Read about our internship opportunities for freedom-minded students on page 8.
I t’s time to rename our state “East California.”

There has been a seismic shift in the spirit of Colorado and its people. You feel it. You’re reminded of it every time you roll your eyes when you’re stuck behind a California license plate in traffic.

You feel it with the growing “triggered” society, ready to riot over a silly sign at a coffee shop. You feel it with every proposal to raise “fees” on grocery bags or drinks with sugar, force green roofs, municipalize power companies, raise sin taxes on smoking, build city-owned internet, impose growth control, gun control, healthcare control. Control, control, control.

You feel it – we are becoming California.

I grew up in a Colorado where a love of liberty seemed to grow out of the ground. Due to that love of liberty, Colorado has always been a destination state, perhaps THE destination state in THE destination nation. Why? Because it was the place where a man could write his own biography.

People who craved the freedom to make their own decisions were pulled to this state by some unseen magnet, which created what we call the Colorado character.

Miners, farmers, ranchers, brewers, artists, techies, and businessmen were all drawn here and had one common denominator: a fearless desire to take on risk. They directed their own activities, made their own calls, and, through the power of freely associating with others, built the greatest state in America. The tales of their failures and successes only powered the magnet more.

There was a reason Ayn Rand, when writing Atlas Shrugged, put her fictitious “Galt’s Gulch” in Colorado. Where else could it be?

But with the massive influx of people who don’t share that love of liberty and have never understood or even thought about the Colorado character, that which makes Colorado special might be lost forever if we don’t fight to save it NOW.

The magnet that seems to pull today’s new Coloradans are pretty mountains, a job, and homes that somehow cost less than the ones they’re selling in California.

Last year saw 30,000 more people come to Colorado. That in itself is not a problem. The problem is that they’re not drawn here for our spirit of liberty, and they’re bringing their Californian character with them.

I want to be clear about the labeling I’m using here. Being “Californian” doesn’t mean being from California. It’s all about the political culture, the way Coloradans think about using government to control others. People can be born here and still be “Californians.”

Our definition simply comes down to this: Colorado character means craving the freedom to make one’s own decisions. Californian character means demanding to make decisions for other people.

All of us who care about Colorado’s character must come to terms with a harsh reality: The demographic changes to our home make our task more difficult than we ever realized. As we often say here, politics is the lagging indicator of change. Culture is the leading indicator. And the culture is now against us.

The first thing we must do—and Independence Institute is perhaps the only organization that can get it done—is to get this issue recognized and accepted. Like an alcoholic finally publicly saying he has a problem before he can even attempt to tackle it, the body politic of Colorado must come to publicly recognize that we are becoming East California.

Then we must challenge our policy makers to choose. Are you Coloradan? Or are you Californian?

You’ll hear more about this theme throughout our work in 2018. We need you to join us!

And remember, real Coloradans crave freedom.

Think Freedom!

Letter from the President
Independent Inking  |  Winter 2018

Words of Encouragement During a Successful Year

by Amy Oliver Cooke

Just before the 2016 elections, a reporter from the New York Times interviewed me. His theory was that state-based think tanks aren’t effective in the energy and environmental space. Fortunately for him, he never published the story. He’d be embarrassed now.

A few things for Energy and Environmental Policy (E2P) to brag about, made possible by the generous support of folks like you:

• E2P was one of the key members of a successful coalition that stopped the controversial and costly “Clean Power Plan.”
• I was the second person named to the presidential transition team for EPA (I wonder if Mueller has my emails because I didn’t save them).
• We launched the first annual Earth Day Art Contest to celebrate fossil fuels with help from our fabulous creative guru, Tracy Kimball Smith.
• We successfully introduced the phrase “energy feminist” into social media and on Comedy Central’s Young Turks.
• We brought the health impacts of industrial wind in Colorado to public attention.
• We shined a light on the electric vehicle tax credit scam.
• We prevented Xcel Energy from getting legislative approval to blanket the state with industrial wind turbines.
• We stopped monopoly utilities from forcing all ratepayers to pay the bill for electric vehicle charging stations and infrastructure.
• We petitioned and were granted standing at the Public Utilities Commission for our Ratepayer Coalition to challenge Xcel’s regulatory power grab.

Those things are impressive, but here’s how I know our free market energy and environmental movement is gaining traction. Our critics are taking notice. Check out some of the sweet messages of encouragement I received through Twitter and email over the last year (typos and all).

“Energy Feminists, What’s next, ‘Fracking Friends’ you pandering pieces of sh*t?”

“Amy Cooke, your not protecting the environment when you promote ending regulations on the dirtiest energy sources on the planet. Also sprinkling in terms like agnostic and feminism do not make your pro-pollution message more in line with Earth Day’s meaning.”

“This video makes me want to slap the sh*t out of someone :/”

“Hands down this is the worst kind of feminism.”

“The words ‘energy feminist’ are going to haunt me until the end of my days, and maybe beyond.”

“murder me, f***.”

“As Dorothy Parker said so perfectly, ‘May you die slowly of a hideous disease for which there is no cure, in a foreign country not of your choosing’”

“What lakes, reservoirs, rivers, and creeks have too much mercury and arsenic around Colorado Springs to fish in? Tell her to jump in one.”

Despite the generous words of encouragement from our delightful critics, we enjoyed some tremendous successes in 2017. Thank you for helping make it happen. I think we’re over the target and looking forward to 2018. Stay tuned!

Amy Oliver Cooke is the Executive Vice President of the Independence Institute and Director of our Energy and Environmental Policy Center.
U.S. Supreme Court justices are increasingly turning to Rob Natelson, Independence Institute’s senior fellow in constitutional jurisprudence, for guidance on the Constitution’s original meaning.

Justices have relied on Rob’s articles 19 times in six cases since 2013. Most recently, Justice Clarence Thomas included two references to Rob’s work in a November 2017 opinion. All the referenced articles have appeared in scholarly legal publications.

Most of Rob’s writings examine constitutional provisions that are not widely understood or that have been seriously misrepresented. Rob studies the historical and legal sources and sets the record straight.

“I try to keep politics away from my constitutional research,” Rob says. “My goal is to reconstruct the actual meaning of the Constitution as honestly and as clearly as I can.”

A good example is the article cited recently by Justice Thomas. Entitled “The Original Understanding of the Indian Commerce Clause,” which appeared in a 2008 issue of the University of Denver Law Review. Its publication in a Colorado law journal was happenstance; Rob was teaching at the University of Montana at the time and submitted the article to many different journals.

The Indian Commerce Clause grants “Congress the Power . . . to regulate Commerce . . . with the Indian Tribes.” Over the years, both the federal government and legal writers seriously misrepresented what the clause actually means. They claimed it granted Congress nearly absolute power over Indian affairs, to almost the entire exclusion of the states.

“As so often happens during these investigations,” Rob says, “the conventional wisdom turned out to be false. It was based partly on sloppy scholarship and partly on wishful thinking. In fact, the actual scope of the Indian Commerce Clause is relatively narrow.”

Rob explains that the purpose of the clause was to allow Congress to regulate the trade between Indians and white merchants while protecting the Indians from fraud. During the founding era, Indians sold furs and other raw goods to merchants and received finished products, such as clothing and utensils, in return.

Justice Thomas cited the article while unsuccessfully arguing that the Supreme Court should review the federal government’s use of the Indian Commerce Clause to seize jurisdiction over 13,000 acres of territory in New York. Thomas previously cited the same article in a 2013 case. And in two other cases, he relied on Rob’s analysis of the Constitution’s Necessary and Proper

Continued on page 10

By Staff
I n December, the new 7-0 union-backed school board in Douglas County, Colorado, voted to repeal a first-of-its-kind local voucher program and to end the district’s role in a related constitutional case involving nonpublic parental choice. In so doing, the board drastically decreased the likelihood that the case will ever reach a final resolution—a resolution that could have changed the future for disadvantaged children across the United States.

With a median income of over $100,000 and poverty rate below 4 percent, Douglas County is one of the wealthiest counties in the nation. More than 90 percent of the county’s population is white. Much of Douglas County’s landscape is dominated by multilevel suburban homes, packed shopping centers, and broad avenues lined with impeccably manicured grass and trees. Elsewhere, large ranches sprawl in the shadow of the foothills.

Only 12 percent of the district’s nearly 70,000 students qualify for free or reduced-price lunch under the National School Lunch Program, compared to 42 percent statewide. Although the new board and their supporters have worked hard to portray Douglas County as an educational disaster zone following eight years of reform, the school district boasts an on-time high school graduation rate of over 90 percent and higher SAT scores than most of the surrounding school districts.

Here, surrounded by money, safety, and gleaming monuments to middle-class American success, the school board voted to substitute its judgment for the courts’ by sabotaging a nationally watched constitutional case impacting students across the country. The board may well have rendered the case moot by repealing the program in a purposeful attempt to preclude all future chances of resolution.

Ironically initiated in 2011 by newly elected board member Kevin Leung and his political allies, *Taxpayers for Public Education v. Douglas County School District* was set to answer a longstanding question about whether historically discriminatory Blaine Amendments prohibiting government aid to “sectarian” institutions in 38 states are compatible with First Amendment religious protections. Had Blaine Amendments lost in court—and it seemed highly likely that they ultimately would—the most commonly deployed means of denying choice to underserved students would have been neutered.

As they celebrate the “victory” of running from their own legal questions, I wonder if the new board or its supporters understand the implications of this vote for children far removed from Douglas County’s suburban paradise.

I am reminded of the many stories I have heard as an advocate for parental choice programs for disadvantaged students. I remember the story of a little boy who tried to stab a principal using a knife he kept to ward off the strange men his single mother often brought home. I remember asking a classroom of young students with disabilities which of them had experienced bullying and watching nearly every hand rise. I remember speaking...
On Dec. 6, 2017, Dave Kopel, our Second Amendment Project Director, testified before the U.S. Senate Judiciary Committee doing what he does best: protecting our Second Amendment rights. Kopel’s oral testimony focused on a bill by Senator Diane Feinstein (D-Calif.) about “bump stocks.” Kopel explained that he favored changing federal law so that bump stocks would be treated the same as machine gun conversion kits. If something makes a normal gun fire as fast as a machine gun, then it should be regulated similarly.

However, Kopel suggested that the Feinstein bill went too far. Most importantly, the Feinstein bill outlaws everything that “functions” to “accelerate” the rate of fire of a semi-automatic rifle. Thus, the Feinstein bill would outlaw:

- Trigger modifications to reduce the pressure needed to pull the trigger
- Cleaning kits, because mechanical tools that are clean operate faster than tools that are dirty
- Improved forward grips, because anything that better stabilizes a gun enables the user to fire faster
- Modifications to reduce felt recoil, which also help with stability and control
- Improvements to the gas system, so that the energy from expanding gunpowder gas is more efficiently used to propel the bullet down the barrel and out of the gun

As Kopel noted, the items in the list only “accelerate” a rifle’s rate of fire by about a tenth of a second per shot or less. Yet they would all be outlawed by the Feinstein bill.

To make matters worse, the Feinstein bill has no grandfathering provision. So, a person who owns a rifle with an improved trigger (or who owns a bump stock) would have 180 days to destroy his or her property. After that, the property becomes contraband and possessing it becomes a 10-year federal felony.

Kopel testified that the better approach would be to copy previous statutes and regulations that have changed the classification of arms or accessories. There should be a lengthy period for current owners to register their bump stocks, and the $200 tax should be waived.

While Kopel’s five-minute oral testimony addressed only the Feinstein bill, his 32-page written testimony also analyzed three other bills of interest to the Senate Judiciary Committee. Kopel’s written Senate testimony and a video of his oral testimony are available at his website, davekopel.org. They are also available at the Senate Judiciary Committee website, and video can be found on Cspan.org.
How can Liberty win in Colorado when the Left owns the media? Building a credible alternative to the overwhelmingly progressive reporting in our state has been a key component of our capacities. CompleteColorado.com is not only a Drudge Report style news aggregator, but it is also the vehicle to release much of our original reporting and investigative stories. If you care about politics in Colorado, CompleteColorado.com needs to be on your daily hit list of news websites.

We are thrilled to announce we are expanding our reporting pool by opening our southern bureau. Veteran columnist turned reporter Scott Weiser joins the Complete team and will be covering southern Colorado, including Colorado Springs and Pueblo. Scott will be a great compliment to Sherrie Peif, who covers northern Colorado. Both will cover the 2018 legislative session, so look for even more Capitol beat reporting on the Page 2 section of the site.

CompleteColorado.com was founded in 2008 by Todd Shepherd, previously an investigative reporter for Independence Institute and current investigative reporter for the Washington Examiner. Todd saw the need for a legitimate, local news site that could be a one-stop-shop for the best news, opinions, and investigative reports from around the state. The site is managed by our in-house web master, Justin Longo, a graduate of economics and business management from George Mason University.

Since its launch, Complete has found tremendous success, breaking new stories that are updated morning, noon, and night. In 2012 Complete was named “Best Political Blog” by Westword magazine, and it won “Best Source for Up-to-Date Political Information” in 2017.

If you want to hear directly from your favorite II policy gurus, just flip to Page 2, which functions as a publishing platform for Independence Institute contributors as well as our news stories – stories you aren’t likely to hear or read in traditional news outlets.

Rather than scouring the different news sites on the internet, and sifting through the progressive muck, head to CompleteColorado.com and find everything in one place. It’s what all the cool kids are reading!

Be sure to download the mobile app to take Complete Colorado with you no matter where you go. Find Complete on Twitter @CompleteCO and on Facebook.

Because liberty is a team sport, the Independence Institute’s Health Care Policy Center is providing some research support to Mountain States Legal Foundation attorneys. These attorneys are suing the state for collecting hospital provider fees in violation of Colorado’s state constitutional Taxpayer’s Bill of Rights (TABOR). The hospital provider fee raises almost $800 million in revenue annually. It requires hospitals to send the state up to $385 per person for each day spent in the hospital and an amount equal to 1.8208 percent of total gross outpatient charges. Almost everyone else in the country, including the Medicaid bureaucrats who approved Colorado’s hospital provider “fee,” calls the provider fee a provider tax.

To make the scheme work, the state needs everyone to believe charges constituting sales taxes are actually fees. Why? Because the state pretended that the tax was a fee in 2009 when it passed the measure, started collecting money to fund Medicaid expansion, and did not bother asking the voters under TABOR.

Along with its fee claims, the state makes the silly claim that nobody really pays the fee because the state returns all the fees to the hospitals that send it. If that’s really the case, the state is violating federal regulations. The federal government requires that Colorado’s program not make whole all of the hospitals paying the fee. In its fine print, even the state admits that some hospitals get...
I spent six years in the United States Army. It was during my time in the army that I learned the importance of civil liberties. The United States Constitution, which I swore to uphold during my time in the military, affirms these liberties for all citizens.

When I returned home after my service, I began to reacquaint myself with the town I had called home for six years. I became more involved with my community, believing that the best way to implement positive reform was to exemplify it through engagement. This effort to make a difference in my community would lead me to attend a local government presentation by the Independence Institute’s Kathleen Chandler.

Kathleen’s presentation on local government issues introduced me to a part of government that I had not been aware of to that point: citizen advisory boards and commissions. Kathleen explained how these boards and commissions impact their communities and why it is imperative for citizens who wish to see individual liberties upheld to seek appointments to them.

Kathleen’s presentation emphasized that being appointed involves selling yourself as an asset and presenting yourself as a team player who is not afraid to ask, “What is the purpose of government?” With this training in mind, I sought out the citizen’s commission in Aurora that I felt best matched my areas of expertise and experience: the Aurora Veterans Affairs Commission.

Applying the knowledge I received from Kathleen’s training, I first began by applying to fill a vacancy on the commission, then proceeded to interview with the commission’s vice chair. During the interview, I emphasized that I was willing to sit on a committee and work with other commissioners to meet the commission’s objectives. I demonstrated my value to the commission and my willingness to be a team player.

During the application process, I chose to enroll in the Aurora Citizens Academy, taught by a member of the city council. This experience would prove to be extraordinarily beneficial not only in terms of the training I received, but also in gaining name recognition with the city council when they were appointing citizens to their various commissions.

Acknowledging my desire to become an involved citizen and noting a recommendation from the Veterans Affairs Commission, the city council appointed me to the Aurora Veterans Affairs Commission. As part of my oath of office, I once again swore to uphold the Constitution of the United States, just as I did when I first joined the army.

I now have the opportunity to make a real difference in my community – an opportunity I never would have known about had it not been for Kathleen Chandler’s work on local government issues and the Independence Institute.

"Tax or Fee continued from page 7"

much more in state payments than they contribute, and some get much less.

Last we checked, hospitals don’t print money. If some hospitals pay more in fees than they get back, the money has to come from somewhere. We’re betting it’s from people who pay for their own health care with cash or by paying private insurance premiums. It’s just one more way government raises the cost of private health care.

Linda Gorman is the Director of our Health Care Policy Center.
Little Eddie Has Three Dads

By Connan Houser

As the newest member of the Education Policy Center team, I am excited to take on the responsibility of being the primary writer for the newly redesigned Edis Watching org—a blog about K-12 education policy originally conceptualized by former senior policy analyst Ben DeGrow.

Ed is Watching is a platform to inform readers about current education issues in Colorado from the perspective of five-year-old Eddie. With his questioning and often facetious nature, Eddie watches over Colorado, bringing to light the best and the worst of the education world. He often features work by the Independence Institute Education Policy Center, and he loves to follow the progress of school choice and education reform across the nation.

So why is the blog narrated by a kindergartner? Though I enjoy sophisticated analysis as much as the next policy nerd, sometimes the blatant input of a five-year-old is just what you need in the commonly wordy and convoluted realm of politics and policy. When reading Ed is Watching, you can expect both the thorough research of a policy analyst and a few points from the innocent yet witty Eddie.

The previous voices of Eddie include Ben DeGrow and Ross Izard. Needless to say, I have some big shoes to fill. There’s a lot to learn from the preceding writers, but I look forward to bringing the voice of a more recent graduate of the public education system to the blog. Trust me, I have my fair share of both criticism and appreciation for our education system and look forward to sharing it with you.

Connan Houser is a research associate with the Education Policy Center.

Future Freedom Fighters

By Staff

Although they seem to be rarer than the elusive white rhino, free-market-minded young people do indeed exist. If you know any, we would love to talk to them! The Independence Institute has paid and unpaid internship positions available through our Future Leaders Program.

This program is a great opportunity to learn from our experts by working on timely and relevant public policy research and projects. We match our Future Leaders with a policy center director or senior fellow as their mentor to learn how to affect change using a variety of different tools and strategies, including: in-depth research, policy analysis, academic writing, commentary, and navigating the political landscape. Plus, it’s all through a free-market lens. Interns participate in Institute events for no fee and have a series of lunch meetings with VIPs, such as newspaper editors, radio personalities, key local leaders, and elected officials.

Areas of study considered are, but not limited to, political science, journalism and communications, public policy, philosophy, economics, education, environmental studies, nonprofit management, criminal justice, and pre-law and law school students. Good research, writing, and office skills are essential.

For more information, i2i.org/join-us/internship.
with a now-successful man who told me that his friends’ childhood heroes were the corner drug dealers who would hand them cash on the way home from school to feed their families.

I remember the pain of two elderly grandparents who felt like they failed their young granddaughter as she struggled with every school she attended following her mother’s departure from her life. I remember watching grown men cry as they describe the difference their children’s private schools—schools they could not have afforded without assistance—have made in their lives.

These stories irrevocably changed my view of parental choice in education from one of economics and policy to one of morality. They are lacerating, but they taught me that educational choice is about more than spreadsheets and dueling philosophies. It is about compassion, justice, and a fair shot at success for children living in unimaginable situations. Yet these things were never mentioned as the Douglas County school board coldly executed its political agenda to a standing ovation last week.

Rob notes that although much of his research was published while he was still a law professor, most of the public notice has come since he left academia and moved back to Colorado to work more closely with Independence Institute.

“By and large, the law school was hostile to my scholarship,” he says. “They certainly did almost nothing to promote it. By contrast, the staff at II, especially Dave Kopel, have helped push my work into the mainstream.”
Supporting Independence

Colorado Gives Day Report
December 5th was Colorado Gives Day, an annual statewide movement dedicated to increasing support for philanthropy in Colorado through online donations.

Our donors know how to stick it to the Left, and on Colorado Gives Day you stuck it good. Together, we invaded a day that overwhelmingly supports nannyists and control freaks, and instead turned it into a day that embraces freedom. And you knocked it out of the park!

With more than $70,000 raised for the Independence Institute, your support will prepare us for fresh battles in the New Year! Thank you!

Policy Primer Breakfast
If you invest $1,000 or more in one year to the Independence Institute and our work for freedom, you’re a part of our ever-growing group of members who receive invitations to special events such as our February Policy Primer Breakfast, during which our policy experts will cover the most pressing issues facing our state during the legislative session. Look for your invitation to attend this event, which will be Tuesday, February 13, 2018, from 7:15 - 9 AM.

Register with James Lutack at 303-279–6536 x124 or James@i2i.org today.

Legacy Society
Have you considered becoming a member of the Independence Institute’s Legacy Society? We invite all supporters of freedom to make a planned gift so they can perpetuate liberty beyond their lifetime. Vehicles for giving—life insurance policies, bequests made in your will, gifts of real estate, etc.—provide tax benefits and block government from taking more of your hard-earned savings (which they would likely invest in causes you hate). Contact your tax advisor about the many ways you can make a planned gift. Your vision today will benefit your children, grandchildren, and all Coloradans for decades to come.

Contact Todd Lubas at 303-279-6536 x120 or Todd.Lubas@i2i.org for more information.

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 $________

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

Please mail to: Independence Institute • PO Box 5387 • Denver, CO 80217-5387
Get Your Seat at the Table!

Mark your calendar today to sponsor or attend the Independence Institute’s most exciting and important fundraising event of the year, our Founders’ Night Dinner. On **Thursday night, April 26, 2018** at the EXDO Event Center in Denver, we’ll take you on a journey as we never have before. It’s awards season, from the Golden Globes to the Oscars to our own Founders’ Night. We’ll roll out the red carpet and go from Hotel California to Colorado Rocky Mountain High (not literally). Expect a rollicking good time, compliments of your host, Independence Institute President and amateur-hour comedian Jon Caldara, and other B-list celebrities. Don’t let anyone else snag your goodie bag! Contact Shari@i2i.org today to reserve your table so you’re in the front row! This is one Founders’ Night dinner and awards program you won’t want to miss.

Contact Shari Hanrahan at 512-627-9831 or shari@i2i.org to reserve your sponsorship and seat.