal Protection and Privileges or Immunities Clauses of the Fourteenth Amendment. The court ranks it as a "fundamental right"—in the same category as freedom of speech and religion.

In a series of cases the Supreme Court has protected the right to travel by striking down state laws that imposed only incidental burdens on interstate migration. I think it would act even more readily if faced with excessive direct bans on travel within state boundaries.

Over the years, the Supreme Court has developed a test for measures (laws, regulations, and orders) that restrict fundamental rights. It is a two-part test: (1) To be constitutional, the measure must further not merely an ordinary government purpose, but a compelling one,

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LEGISLATORS

Rewriting the Rules

By Shayne Madsen

In 1988, the People of Colorado enacted the GAVEL Amendment to our state Constitution, thus stopping a wide variety of abuses in the legislative process. To preserve Colorado’s citizen legislature, the Amendment limits regular legislative sessions to “one hundred and twenty calendar days.”

Due to the CCP Virus—the virus that the Chinese Communist Party turned into a global pandemic—the Colorado General Assembly recessed on March 14.

Also on March 14, the legislature unanimously sent interrogatories to the Colorado Supreme Court; in essence, the interrogatories ask whether the legislature can pass a rule that exempts itself from straightforward constitutional controls on the legislature.

The Colorado Supreme Court agreed to decide the issue; the Colorado Constitution authorizes the Court to answer important questions propounded by the General Assembly.

Briefs on both sides were filed on Tuesday, March 24. The Democratic majority in the legislature used taxpayer dollars to pay lawyers to write the brief arguing that the regular session should be extended beyond the constitutional limit. In contrast, the Republican legislators were told to raise their own money for lawyers.

The taxpayers also paid for another brief, by a team of eight lawyers from the Colorado Attorney General’s Office, on behalf of A.G. Phil Weiser and Governor Polis. These briefs were supplemented by briefs from some local government officials and organizations of tax consumers.

In contrast, the pro-Constitution side of the case received not a penny of government funding. The Independence Institute was represented by Research Director Dave Kopel and myself. At the University of Denver’s Sturm College of Law, Dave teaches

the only class in Colorado dedicated to the Colorado Constitution. Since there are no textbooks on the subject, he wrote one.

The Independence Institute brief was based on the text and history of the Colorado Constitution. In short, the Constitution’s Article V places many strict controls on legislative process; when an exception is intended, the Constitution says so.

Colorado’s 1875-76 Constitutional Convention was based on true non-partisan spirit. The Democratic and Republican delegates both wanted very strict controls on the legislature because they had seen many abuses by legislatures in other states.

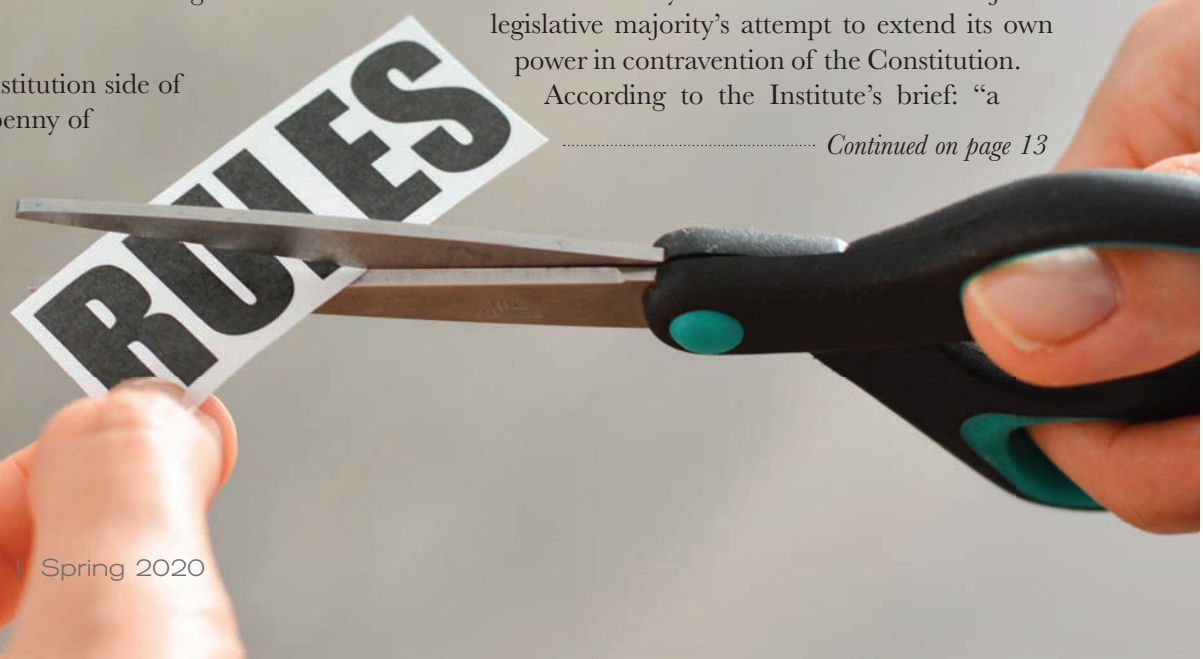
When the People of Colorado ratified the Calendar Day Clause in 1988, they well knew, as did their predecessors from 1876, that pandemics and other emergencies do occur. Emergencies can be addressed in special sessions if necessary. The People who imposed the 120 calendar day limit on regular sessions did not want to give the legislature any discretion to extend its regular sessions.

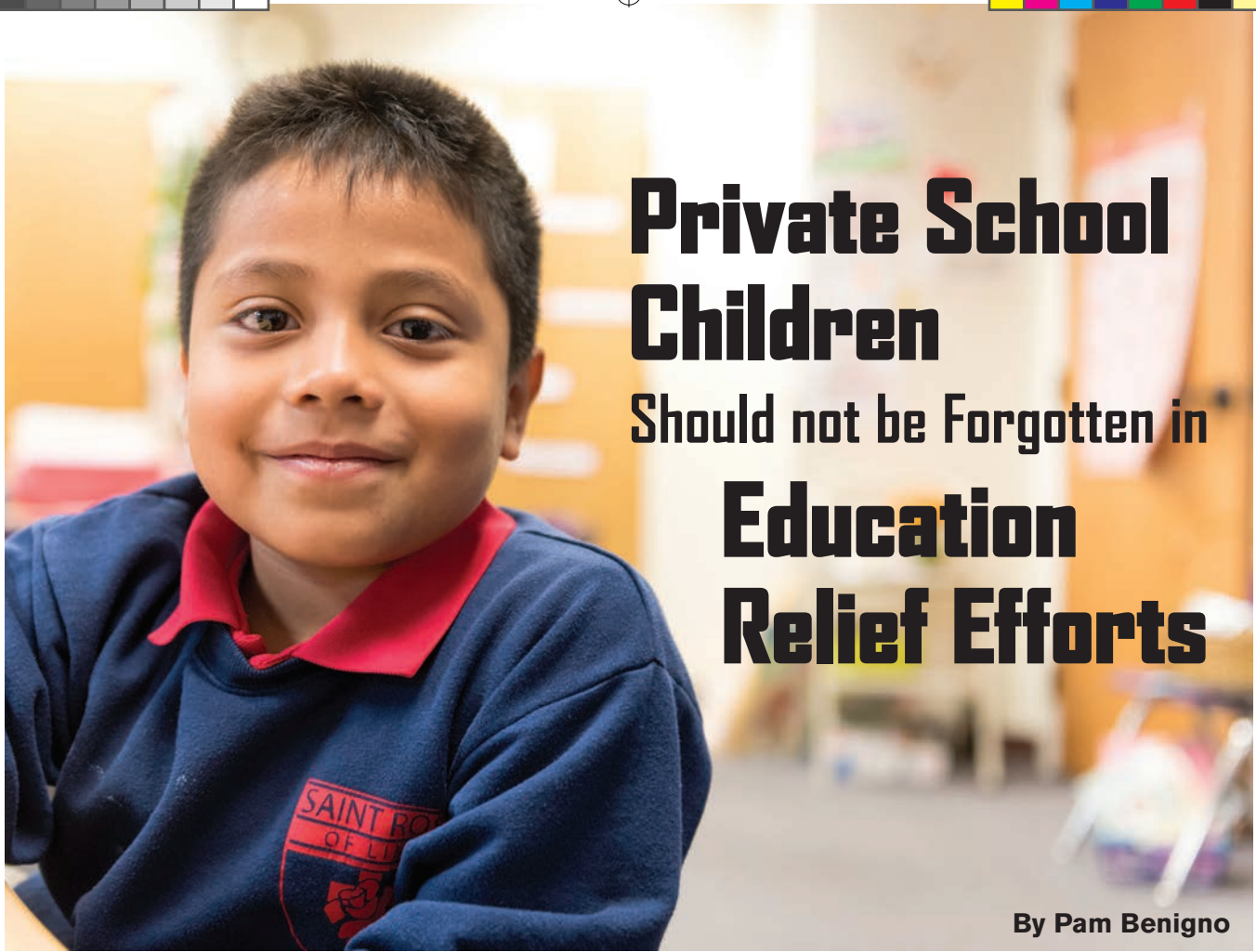
A strict interpretation of the Calendar Day Clause is essential to the preservation of a citizen legislature. When the legislature must adjourn by a date certain, citizen legislators are better able to earn a living income outside of the legislative session. Citizen legislators spend more time living under the laws, like other citizens, than they do making laws in the closed world of the capitol.

The Calendar Days case is about more than just a legislative majority’s attempt to extend its own power in contravention of the Constitution.

According to the Institute’s brief: “a

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Private School Children Should not be Forgotten in Education Relief Efforts

By Pam Benigno

Governor Polis has access to \$44 million from the Governor's Emergency Education Relief Fund to direct where he sees the most impact from COVID-19 on educational services. By including K-12 private schools in the CARES ACT, Congress recognizes the critical role these schools play in the educational ecosystem, and so should our governor. Hundreds of newly unemployed low-income parents can't afford tuition payments to the school that gives them hope for their children to receive a quality education. Additionally, spring fundraisers have been cancelled. Some schools are struggling to make payroll.

Many nonpublic schools may not be able to open their doors this fall. And without emergency assistance, it will be the already overextended public-education system that will have to bear the burden of serving potentially thousands of new students displaced from these schools.

In tune with the education secretary's goal to give states more control over federal education dollars, there is some flexibility with the Governor's fund. Protecting education-related jobs is an allowable expenditure. Protecting jobs for private school educators will simultaneously benefit public school teachers who will be under additional strain if they have to absorb a considerable number of new students.

Colorado will also receive \$121 million from the CARES Act Elementary and Secondary School Emergency Relief Fund to distribute to local public school districts. Districts must provide "equitable services" to Colorado's K-12 private schools that choose to participate in the program.

Some may question federal support for nonpublic school teachers and students, but it is actually business as usual. The federal government already serves the private K-12 sector by funding "equitable services" through local districts.

The 1965 Elementary and Secondary Education Act (ESEA), a key component of President Lyndon B. Johnson's "War on Poverty," required that these federal equitable services be offered to nonpublic schools. The intent of the law was to help provide all low-income students equal access to a quality education.

Nonpublic schools do not receive actual funds through the equitable services program but instead private school students and teachers benefit from a variety of services. In the 2018-19 school year, about one-third of Colorado's private schools participated in the program. For example, a public school district may purchase musical instruments for a private or parochial school, but the

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district remains the owner of the instruments. Districts often pay for nonpublic school teachers to receive professional development courses or particular school-wide trainings.

Sometimes, the services could be even more integral. In one visit to a Denver Catholic elementary school that serves low-income children, I was introduced to a reading teacher who was a Denver Public School's employee. She had provided additional reading instruction at the school for a decade.

Federal support doesn't end with equitable services. The Emergency Impact Aid for Displaced Students Program and the Nonprofit Security Grant Program also both award grants to nonpublic schools. Many Colorado private schools also participate in federal breakfast and lunch programs.

Governor Polis has an extensive background in K-12 education and, I believe, understands that a variety of school options makes for a healthy educational environment for both children and families. One way to help preserve Colorado's nonpublic school options is for the governor to send assistance directly to non-profit organizations that support nonpublic schools, such as K-12 scholarship granting organizations. Colorado is home to four such organizations that could, with additional

funds, help fill the immediate need of tuition assistance for disadvantaged families.

In many areas in our state, private and public schools have already formed friendly partnerships that focus on children, not systems. The current crisis should create a greater number of partnerships as we all seek to help our neighbors and communities. Nonpublic school students could benefit from access to public school online courses and private school teachers could benefit from distance learning training. Both should qualify under either emergency education fund.

CARES Act K-12 funds can help reduce the crushing impact of COVID-19 on low-income nonpublic school children. Many private schools do heroic work for low-income children who otherwise would face dim educational prospects. These schools are a vital thread within the delicate tapestry of Colorado's educational landscape. If the thread breaks, we will all feel the impact.

For more information about federal support of nonpublic schools please our publication titled, *How Federal Programs Support Private K-12 Students and Teachers* at www.i2i.org/education.



WANTED:

Liberty-Minded College Students

By Brit Naas

Contrary to popular belief, liberty loving college students do exist and there are places that actually want them. And no, I'm not talking about outfits that would like to hire a token center-right voice. At the Independence Institute, we actually want to hire students who revere the Constitution and value the free market — both of which must be preserved during and after the Covid-19 Pandemic.

It's no secret that the center-right movement must instill and preserve in younger generations the ideals that have made America the envy of the world. It's also not a secret that the unfortunate growing number of young socialists will peddle the current crisis as proof that a universal basic income and related policies would be net positives for society. With national personalities speaking out against government overreach and proffering plans to safely reopen the economy, young libertarians and conservatives do have resources they can look to for guidance and advice.

However, these voices tend to be from afar and provide little to no guidance to a specific locale's issues. As part of the Independence Institute, Colorado's premier political think tank, the Future Leaders Program is poised to provide the type of guidance national personalities cannot.

Our own legal scholar Rob Natelson has been at the front investigating and writing about the legality of our government's response to coronavirus. The team at our online newspaper Complete Colorado has also been busy publishing new material on Covid-19 almost every day — pieces written by well-known Colorado personalities like former Congressman Tom Tancredo and Mike Rosen to our very own investigative reporters Sherrie Peif and Scott Weiser.

I mean imagine what your liberty-minded college or law school student would learn during a summer working under Dave Kopel, Pam Benigno, Rob Natelson, Shayne Madsen, or Laura Carno. Not to mention, many

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The EVOLUTION of VOCATIONAL EDUCATION

By Pam Benigno

My father was in the machine tools business; I remember in the 1970s he sold machinery to the Jefferson County School District for a new vocational training site called Warren Tech. A few months ago I had the chance to tour Warren Tech for the first time. There, in a hall adjacent to the automotive shop, I saw what looked like a graveyard for metalworking machines like lathes and drill presses. The smell of machine oil and steel shavings reminded me of visits to my father's business. Back in the auto and engine repair area, I stood where my friend George likely first learned how to fix cars. The same shop was also the place where George's longtime mentor, a Warren Tech auto instructor who recently passed away, taught hundreds of students how to fix cars. George, like many students who over the past several decades have attended Warren Tech, always liked to

use his hands, but the career paths he chose also allowed him to use his keen mind as he entered various industry fields that constantly changed around him. Almost half a century old, Warren Tech has also changed to keep pace with technological innovation, offering numerous new career pathways including advanced STEM and engineering programs. And so today the school is not the same school that my father sold equipment to, but its instructors continue to provide training and mentorship for students like my friend.

Before the turn of the century, vocational education was viewed as a path for students who either by choice or circumstance wouldn't attend college. Stereotypes emerged, and some groups were guided toward college while others were encouraged to pursue technical train-



ing. Then the pendulum swung. “College for all” became the mantra of the education system. Sure, we should expect our K-12 public and private schools to prepare students to enroll and succeed in college, but to assume that college attendance is the only road to a successful and fulfilling career and life is narrow-minded. As a nation we now face a shortage of skilled tradesman and too many students are burdened with unprecedented college debt, but the expectation that everyone will attend college remains in place.

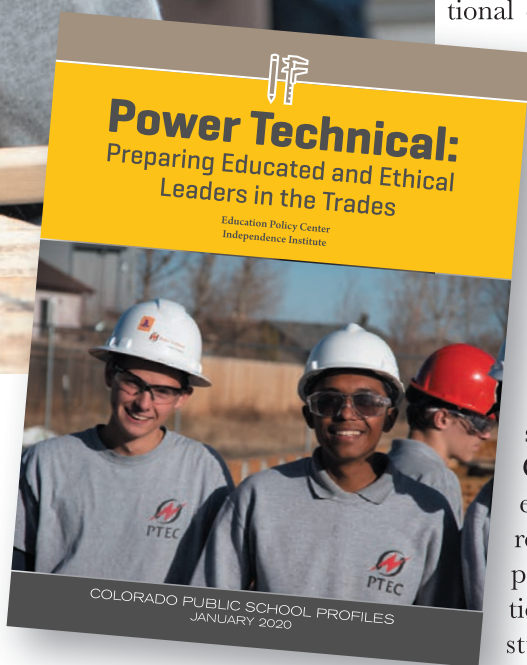
In the 1990s vocational education began to evolve. This gradual transformation led to the emergence of Career and Technical Education (CTE) as we know it today. Over the past several decades, CTE has emerged as a robust avenue for promoting educational options for student populations ranging from those who would have been traditionally served by vocational education programs to college-bound students in high demand fields, such as computer science, engineering, health care, and hospitality to name a few. Though the definition of CTE might seem vague, it is best understood as an education that directly connects a student’s learning experience at the secondary level with

whatever career they may choose to pursue after graduation. In other words, while CTE programs are designed to offer a level of career preparation rigorous enough to allow graduates to pursue employment immediately after high school, in many cases pathways will continue on to colleges and universities.

The Education Policy Center has recently written two publications to provide policymakers and the public with a glimpse of Colorado’s CTE landscape. One of these, *Power Technical: Preparing Educated and Ethical Leaders in the Trades* is the subject of the newest installment in our series of school profiles. The profile offers its readers a window into Power Technical not only through its beautifully written story, but also visually by means of our original and creative photographs.

Authorized by District 49, the school (which enrolls middle- and high school pupils, as well as 13th and 14th graders) serves students from across the Colorado Springs area. These students have all chosen to pursue an education built around preparation for careers in skilled trades. In addition to instruction in core academic subjects, Power Technical students take 90 minutes of shop per day in one of a number of available career concentrations. In line with the broader goals of CTE across the country, Power Technical’s aim is to provide a level of career training thorough enough to make it possible for its graduates to enter the workforce immediately after finishing high school. This, however, does not necessarily have to be the case, as the school’s academic instruction aims to allow students to pursue two- or four-year college degrees if they so choose. This new school profile can be found at www.i2i.org/education.

Due to be published this summer, our second publication titled *An Overview of Colorado K-12 Career and Technical Education*, provides a brief outline of the history of vocational training in the United States and subsequently draws out a broad overview of Career and Technical Education in Colorado. Because schools and districts have considerable autonomy when it comes to organizing their CTE programming, there is much variation across the state. For this reason the paper also features several Colorado models of career instruction. Although the paper devotes significant attention to policy much of the information that it presents was gathered through school tours and in-person interviews, which serve to give some depth and perspective to the descriptions of the different models.



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Independence Institute Defends the Electoral College

By Staff

The fair and impartial rule of law is necessary to freedom. That's why the Independence Institute is in the forefront of defending "the supreme law of the land"—our Constitution.

Among the recent attacks on the Constitution has been agitation to abolish the Electoral College. The "college" is, of course, one of three steps in our three-tier presidential election system: popular vote, electoral vote, and (if necessary) congressional run-off. The Institute's Senior Fellow in Constitutional Jurisprudence Rob Natelson has been active in defending that system.

For example, Rob frequently gives speeches and radio interviews pointing out the flaws in the so-called "National Popular Vote Compact." The measure, adopted by Colorado's "progressive" state legislature, would effectively hand over our state's electoral votes to urban states such as New York and California.

But there are other "progressive" attacks on the Electoral College also. California's legislature recently tried to bar from the ballot any candidate not releasing tax returns—an obvious ploy to prevent the voters from choosing presidential electors pledged to President Trump. The California Supreme Court unanimously struck that down as unconstitutional.

A Colorado state law, while seemingly more benign, also undermines the Constitution's presidential election system. The U.S. Supreme Court is now considering its constitutionality, and the Independence Institute has weighed in.

The Founders understood that political candidates would advertise their views to the voters. However, they also allowed elected officials and presidential electors to change their minds if necessary.

In 2016, Colorado and Washington State presidential electors pledged to Hillary Clinton decided that their party's candidate was deeply flawed. They voted, or tried to vote, for two Republicans instead: Former Secretary of State Colin Powell and Ohio Governor John Kasich. Officials in Washington enforced a state law imposing a \$1000 fine for each "wrong" vote. Officials in Colorado enforced a state law purportedly removing an elector who voted "wrong."

Both slates of electors sued, and the case is now pending before the U.S. Supreme Court. When it was in federal appeals court, Rob Natelson wrote and II Research Director Dave Kopel edited and submitted a "friend of the court" brief presenting the results of II's original research. It proved that the Founders intended presidential electors to be able to exercise their own judgment. The brief also rebutted the common claim that the 12th amendment, adopted in 1804, abolished elector discretion.

The brief proved persuasive. In fact, it proved so persuasive that even though II was not a party to the case, the appeals court cited our brief specifically when ruling for the electors.

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SAFE Vehicles Rule

By Brit Naas

In the midst of the Covid-19 pandemic, the Trump Administration released part two of the Safe Affordable Fuel Efficient (SAFE) Vehicles Rule. To most of the media, this was an egregious act shrouded in the present crisis as an attempt to suppress any alarm and push back. The reality? The Trump Administration had to issue part two because of a deadline that had been set a couple of years ago.

President Trump's SAFE Vehicle Rule has two parts – part one preempted states from adopting stricter fuel standards and rescinded California's Clean Air Act waiver, and the second part introduced the actual emission and fuel standards car manufacturers will have to abide by. The first part is being challenged in court, and a ruling will not likely be issued until after the November elections (most likely in 3-5 years). The second part of the rule has undergone some revision, the most notable being the standard will increase 1.5 percent a year beginning in 2021 and ending in 2026. This is in contrast to the plan that was originally put forth, which would have frozen the standards at 2020 levels. The SAFE Vehicles Rule is anticipated to reduce vehicular fatalities, reduce the price of new vehicles, and improve the environment.

The Trump Administration's decision to revise the standard matters for Colorado because former Governor John Hickenlooper via

executive order adopted California's vehicle emission standards, and Governor Jared Polis also via executive order adopted California's electric vehicle mandate. Following the executive orders, Colorado became a CARB state and moving forward would have had to abide by the emission standards California adopts. Our Governors' ability to do this rested on California being able to adopt more stringent standards than the federal government because of its Clean Air Act waiver. Part one of SAFE, however, rescinded that waiver on four grounds – one of which is that the Environmental Policy and Conservation Act preempts states from adopting stricter fuel standards, which are closely related to carbon emissions. As reported in an article from Complete Colorado reporter Sherrie Peif, Colorado Automobile Dealers Association President Tim Jackson believes California's higher standards will continue to be enforced until a final decision is rendered in court. For Colorado, since the standards won't go into effect until MY 2022 (Emission standards) and 2023 (EV Mandate), this could be good news because a legal decision to either uphold or void California's standards could be issued prior to our programs' start dates.

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Emergency Powers continued

such as national defense. (2) The government’s measure must be “narrowly tailored”—i.e., targeted closely at the problem. It can’t be over-broad: You can’t use a shotgun to kill an ant.

Additionally, if the measure is filled with loop-holes, that’s a sign that it’s not “narrowly tailored.” A citizen suing to strike down the measure does not have to prove it is defective. The government must prove it is valid.

I think the courts would find that fighting the coronavirus is a “compelling government purpose.” But they likely would find also that the states’ methods for doing so are too scattershot to be constitutional.

One example is the statewide lock down order in Maryland. Because epidemics do not last forever, emergency orders should include a termination date. If the epidemic has not eased sufficiently by the termination date, the order can be extended. But Maryland’s state shutdown order has no termination date.

As President Trump has suggested, a stay-at-home order appropriate in New York City would be excessive for Wyoming. The same flexibility should be observed within individual states. The governor of Pennsylvania formerly understood this and limited his state’s order to urban counties. But he has since extended it to his entire state, even the most profoundly rural areas. A court could find this to be over-broad.

Colorado’s orders follow a template used in some other states. They are unconstitutional for several reasons:

- They extend to all parts of the state, even though conditions differ radically between metropolitan Denver and the state’s nearly empty eastern plains.
- The Colorado orders ban much automobile travel, although the virus is not communicated between cars.

SAFE Vehicles continued

If you would like to learn more about this issue, please visit our Coalition of Ratepayers website (coratepayers.org). Last year, knowing that the Trump Administration was working on a rule to replace former President Obama’s One Vehicle National Program, we retrofitted our Coalition of Ratepayers website to also focus on mobility issues. On it, you’ll find a page dedicated to general information about vehicle emission/fuel standards – their history to what occurred under President Obama to their current format under Trump – and a database where readers can learn more about the issue by read-

- They close down most of the economy rather than taking a more targeted approach. For example, it may be sufficient to allow businesses to function if they follow emergency health procedures, such as social distancing and offering curbside service. Anyway, destroying the economy is a sure way to hike the death toll from suicide, malnutrition, and other products of poverty.
- The Colorado orders, like those of some other states, contain unexplained exemptions. For example, recreational marijuana stores may stay open, but tobacco shops must close. Clearly this is more about politics than health: In Colorado the marijuana lobby is stronger than the tobacco lobby.

Some states are violating other constitutional rights as well. One of Colorado’s orders seems to ban most interstate freight hauling, in violation of the Supreme Court’s Dormant Commerce Clause rules. And in Montana the governor has issued a directive that probably violates the Constitution’s Contracts Clause.

The Montana directive purports to stop evictions for non-payment of rent, block foreclosures for non-payment of mortgages, and prevent service cut-offs for non-payment of utilities. The directive does not distinguish between those who can pay and those who cannot. A prosperous supermarket may stop paying rent as readily as a shuttered business.

Finally: Appropriate government response to a pandemic would consist of a balance between (1) restrictions and spending and (2) tax and regulatory relief. Yet in almost all states, orders have been very long on measures that add to the burden of government and short on measures that reduce it. This, again, suggests that many state efforts to fight the coronavirus have been corrupted by politics.

ing studies, news articles, and primary sources from the National Highway Safety Traffic Administration and the Environmental Protection Agency.

E2P remains ready to combat radical environmentalism at the state and federal levels – and sometimes, as with the issue described above, that occurs by simply informing our followers.





Rewriting the Rules continued

ruling in favor of a government actor’s bootstrapped exemption could embolden others to defy plain constitutional language. In times of crisis, the slippery slope can be steep. . . .Confidence in the continuing orderly operation of our Colorado system of government will be enhanced by upholding the People’s straightforward regulation of the operations of the government they created.”

Former U.S. Attorney Troy Eid wrote a brief on behalf of all 40 Republican legislators. The brief showed that Colorado courts have always interpreted “calendar days” to mean consecutive days on the calendar. All of the history of the enactment of the GAVEL amendment shows that this is exactly what the sponsors and the People intended. A rule made by a legislature cannot exempt the legislature from obeying the Constitution.

Former Secretary of State Scott Gessler filed a brief on behalf of former House Majority Leader Chris Paulson, who was the lead sponsor of the resolution that put the GAVEL Amendment on the ballot in 1988.

The brief explained how frequently emergencies have been declared in Colorado, and how the special session process ensures that all laws that really do need to be considered can be considered.

The Colorado Supreme Court exercised its discretion to decide the case solely on the briefs and did not allow oral argument.

The Court, the majority of which were appointed by Democrat governors, ultimately sided with the Majority Party and ignored the constitutional mandate of a 120 day session.

As a result, the Colorado Legislature may go back into session on May 26 to meet for their remaining 50 days. And the Governor may still yet convene a special session.

Once again, the taxpayers must foot the bill.

Electoral College continued

Dave has now arranged for submission of a very similar brief to SCOTUS. Rob, meanwhile, has penned yet another for Citizens for Self-Governance, a pro-freedom group. Rob’s new brief backs up II’s evidence. It further points out that the rules applying to presidential electors do not necessarily apply to others carrying out constitutional functions. For example, conventions operating in the amendment process are subject to a different set of rules.

Dave and Rob agree that electors generally should honor their pledges—as they nearly always do. But there are some scenarios in which electors may have to change their minds. Rob outlined four such scenarios in a recent essay for the Epoch Times:

- After the popular vote is complete but before inauguration, the winning presidential candidate may die or become incapacitated. His running mate may not be the best replacement. (As every political observer knows, presidential nominees often choose running mates of dubious qualifications.) Electors must choose among the available options.
- State laws increasingly allow for early voting. If damaging information suddenly surfaces after

most or all of the electorate has voted but before inauguration, presidential electors must be able to consider and apply it.

- In an election with several major candidates, the nominal “winner” may receive only a tiny plurality of the popular vote. For example, in the multi-candidate 1992 presidential election in the Philippines, the winner received only 23%. Potential dictators have often exploited such “plurality-winner” rules to seize power. But our Constitution allows presidential electors use their discretion to prevent subversion of the popular will, widespread civil disturbance, civil war, or dictatorship.
- About 92 percent of the time, the popular vote winner receives an Electoral College majority. In fact, no candidate has ever won an Electoral College majority with a popular vote falling below 2.8 percent of the winner. But in theory a candidate might win an Electoral majority while losing the popular vote total by 10 percent or more. In that case, Electors may vote for the popular vote winner or for a compromise candidate.



Interns Wanted continued

students get to meet Jon Caldara and may even appear on his show! Unlike listening to Ben Shapiro on a podcast, students working at the Independence Institute for a semester get to actually meet individuals helping to develop and change Colorado public policy. They'll have the opportunity to engage with experts working hard to ensure that our liberties are protected during the current public health crisis, and if things have returned to normal, students will be in the mix researching the government's response to learn about what went right and what went wrong. Whether it's professional development, career advice, or Covid-19, students in the Future Leaders

Program will be equipped with the knowledge necessary to carry on America and Colorado's rich heritage.

Please don't hesitate to refer to us students who may be interested in this opportunity. The application cycle for the summer semester is already closed and spots for the fall class tend to fill up fast this time of year! Visit the Future Leaders Program webpage at <https://i2i.org/join-us/internship> for the start and end dates of the fall semester and for more general information on the program.

It is time for the next generation to help carry the torch!

JOIN US FOR LOCAL GOVERNMENT PROJECT TRAINING



Learn how to get something on your local ballot or learn the skills needed to apply for local positions and to serve as an effective leader. The training will cover the board/commission application process, what to expect once you are on a board, and the ongoing support we offer to you as you serve your community.

Register i2i.org/local-gov	Where Your living room! We will be hosting our first online training.	When Tuesday, June 2 6:00PM - 8:00PM
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Want a Government Handout? NO WAY!

The Covid-19 pandemic has brought out the best and worst in people all across the nation and state. Our principles are being tested like never before.

Big government has stepped in and is trying to force a cure that is worse than the disease and has essentially shut down the economy and put limits on our freedoms.

The CARES Act provides an opportunity for employers to receive government money to stay open, an irony not lost on us because it was the government shutdown that forced businesses to close in the first place. With that said, we do not begrudge those businesses that take government money in order to keep their employees fed and able to pay their bills. It is your choice.

As a small state-based nonprofit, Independence Institute was eligible for **hundreds of thousands of dollars** in relief. Part of our mission is to limit the size and scope of government interference in the economy; we held to these principles and refused to accept the money.

For 35 years we have stood up to big government and have never sacrificed our principles through any crisis, no matter who is trying to expand the size of government.

But to be honest, these are truly the times that try men's souls. We rely solely on individuals and organizations like you for our funding. Help us stand up against big government overreach and continue to support Independence Institute's unique voice in the marketplace of ideas.

Please consider a generous donation to Independence Institute today.



By Josh Williams

Yes! I want to join the Independence Institute in advancing the principles of limited government.

Enclosed is my gift of:

\$1,000 \$500 \$100 Other \$ _____

Address: _____

Please charge my: VISA MasterCard

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Phone: _____

Signature: _____

If this is for a specific item, please let us know here: _____

Name: _____

Please mail to: Independence Institute • PO Box 5387 • Denver, CO 80217-5387

Thank you... for partnering with us to make Colorado the destination state for freedom.



INDEPENDENCE
INSTITUTE.ORG

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Freedom on Tap

In order to keep people engaged with liberty during the COVID-19 shut-down, we launched a new virtual policy/drinking program (or drinking/policy program) named Freedom on Tap. Join in live with host Jon Caldara as he hoists a couple with policy experts and freedom lovers alike. You must have a drink in your hand and be prepared to tell us the ingredients in order to join in the conversation, pants, however, are optional. You can watch the show via YouTube, Facebook, and Caucus Room OR join us on Zoom where you can ask questions and be a part of the live audience.

So far guests have included:

- David Kopel, Independence Institute Research Director and Director of the Second Amendment Project
- Rob Natelson, Independence Institute Senior Fellow in Constitutional Jurisprudence
- Stephen Moore, economic advisor to President Trump
- Wayne Laugeson, editorial page editor of the Colorado Springs Gazette
- John Fund, national-affairs columnist for National Review Online and a senior editor at The American Spectator
- Tom Krannawitter, Doctor of Political Science and President of Speakeasy Ideas
- Randal O'Toole, Cato Institute Senior Fellow working on urban growth, public land, and transportation issues
- District Attorney, George Brauchler

Grab your favorite beverage and join us for our next show!

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