



Independent Inking

Standing Up for School Choice

Education Policy Center Director,
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Letter from the President



President Donald Trump and the Republican Congress just gave us a large tax cut. But Colorado's Republican-controlled state Senate took it away, even before we got it.

How is that possible, you ask? To comprehend it, we first need to understand the largest betrayal of Republican values in Colorado political history: the tax-hiking, debt-raising, TABOR-busting Senate Bill 267, sponsored

by Republican state Sen. Jerry Sonnenberg and enabled by the schizophrenic leadership of Republican Senate President Kevin Grantham.

Our Taxpayer's Bill of Rights is beautiful. Taxes and debt can grow as high as any communist might dare to dream—all the state has to do is ask for permission from the voters first. Shockingly, elected officials, apparently impersonating Harvey Weinstein, don't like to ask for consent. They know that the answer often will be No. So, instead of asking, they re-label taxes as "fees," so that the Colorado Supreme Court won't enforce TABOR.

In 2009, without asking, the state forced an extra tax on us when we're sick and have to go to the hospital. The legislature named this tax the "Hospital Provider Fee," as if the hospitals, not the patients, pay it. The new "fee" generated about \$800 million in 2016, pushing Colorado's revenue way over its TABOR cap.

TABOR, in all its beauty and wisdom, also limits the state budget's growth to population growth and inflation. But, all the government has to do to keep anything in excess of that is—you guessed it—ask us first. The state was going to hit its budget limit this year, triggering either a refund to taxpayers or a vote for consent to keep the cash.

But led by Sonnenberg, the legislature put the hospital "fee" into a different state-run checking account. This technically, and laughably, put the money outside the state budget. That cheats the taxpayers out of the excess refunds as well allows the *actual* state budget to balloon even more before the legislature has to write a refund

check to the lowly citizens that provided the funds. Did I mention that Sonnenberg is supposedly a Republican?

By contrast, Republicans in D.C. were *acting* like Republicans and reducing our tax load. Thanks to Sonnenberg, the Trump cuts at the Colorado state level mean we will be losing even more of our money.

Here's how: Colorado income taxes are based off federal income tax forms. You take your federal taxable income off your federal tax form (line 43 on your IRS 1040 form) to calculate your Colorado taxes. Under the Trump tax cuts, the calculation of your federal taxable income goes up. Don't worry, since tax rates go down, you still save a lot of money on *federal* taxes. But because the state tax rate hasn't changed, almost all of us will see a (Trump voice) HUGE increase in Colorado state income taxes.

If Sonnenberg and Grantham didn't collude with Democrats to pass their original massive tax grab, SB 276, most of those additional tax payments would have come right back to us via the Taxpayer's Bill of Rights. No fuss, no muss.

But their betrayal will now cost you a substantial state income tax increase despite your federal tax decrease. Well done boys!

Let me thank all those brave Republicans who stood up for taxpayers and voted against SB 267. If other "Republicans" voted like them, you'd be getting sizable tax refunds, not a tax hike.

Many of the Republicans who voted for this costly grand betrayal are, of course, seeking higher office. Sonnenberg wants to become Senate president. Owen Hill is running for U.S. Congress, Polly Lawrence for state treasurer, and Dan Thurlow for state Senate. They might all succeed given that voters won't feel the cost of their spineless perfidy until they're paying their taxes in April 2019, well after the midterm elections.

Who thought D.C. Republicans would care more about Colorado taxpayers than so many Colorado Republicans?

Think Freedom!

Local Government Project Makes a Difference in La Plata County

by Kathleen Chandler



The La Plata Liberty Coalition was formed in response to the onerous land use codes proposed by the La Plata Board of County Commissioners.

Naomi Dobbs called the Independence Institute in early January 2018 asking for help. She is a citizen of La Plata county and is very concerned about the land use code proposal. The first of three sections proposed was made public on December 8, 2017, and constituted 118 pages of government overreach. Naomi had two very specific needs: short-term strategy and long-term strategy. How do we stop this land use code and how can we help the residents of La Plata (mostly farmers and ranchers) have a voice in county policies?

I am the coordinator of the local government project at the Independence Institute. This project trains and empowers citizens to stop complaining and take back their country by taking back their communities. The citizens of La Plata County were and are ready to take action! I went to Durango a few days after Naomi called prepared to help them organize. The strategy of II is to empower local citizens, not to manage their affairs.

Naomi arranged a meeting with me and about 30 citizens who were ready to roll. We met for several hours talking about organizing for the short-term goal of stopping the land use code, as well as the long-term goal of keeping La Plata county free. The county has many family farms and ranches that have been homesteaded for over 100 years. This is their life.

The group I met with listened to suggestions, worked hard to form a working group, and developed a Facebook page. That same evening, over 1,000 citizens turned out to express their displeasure to the county commissioners about the land use code proposal. Imagine, 1,000 people in La Plata County!



Naomi Dobbs

This is the power of the people at its finest. The La Plata Liberty Coalition has stopped the forward march of the land use code. They have also spun off a recall election of Gwen Lachlet, one of three La Plata county commissioners. She has been tied to lobbying efforts for an environmental conservation nonprofit.

The motto of the Independence Institute is “Think Freedom.” The La Plata Liberty Coalition is doing just that. The local government project is shining a spotlight on the incremental loss of freedom not at the federal level, but in our community. So, stop complaining. Take back your county—and your country—by taking back your community. www.i2i.org/local-gov.



Kathleen Chandler is the coordinator of the Independence Institute’s local government project. She is actively recruiting citizens as volunteers. You can contact Kathleen at Kathleen@i2i.org

II Research Smashes School Choice Opposition Argument

By Staff

Opponents of education reform often ask the courts to void programs of school choice after they lose in legislative arenas. They claim wording in state constitutions banning aid to “sectarian” schools prohibits most choice programs.

Opponents won on this basis in the Douglas County voucher case, where the state supreme court struck down a school choice program because it included “sectarian” schools. The court held, in a decision that was later vacated, that “sectarian” simply meant “religious.” The court implied the state could discriminate against religious schools, so long as all religious schools were discriminated against equally.

But research undertaken by II’s Constitutional Studies Center and funded by II’s Education Policy Center has knocked the legs out of that argument.

Today we sometimes equate the word “sectarian” with “religious”—just as the Colorado Supreme Court did. But most states’ bans on “sectarian” aid, including Colorado’s, date from the 19th century. And the legal rule is that a state constitution is applied as the voters understood it when they approved it. Colorado’s constitution was approved in 1876. So, we asked the big question: What did “sectarian” mean in 1876?

In a quest for that answer, Rob Natelson, our senior fellow in constitutional jurisprudence, reviewed 19th century state constitutions and constitutional documents. He examined all relevant definitions in 19th century dictionaries. And he collected hundreds of contemporaneous newspaper articles from states throughout the country.

Here’s what he learned: In the 19th century, “sectarian” never meant merely “religious.” It always referred to a particular kind of viewpoint.

- The word primarily was used as an insult. Nineteenth century writers, speakers, and political activists used “sectarian” in much the same way their modern counterparts employ the term “extremist.”

- In fact, dictionaries commonly listed the word “heretic” as a synonym for sectarian.
- Mainstream Protestantism, which was then dominant in America, was almost never viewed as “sectarian.”
- Catholics frequently were attacked as “sectarians,” but so also were other unpopular groups like Mormons, Muslims, Jews, and even some Protestants perceived as overzealous.

Thus, the core purpose of the bans on “sectarian” aid was to *force* state officials to discriminate against minority and unpopular religions!

Today, any honest and competent modern judge would react to the new evidence by finding this kind of state discrimination flagrantly unconstitutional.

How did the states think they could get away with this? Because the U.S. Supreme Court had not yet decided that the U.S. Constitution requires states to follow the same rules of religious neutrality that regulate the federal government.

Today, any honest and competent modern judge would react to the new evidence by finding this kind of state discrimination flagrantly unconstitutional.

Not surprisingly, within days of publication, Rob’s research was presented to the court in a Montana school choice case.

In other words, II’s research may be the beginning of the end of state constitutional bans on school choice programs.

One last point: State provisions barring aid to “sectarian” institutions often are called “Blaine Amendments.” One of the more surprising things Rob discovered is that they are misnamed. They go well beyond anything Congressman James G. Blaine proposed. They fit better with the views expressed by President Ulysses S. Grant in 1875—and therefore are better called “Grant Amendments.”

Rob’s article is called *Why Nineteenth Century Bans on “Sectarian” Aid Are Facially Unconstitutional: New Evidence on Plain Meaning*. It was published in the *Federalist Society Review*. On March 8, Rob presented his findings to a group of Colorado school choice leaders assembled by the Education Policy Center.

Kopel Defends Sessions

By Staff

Some people are very ignorant. Other people enjoy being angry all the time. Attorney General Jeff Sessions has been a recent target of folks who like combining stupidity and rage. Fortunately, Dave Kopel was ready to set the record straight.

Speaking to the National Sheriffs' Association, Sessions said, "I want to thank every sheriff in America. Since our founding, the independently elected sheriff has been the people's protector, who keeps law enforcement close to and accountable to people through the elected process." He continued, "The office of sheriff is a critical part of the Anglo-American heritage of law enforcement."

Amazingly, some people claimed that Sessions' use of "Anglo-American" was some sort of white supremacy phrase. Actually, America's entire legal system is a descendant of the English system. That's why President Obama, for example, gave speeches urging Americans to live up to the ideals of the "Anglo-American" system of law.

When the controversy erupted, Kopel promptly wrote an article for Reason.com entitled "The Anglo-American Office of Sheriff." As he explained, Americans' right to elect their sheriffs comes from ancient English legal

tradition. In fact, the word "sheriff" is a compound of "seyre" (Anglo-Saxon for "shire," what we today call a "county") and "reve" (meaning "guardian").

Kopel's research on sheriffs was cited by CNN, by the *Washington Post's* "Post Nation" feature, and by the Post's syndicated columnist Aaron Blake—all of them debunking the bogus charges against Sessions. The reason that Kopel was able to decisively refute the libel against Sessions was that Kopel had previously written a 90-page article in the *Journal of Criminal Law and Criminology* detailing the legal history of the office of sheriff from the days of King Alfred the Great (reigned 871-99) up to modern Colorado.

The organization to which Sessions was speaking, the National Sheriffs' Association, was Kopel's pro bono client in 2017. He wrote a U.S. Supreme Court amicus brief for the Association, urging the high court to take a case to overturn Maryland's ban on various guns and magazines. The brief argued that the arms typically possessed by ordinary law enforcement officers (not SWAT teams) are often the best arms for lawful defense of self and others. This includes semi-automatic rifles, and also handguns with 11-20 round magazines.

E2P at East High School

By Staff

The Independence Institute's Energy and Environmental Policy Center was invited for a return presentation this year at East High School. Teacher Michael Hernandez holds a "Social Problems" course every spring, and for the second year in a row II's Michael Sandoval delivered a one-hour survey on energy and public policy for 10-12th graders. More than 50 students over two sessions were given a whirlwind tour of II's public policy principles and deep dives into Colorado-specific energy issues. Thanks to Mr. Hernandez for inviting II again—and if you're interested in a presentation at your school, let us know!

Political Law Center

By Staff

Shayne Madsen, director of the Political Law Center, has been appointed by Colorado Secretary of State Wayne Williams to be a member of the Colorado Bipartisan Election Advisory Commission. This fifteen-member commission was created by Secretary Williams in 2016 to provide guidance on the conduct of elections and legislation dealing with elections, rule review, and make general policy recommendations concerning the conduct of elections. The Commission includes former Republican Party Chair

Steve House, Rep. Patrick Neville (R), Rep. Dan Pabon (D), Senator Chris H o l b e r t (R), as well

as county clerks, a representative from the governor's office, the general counsel for the state Democrat Party, and Common Cause.

Shayne's appointment demonstrates the growing political influence of the Independence Institute in Colorado!



Arrupe High School Intern Shares Her School Choice Story

By Diana De La Rosa

School choice has opened new opportunities for me and contributes to my success today. The first time I exercised school choice was in middle school. My parents and I chose Strive Prep Federal, a charter public school, because I was performing above grade level and needed to be challenged academically at a level higher than my neighborhood school could offer. Strive Prep helped prepare me for the rigorous programs at my current school, Arrupe Jesuit High School.

I knew that Arrupe Jesuit was the school for me since the day I shadowed an Arrupe student during 8th grade. The classes were informative and captivating, the teachers were passionate and charismatic, and the student body was incredibly inclusive and accepting. Even though I knew Arrupe Jesuit was the perfect high school for me, I didn't think I could attend due to the cost.

My parents have always taught me that in order to succeed and reach what I truly want for myself, I must work hard and focus on my goals. I reminded myself of this, and knew that I could not get discouraged by the realities of being a low-income student. My father is the only person working in my family and provides for our family of five. Attending Arrupe Jesuit seemed impossible. Thankfully, because of financial assistance offered through Denver-based ACE Scholarships and

support from the admissions counselors, I was able to attend Arrupe Jesuit High School.

Arrupe Jesuit High School is part of the national Cristo Rey Network, which offers a Corporate Work Study Program (CWSP). All students at my school come from low-income families who are unable to pay full tuition. To pay for 50 percent of the cost of tuition, students work at a corporate or nonprofit job one day each week. The CWSP program allows me to develop my skills in the workplace, build new relationships, and continue to grow my skills as I prepare to go to college. Currently, I am working at the Independence Institute's Education Policy Center, where I am gaining new skills that will benefit me in my future career. I am performing database work, managing the front desk, writing scripts, and appearing in videos and on television.

I look forward to becoming the first person in my family to graduate from high school and go on to college to pursue degrees in journalism and law. My dream of attending college is now a real possibility because of the high-quality education I have received. I will always be grateful to my parents and to those who gave me the opportunity to pursue my dreams. School choice and the financial assistance available has changed my life. All students deserve an opportunity to choose the educational path that best suits their needs.



Diana De La Rosa speaking at the National School Choice Week event in Denver



Armed School Staff: A Law Enforcement Perspective

By Laura Carno

Independence Institute has partnered with Coloradans for Civil Liberties to bring training to teachers and other school staffers who are armed first responders on their campus. The program is called FASTER, which stands for Faculty/Administrator Safety Training and Emergency Response.

One of the reasons that FASTER Training is different from other training programs is that all our trainers are active-duty law enforcement. All have law enforcement training experience, and all are current or previous SWAT officers. One has responded to a school shooting. One was on-scene the day following the massacre at the Century-16 Theater in Aurora. All have seen what happens when violent criminals kill innocent people. *And they know they can't be there in time to stop it.*

That is why they are all such active advocates of armed school staff.

FASTER trainer Graham Dunne, an active duty law enforcement sergeant with SWAT experience said, "The reality is that police cannot be there all the time. I could be sitting in my patrol car in the parking lot. Once the call comes out, by the time I get in there, it's all over with. It's too late." Graham has been training armed school staff members since 2012 through his private training company, Colorado Concealed Permit. His motto, which he imparts to armed defenders is, "If not me, then who?"

FASTER trainer Quinn Cunningham, an active duty law enforcement trainer and SWAT team leader says, "Our children are this country's most precious natural resource. We must do everything in our means to protect their innocence. When they are subjected to violence at school, that innocence is lost forever." Through his private training company, Fortitude Training Concepts,

Quinn began training armed school staff members in 2013.

FASTER trainer Paul Gregory, an active duty law enforcement and SWAT commander, says, "Law enforcement is not always able to immediately intervene in the event of an active shooter. We need trained faculty to save lives. The FASTER program provides that critical training." Paul has been training civilians and non-civilians through his private training company, Gunfighting International.

Although there are other training classes available in Colorado, our trainers provide one of the key advantages of the FASTER program. Law enforcement officers are on duty working with their skills every day. They know better than anyone how to train armed school staff to work with law enforcement when they arrive on scene.

There is one more advantage for the schools that send their armed staff through FASTER. We know that many schools don't have the budget for this world-class training—tuition for the 3-day course is \$1,000 per participant. Independence Institute has joined forces with Coloradans for Civil Liberties to raise private money to cover the cost of tuition so none of these brave defenders will have to go without this training due to lack of budget.

Some who are opposed to armed school staff say that law enforcement doesn't support the idea. Don't let them speak for all law enforcement. Those who have chosen to participate in FASTER training for school staff in Colorado know better.



Laura Carno is the Director of FASTER Colorado.

Education Policy Center Celebrates School Choice and Coalition Building

By Pam Benigno

On a cold but sunny Saturday in January, we greeted low-income families with bright yellow National School Choice Week scarves and pizza at a northwest Denver recreation center adorned with festive red and yellow balloons. Education Policy Center staff and our planning partners—the Libre Institute, ACE Scholarships, and the Denver Archdiocese—worked together to host a National School Choice Week event focused on providing information to families about scholarships available to assist with K-12 private school tuition. For those who had already received a scholarship, it was a time to celebrate and be grateful for their chance to choose the school of their choice.

Ivette Diaz from the Libre Institute was our bilingual emcee. ACE and Seeds of Hope scholarship recipients shared their stories about how tuition assistance impacted their lives. Various private schools and other organizations lined the room with tables and valuable information to empower parents. At the Independence Institute, we know the importance of coalition building and outreach to those who will benefit from the policies we support.



Pam Benigno is the Director of the Independence Institute's Education Policy Center.



Small Business Stands up to Xcel Energy



“What keeps you up at night?” is a question Arthur Brooks posed to a room of about 40 people back in 2014. For Brooks, president of the American Enterprise Institute, it was poverty. For me, it was Sharon Garcia, the single, working mom and the sky-high energy rates causing her “Depression-era obsessiveness” over electricity use, as profiled in the *Washington Post*.

Who does this to a working mom in the 21st Century? Colorado lawmakers do by enabling monopoly utilities to financially gouge captive ratepayers.

Public policy makes it difficult on families—especially single moms like Garcia—to pay their bills. We’ve reported repeatedly on how rates and monopoly utilities’ profits have skyrocketed while wage growth has been anemic.

Sharon Garcia, an in-home day care provider, isn’t alone. There are other residential and small business customers who share her concerns. We found some of them and formed the Coalition of Ratepayers, a Colorado nonprofit concerned with rising energy costs and the burden those costs put on residential and small business customers.

Two of our coalition members are Mike and Deb Morris, owners of Auto Collision Specialist in Greeley. Open since 1989, Auto Collision

Specialist has the distinction of being one of the few female-owned body shops.

Deb recently braved a hostile crowd at the Colorado Public Utilities Commission to testify against Xcel Energy’s \$2.5 billion Colorado Energy Plan to retire prematurely 660 megawatts of relatively young, low-cost, highly utilized, environmentally state-of-the-art, coal-fueled power plants in favor of industrial wind and solar with battery storage.

“My concern with closing down any of the facilities that exist now is I am not getting reliable service today. For every hour that I lose electricity, I lose \$1,000 to \$1,500. My employees lose \$150 to \$200 out of their paycheck.”

Last year, Auto Collision Specialist lost somewhere between 30 and 40 hours of power, which cost them nearly \$35,000. For their lost service and revenue, Xcel refunded them a whopping \$5.18.

In order to lower their monthly electric bills, the Morrises invested over \$30,000 in energy efficiency upgrades, including LED lights throughout their shop.

It’s small business owners like Mike and Deb, who provide jobs for 12 employees, that empower

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Sherrie Peif Takes on Weld County, and Wins

Complete Colorado reporter Sherrie Peif was recently part of a successful legal fight for the employment files of a Weld County employee who is running for clerk and recorder.

More than 18 months ago, Weld County employee Elisa Kunkel took on her then-employer, Weld County Clerk and Recorder Carly Koppes, when she claimed she was inappropriately demoted by Koppes as a form of retaliation after Kunkel complained of low morale and high turnover in the motor vehicle office. Kunkel claimed her 18 years of employment with the county was spotless and that she had never received a negative review. Earlier this year, Kunkel announced she would challenge Koppes for the clerk's position in the 2018 election.

Peif filed an open records request with the county for the employment files of

both Koppes and Kunkel. Koppes' files were turned over, but the county denied access to Kunkel's files. Peif then asked the county to ask the district court to make a determination after citing legal precedent concerning the release of government employee files. Shortly thereafter, the *Greeley Tribune* also requested the files and was also denied. The county agreed to ask the court for clarification and named Complete Colorado and the *Greeley Tribune* as joint defendants in the case. The two news outlets won. Peif testified on behalf of Complete Colorado at the hearing.

Weld District Court Judge Marcelo Kopcow released the vast majority of the files, which showed Kunkel was not the exemplary employee she claimed to be. Those records could be the determining factor in the clerk and recorders race in Weld County. More importantly, it was a major victory for open records laws in Colorado.

Standing up to Xcel continued from page 9

our coalition to go where others don't dare to tread: the regulatory arena at the Colorado Public Utilities Commission. Until now, this space has been the sacred playground of corporate lawyers, unelected bureaucrats, and well-funded special interest groups. They have "stakeholder" meetings that include only themselves, then they issue press statements slapping each other on the back for their hard work securing a "settlement" that forces Colorado working families and small businesses to pay more while a monopoly utility lines its pockets.

Average small business and residential customers aren't welcome here. Heck, they can't even get in. And don't fall for the pretense that the Office of Consumer Counsel (OCC) is your consumer advocate. The OCC has abdicated its role as any type of consumer watchdog, instead

preferring its role as Xcel Energy's lapdog.

But the coalition did get in and make its voice heard, and we're challenging the process that is tilted so heavily in favor of insiders. The deck may be stacked against small business and residential customers like Mike and Deb Morris and Sharon Garcia, but at least now they have a voice in the Coalition of Ratepayers.

When fairness is restored to the process and the high cost of energy and monopoly profiteering doesn't burden ratepayers, I'll finally get a good night's sleep.



Amy Cooke is the Executive Vice President of the Independence Institute and Director of our Energy and Environmental Policy Center.

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We're Hitting the Road!

Starting this April, the Independence Institute will be on the road to educate people across Colorado about the importance of TABOR (The Taxpayer's Bill of Rights) and expose those who have failed to uphold it.

In partnership with our TABOR Roadshow Coalition partners, the Independence Institute will be crisscrossing the state to remind Colorado residents of the single greatest gift we voters have ever given ourselves. TABOR is what empowers the citizens of Colorado to decide the size and scope of government that WE want for ourselves. The media and the political elites won't defend TABOR, but WE WILL with your help.

Join us as we bring a TABOR Roadshow event to a city near you!

Would you like to sponsor a local TABOR Roadshow event? Your logo or name can appear on event signage, the website, and even promotional materials!

For more information on the roadshow or our plan to defend and protect our Taxpayer's Bill of Rights, please visit www.TABORYes.com.

For Sponsorship Information

Contact Todd Lubas
at 303-279-6536 ext. 120

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

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Keep Our Events Nice, Help Us Make Ice

As you may already know, the Independence Institute is an embassy for coalitions, groups, and conferences across Colorado. You might have even enjoyed a drink or two with our policy analysts at an event! Sadly, however, that drink was likely warm. We have learned that expecting our guests to keep a cool head when they're drinking warm vodka is simply too much. When drinks are cold, however, spirits are up!

Though we do have a small freezer downstairs, we are finding that the scale of the events at the

Independence Institute have grown so large that our freezer is not able to hold all the ice we need. This leads to an even bigger problem – watered down drinks.

Thus, the Independence Institute is in the market for an ice machine. The cost of this coveted treasure is around \$2,000 and we could use some help making the purchase. So, this spring, help us help you by providing an ice machine for our downstairs event space.

To contribute
please contact Todd Lubas at
Todd.Lubas@i2i.org.

